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Senate

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

PRAYER

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

Dear Lord and Father of mankind
Forgive our feverish ways
Reclothe us in our rightful mind,
In purer lives thy service find,
In deeper reverence, praise.
Take from our souls the strain and stress,
And let our ordered lives confess
The beauty of Your peace.—Whittier.

O God, You have promised to keep us in perfect peace if we allow You to stay our minds on You. This is the peace we need today. The conflict and tension of these days threaten to rob us of the holiday spirit. It is easy to catch the emotional virus of frustration and exasperation. Then we remember that Your peace is the healing antidote that can survive in any circumstance. Give us a peace of a cleansed and committed heart, a free and forgiving heart, a caring and compassionate heart. May Your deep peace flow into us calming our impatience and flow from us to others claiming Your inspiration. In the name of the Prince of Peace who whispers in our souls, ''Peace I leave with you, My peace I give to you. Not as the world gives, give I to you. Let not your heart be troubled, neither let it be afraid.'' In Jesus' name. Amen.

RECOGNITION OF THE MAJORITY LEADER

The PRESIDENT pro tempore. The able majority leader, Senator DOLE, is recognized.

SCHEDULE

Mr. DOLE. Mr. President, we will immediately go to House Joint Resolution 132 regarding the use of the CBO economic assumptions. There will be 60 minutes of debate equally divided with an amendment ordered to the resolution. There should be a rollcall vote around 10:30, 10:35.

Also, this morning we will take up the veto message to accompany H.R. 1058, the securities litigation. It may also be that we will take up the welfare reform conference report today. It just arrived.

There is objection to taking up the resolution concerning application for veterans' benefits unless we can add to it a CR to open up the Government. So that may or may not come up today.

There are other time lines that we need to address concerning AFDC recipients, and other groups, that unless we have a CR, we will take specific action on. I will try to determine what that is during the day.

I have not had a report on the meeting this morning between Chief of Staff Leon Panetta, Senator DOMENICI, chairman of our Budget Committee, and Chairman JOHN KASICH of the House Budget Committee. I understand there was some progress made.

It is my hope that sometime today we can meet again with the President of the United States and see if we can resolve some of the major differences still outstanding. There really are not that many big ones, but there is Medicare and Medicaid and tax cuts. I mean there are some very, very important provisions that need to be addressed.

Whether or not that meeting will occur, I think it is too early to tell. I know the Speaker and I are prepared to meet with the President at any time during the day.

RESERVATION OF LEADER TIME

The PRESIDING OFFICER (Mr. INHOFE). Under the previous order, leader time is reserved.

BASING BUDGET NEGOTIATIONS ON MOST RECENT TECHNICAL AND ECONOMIC ASSUMPTIONS OF CONGRESSIONAL BUDGET OFFICE

The PRESIDING OFFICER. Under the previous order, the Senate will now proceed to consider House Joint Resolution 132, which the clerk will report.

The assistant legislative clerk read as follows:

A joint resolution (H.J. Res. 132) affirming that budget negotiations shall be based on the most recent technical and economic assumptions of the Congressional Budget Office and shall achieve a balanced budget by fiscal year 2002 based on those assumptions.

The Senate proceeded to consider the joint resolution.

Mr. MACK addressed the Chair.

The PRESIDING OFFICER. The Senator from Florida.

Mr. MACK. Mr. President, the night before last there was an effort to bring this resolution to the floor of the Senate for debate and vote under a unanimous-consent request. There was objection to that request. My understanding is that those who objected did so because the full text of the previous language from the continuing resolution that was passed 30 days ago was not included. The resolution only contained language dealing with the the requirement that the President submit to the concept of a 7-year balanced budget using real numbers as generated by the Congressional Budget Office. That was the resolution.

As I understand it, there will be an effort this morning to add additional language to the resolution. Frankly, I have no objection to this proposal. The additional language provides for the protection of various programs, including: ensuring Medicare solvency, something that we have all been working toward; reforming welfare, which clearly

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

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I think we are on the verge of accomplishing; and the adoption of tax policies that help working families and stimulate economic growth.

So I suspect there will be strong support for this resolution. But it is unfortunate that the Senate has to spend its time this morning on this issue. It is unfortunate that the Congress has to take this time to remind the President of the commitment which he made over 30 days ago.

There is a real question as to why the President of the United States has not submitted a 7-year balanced budget plan. The President has submitted a number of budget proposals this year. I think it is three. I could be wrong about that. Some indicate that the President has submitted four. However, not a single one of those four budget proposals has eliminated the deficit in the seventh year. The President's budget plans still accumulates a tremendous amount of debt. They maintain many wasteful liberal programs that have failed—that people throughout the country recognize as having failed, but not one single budget proposal that the President has submitted reaches a balance by the year 2002.

There are many people who would expect me, a Republican Senator, to say these kinds of things. But I think there is evidence to indicate that Senators on both sides of this aisle—and clearly the Members in the other body—have rejected the President's proposals because, frankly, they do not meet the test of a balanced budget as scored by the Congressional Budget Office.

I do not remember the date or the exact vote in the Senate, but I remember bringing the President's first budget proposal to the Senate for a vote. As I recall, not a single—well, maybe there was one Senator who voted for the President's proposal. But it was soundly rejected by both sides of the aisle. And the reason that it was rejected was because it did not reach a balanced budget by the year 2002.

Just a few days ago the other body brought the most recent of the President's proposals to the floor of the House and it was also soundly defeated. In fact, I believe there was absolutely no support, again, on either side of the aisle for the President's budget proposal.

Let me give a little explanation as to what that budget proposal was.

The fourth submission by the President which the administration claimed to be in balance was finally scored by the Congressional Budget Office and was, in fact, $116 billion short in the seventh year. Again, the administration wants to create the impression that it is for a balanced budget but continues to fail to come forward with a plan that balances the budget in 7 years with CBO numbers.

Now, I am under the impression, or I have been given information which indicates that the minority leader has a proposal now that would, according to their numbers which we have been told are based on CBO assumptions reach a balance in the budget by the year 2002. I think this is a helpful first step.

But again, the President just absolutely refuses to come forward with a plan that balances the budget. Let me give you my perspective as to why he will not do it. He simply does not want to tell the people in the country those things that he supports. He does not want to choose those Federal programs which he thinks are so important that they need to be protected. Oh, clearly he has made his statement with respect to Medicare and Medicaid, but he has not talked about any other programs in the Federal Government that he wants to continue in force. Because in order for the President to keep those programs in force, to keep them growing, to keep them as part of the Federal budget, he has to indicate what other programs he is willing to cut. And he does not want anybody to know what programs he is willing to cut or eliminate.

It is time. The country is waiting. The country is committed to a balanced budget in 7 years. Eventually, the polling data is going to indicate that. Eventually, the President is going to get the message.

There is one other indicator that I think will get the President's attention as well. I do not know whether this is a record, and my colleague, Senator EXON, may be aware of whether it is a record or not. But I understand that yesterday while the President was announcing that there would not be a meeting between himself and the leaders of the House and the Senate, the market fell 50 points in somewhere between 10 and 15 minutes. I have been told that that is a record.

I have a feeling that what is happening in the markets, a decline of 100 points 2 days ago, or 3 days ago and a decline yesterday of an additional 50 points, probably has the President's attention. I say this because the point which we have been making on this side is that one of the benefits derived from a balanced budget is lower interest rates. This means lower mortgage payments. This means more affordable student loans. This means lower taxes for American families. Everybody benefits from a balanced budget. But when the market heard that the President was not going to meet with the leaders of the House and the Senate, the market dropped 50 points in about 15 minutes. I would suggest to the President it is time now to get serious about balancing the budget, doing it with real numbers, using CBO, and getting it done over a 7-year period.

I yield the floor.

Mr. EXON addressed the Chair.

The PRESIDING OFFICER. The Senator from Nebraska.

Mr. EXON. Mr. President, the matter before us is one that I think does not require a great deal of debate and consideration. I think probably it is going to be overwhelmingly approved if we have a voice vote on the matter. I simply say that I am not sure at this particular juncture, when the Government is shut down, when there is great anxiety in America that we get on with this matter of balancing the budget, it is particularly helpful to go on another diatribe and sharp debate in the Senate on scolding the President or scolding other people.

I noticed with interest the manager of this measure on the other side indicated that we never have come forth. We have a program, of which this Senator was a chief author, that does, indeed, balance the budget in 7 years, does, indeed, balance the budget based on CBO numbers, period, without any caveats whatsoever.

So in total keeping with the cooperation that has come forth from the Democratic side, we are in basic agreement with what we are attempting to do here, and therefore it is simply a statement of what once again is the obvious.

What I am attempting to do at this time is to restrain our rhetoric, to restrain our differences of opinion as to how we reach that goal of a balanced budget in 7 years using the conservative scoring techniques of the Congressional Budget Office, which, I might add, has been proven wrong. The figures by CBO have been wrong the last 2 years by a very large proportion and all other scoring outside of CBO has been right with regard to what the economy has been doing. There cannot be any question about that.

Regardless of that, I simply say that I think this is the time of coming together rather than to try to blame everybody else for what has or has not happened up to date. The facts are that it is a national disgrace that here we are in a situation 2 or 3 or 4 days before Christmas Eve, people are being sent home and laid off, the Government is being shut down, while at the same time I see certain leaders rushing to the floor or rushing to the microphones to say, ''Well, all you employees that have been sent home because of the impasse that we have created, regardless of whose fault it is, do not worry; you are going to be paid. We are going to have the taxpayers pay you even though you are not at work.''

That is one of the reasons, Mr. President, that as far as this Senator was concerned and many others, I kept each and every one of my employees at their post during the last Government shutdown when others were rushing to send them home in the spirit of shutting down Government. I knew that was a ridiculous proposal because I knew that if I had sent my good associates and coworkers, over which I have control, home, they would be sitting at home twiddling their thumbs, doing nothing, wishing that they were at work with the full realization that they were going to be paid even though we sent them home. That is part of the phoniness, I suggest, of this whole process that we are going through. If we cannot come to an understanding of

a continuing resolution to keep Government fully operating between now and Friday, which is 2 days from now, then it shows how ridiculous all this impasse has been, meant to create something, I guess, from the standpoint of a revolution, a revolution that is taking place without due consideration for all others.

With regard to the President of the United States, I have not agreed with the original budget presented by the President of the United States as the Democratic leader on the Budget Committee, but I think the President of the United States is not all right or all wrong. I do not know whether I am all right or all wrong in our proposal. I believe the Democratic leader, Senator DASCHLE, does not claim that the plan that we have put together and offered that does, indeed, do exactly what has been demanded by some, balancing the budget in 7 years, with CBO scoring—we have met all those commitments in the plan we offered yesterday—is all right or all wrong.

Our plan has not been universally blessed by the President of the United States, but I believe the President of the United States realizes and recognizes there is going to have to be some give and take, there is going to have to be some compromise, there is going to have to be some understanding, there is going to have to be something more than political rhetoric back and forth on both sides. If we are to come together, as I think we must, as reasoned adult people, to recognize with 535 Members of the Congress of the United States, there is no way we are going to write a budget that each and every one of those 535 Members says, ''Boy, that's fine. That's just what I want.''

So I would simply say, Mr. President, that we are working very hard in a bipartisan fashion to try and come together, and I am not sure that a great deal of rhetoric on this measure that probably is not going to be seriously contested from either its intent or its language, because we generally agree.

I yield whatever time is necessary to the Democratic leader.

Mr. DASCHLE. I thank the distinguished Senator from Nebraska.

AMENDMENT NO. 3108

Mr. DASCHLE. Mr. President, I have an amendment and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from South Dakota [Mr. DASCHLE] proposes an amendment numbered 3108 as follows:

On page 2, line 2, strike office''; and insert the following: ''Office, and the President and the Congress agree that the balanced budget must protect future generations, ensure Medicare solvency, reform welfare, and provide adequate funding for Medicaid, education, agriculture, national defense, veternas, and the environment. Further, the balanced budget shall adopt tax policies to help working families and to stimulate future economic growth.''

Mr. DASCHLE. Mr. President, the purpose of this amendment is simply to restate the principles that we outlined on November 19, when we passed the last complete continuing resolution. In that continuing resolution, we did two things. We asserted again our belief in the need to find a way to balance the budget within 7 years, ultimately scored by CBO, but to also protect the priorities that we as Democrats have been talking about for a long period of time; Medicare, Medicaid, reforming welfare, education, agriculture, defense, veterans, the environment. These are fundamental investments that this country has made in our people, strengthening the nation and enhancing our security.

So as we debate the importance of a balanced budget in 7 years, we also must debate the consequences of that we make toward that end. And so this amendment—in my view, improves upon the resolution that is pending. And I hope that it will enjoy unanimous support given the fact that the continuing resolution received such support on November 19.

The distinguished Senator from Nebraska said a number of things with which I wish to associate myself. Most importantly, while this is a fine resolution in which we again assert our support for a balanced budget, the more pressing resolution ought to be the one that funds the Government. We should take care of the immediate and unnecessary crisis before us, as we proceed with negotiations for a 7-year balanced budget.

The taxpayers are getting cheated, Mr. President, when tens of thousands of Government employees are not at work. They are not getting the services they deserve and expect when people are sent home. And the sad tragedy of it all is that it is not necessary. There is no direct connection between funding the Government through these appropriations bills and passing a budget resolution. It has been the design of some to make that connection, but there is none. And people should not be confused by it.

So I hope that sometime today we could pass a continuing resolution putting people back to work, making sure that the taxpayers get not only what they expect in a 7-year budget resolution, but also the services that they pay for with their tax dollars every day.

I might just say one other thing with regard to this particular resolution. I am sure that many of our colleagues will continue to insist that whatever we agree upon be scored by the Congressional Budget Office. CBO has been a very important institution within the Congress now for over 20 years. We have turned to the CBO time and again for objective analysis in the hope that we could project with as much clarity as possible the economic repercussions that will result from the decisions we make.

In the past, every single CBO director has had strong bipartisan support—bipartisan support—prior to the time he or she has taken office. Unfortunately, that was not the case this year. In the past, on a bipartisan basis, Members have acknowledged the authenticity, the clarity, and the integrity of CBO numbers, even when they worked against us.

I can recall so vividly the health care debate 2 years ago where CBO argued with us vociferously about our projections with regard to the impact of the health care reform bill. We didn't like what they had to say, but we had to deal with that. We had to accept that because the director at the time was the appointed official in charge of making those projections. And while we disagreed, we accepted his authority.

I must say, Mr. President, I am disturbed this year about the credibility of this particular director and CBO's activities in the last 7 months. I hope in the future that they will be especially careful to not in any way reflect a partisan bent in the work that they do. Because I am troubled by the very difficult time we have had in getting responses and getting information. And I am troubled by the manner in which much of the information has been presented to the Congress.

I am also troubled, frankly, by the projections themselves. While I would like to believe that these projections are not driven by a partisan motivation, I am concerned when I see the very esteemed blue-chip forecasters agreeing virtually down the line with the Office of Management and Budget about what happens when we actually achieve what we say we want in this resolution.

We have all made our speeches about the importance of a balanced budget in terms of bringing down the rates of interest, about the effect it will have on unemployment, about the effect it will have on corporate profits, about the effect it will have on the economy itself. And it has been that expectation that has driven my support for a balanced budget.

So it is troubling to see CBO projections predicting just the opposite, predicting a decline in real wages, a decline in corporate profits, a decline in economic growth, a decline in overall economic activity and vitality within the economy. These issues ought to be a very central feature as we debate this overall resolution.

Do we expect to see better economic performance than CBO now projects? I think we will. If we do not, what does it say about the impact of a balanced budget? Democrats all expect good things to develop. I believe that under a balanced budget they will develop. And it is one of the reasons we have fought so hard on this point, because we think that the economy will do a lot better than CBO now projects. So this issue should remain on the table, and the very positive effects of our actions ought to be something that remains a part of these negotiations.

So, today, once again we will express our support for a CBO-scored resolution at the end of all of this, not at the beginning, not during the debate, not during the negotiations, but at the end. We expect that CBO and the blue-chip forecasters and OMB can give us the best information available about what this means in terms of the policy ramifications, and we look forward to receiving that information when we have an agreement.

So it is with a caveat that we say, yes, we will score our numbers with CBO, as we have done for more than 20 years. But let us be realistic about projections and be a little more optimistic about what all this may mean, for I fear that we are going to send exactly the wrong message if we do not.

But perhaps of all of the considerations to be made, as we vote on this resolution later on this morning, is the insistence that these priorities be identified and be assured as we consider how we balance the budget in 7 years.

I yield the floor.

The PRESIDING OFFICER (Mr. SANTORUM). Who yields time?

Mr. MACK. Mr. President, how much time remains on our side?

The PRESIDING OFFICER. There are 21 minutes 55 seconds remaining.

Mr. DASCHLE. Mr. President, because the amendment amends the preamble, I ask unanimous consent that the amendment be in order at this time.

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

Mr. MACK. How much time is remaining on the Democratic side?

The PRESIDING OFFICER. There are 15 minutes 31 seconds remaining.

Mr. MACK. I yield 5 minutes to the Senator from Oklahoma.

The PRESIDING OFFICER. The Senator from Oklahoma is recognized for 5 minutes.

Mr. NICKLES. Mr. President, I was interested to hear my friend and colleague, Senator DASCHLE, express concern about the integrity and the accuracy of the Congressional Budget Office. I could not help but be amused because earlier this year Senator DASCHLE offered a balanced budget constitutional amendment on behalf of the other side of the aisle that wrote the Congressional Budget Office's authority in these matters into the Constitution. I just find kind of interesting that now he is questioning their methods or partisanship.

I am very supportive of the resolution before the Senate. I am optimistic it will pass. A similar resolution has already passed overwhelmingly in the House, and I hope this one will pass overwhelmingly in the Senate today. Maybe the President will pay attention to it. It has been very, very bothersome to me, after the Government shutdown of a month ago when the President signed on to a resolution that agreed to a balanced budget in 7 years using CBO numbers, that he still has not done so. One would think if he signed that law, he would comply with it. He has yet to do so.

President Clinton has now submitted four budgets, none of which are in balance as scored by CBO, none of which are even close to being in balance.

His first budget had deficits increasing from $200 billion up toward $300 billion. His second budget, which came out in June, had deficits of $200 billion forever, as scored by CBO. His third budget, which came within the last month, had a deficit of $115 billion in the seventh year. It may be better than $200 billion, but it is still $115 billion. That is not even close to being balanced.

His fourth budget submitted last week still has deficits very close to $100 billion. It also has a back-door tax increase. The President says, ''Well, if we don't meet our deficit targets, we'll have automatic tax increases.'' What Congress has done in the past if we did not meet our deficit targets is have automatic spending reductions. But no, the President does not want to reduce the amount of money Washington spends; he wants to take more money from individuals. That was his approach under his fourth budget.

Even given the President's automatic tax increases in the last couple years, he still does not come up with a balanced budget. So now Congress feels it is necessary to remind the President, ''The current negotiations between Congress and the President shall be based on the most recent technical and economic assumptions of CBO and that we are going to reach agreement this year.''

You would think the President's common sense would say, ''Let's submit a balanced budget using CBO numbers.'' He still refuses to do that.

A lot of people are asking, ''Why did we have the breakdown in talks yesterday?'' Speaker GINGRICH and Leader DOLE come out of a meeting with the President the day before and they said, ''Everyone agrees to use CBO numbers. We're going to work hard. We're going to be the principals, with the President of the United States, and we're going to negotiate the agreement. We're going to try to get it done this year.'' That was the statement made by the leaders.

Shortly after that, the Vice President came out and said the President did not agree to that. They said the final agreement may be scored by CBO, but they never said the President would be willing to submit a balanced budget. The House of Representatives, understandably, became quite upset. Many House Members said, ''Wait a minute, this sounds like the same reaction we got when we thought we had an agreement with the administration a month ago,'' and they have yet to comply.

Then last night, the President went on TV and said, ''I thought the Speaker and the Republican leader gave their word that we would continue funding Government. And who can I deal with if they can't keep their word?''

That bothered me, because I remember the President of the United States standing in the well of the House before a joint session of Congress and the entire American public and saying, ''We're not going to hassle over which numbers and which economic assumptions to use, we're not going to use smoke and mirrors, we're going to use Congressional Budget Office numbers and we're going to work together to get the deficit down.''

He has not done that. He has not kept his word, and that bothers me. For the last month, he has yet to submit a balanced budget. We are trying to negotiate, we are trying to enact a balanced budget, and yet the President is on a different playing field. We are trying to work out our differences. We want to compare apples to apples, and yet he will not agree to the same assumptions, and it is impossible to do.

I compliment my colleagues on the other side of the aisle who evidently today are going to submit a balanced budget using CBO numbers. I compliment them for that. They are on the same playing field. We can work out the differences, even though that is not easily done. I know it is not easily done. So, again, I compliment my colleagues who are willing to do that. Let us work together. There are a lot of us who want to make this happen. We are not just interested in Republicans scoring points or the Democrats scoring points or who is going to win.

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

Mr. NICKLES. Mr. President, I ask unanimous consent for an additional 1 minute.

Mr. MACK. I yield the Senator 1 additional minute.

Mr. NICKLES. Mr. President, for us to have success, it cannot be a Republican victory or a Democratic victory or a Presidential victory, it is going to have to be an American victory. It is going to have to be a victory where we unite, where we curtail the growth of entitlement programs, where we make responsible decisions and both sides can declare victory. A victory on behalf of Congress, a victory on behalf of the administration and, most importantly, a victory on behalf of the American people. It needs to happen, and it needs to happen this year.

Mr. President, I yield the floor and thank my colleague from Florida.

The PRESIDING OFFICER. Who yields time?

Mr. EXON addressed the Chair.

The PRESIDING OFFICER. The Senator from Nebraska is recognized.

Mr. EXON. Mr. President, once again, I say that I am tempted to answer word for word, charge for charge what is being made on the other side. I will be restrained. When I get up in the morning, I go through a few exercises, maybe take a little walk and then have breakfast. My main desire when I get out of bed in the morning is not to come to the floor of the U.S. Senate to bash the President of the United States.

I will simply say, while the President of the United States has not always come up with the numbers with regard to a balanced budget that this Senator would like to see, as I said a few moments ago, I simply say that the record is pretty clear that this President has done a better job than most Presidents of the United States in modern times with regard to trying to restrain the deficit.

The fact of the matter is that in 3 straight years under President Clinton, we have had a significant reduction of nearly 50 percent in the annual deficits. That is the first time that has happened since the administration of another Democratic President by the name of Harry S. Truman.

So I do not know that Clinton bashing—although it is vogue in some quarters today—is particularly helpful at this juncture when we are trying to come together rather than split ourselves further apart. I yield 7 minutes to the Senator from Minnesota.

The PRESIDING OFFICER. The Senator from Minnesota is recognized for 7 minutes.

Mr. WELLSTONE. Thank you, Mr. President. Mr. President, let me, first of all, thank the Senator from Nebraska. I do not think there is probably one Senator here, Democrat or Republican alike, who does not have tremendous respect for the work that he has done. I am really sorry to see him leave the Senate. I think it is a great loss for the country.

When I came here, I only knew about the Senator from Nebraska. Boy, as I had a chance to watch him, if you want to talk about a marriage of personal integrity with commitment to people and commitment to country, there is not anybody who does any better than the Senator from Nebraska.

Mr. EXON. May I interrupt for just a moment and thank my friend from Minnesota. I only yielded him 7 minutes, but with the tone he is following, he can have about 5 hours. [Laughter.]

Mr. WELLSTONE. Mr. President, first of all, just to try to cut through all the rhetoric—and we are trying to get past all of that—the fact of the matter is, and we all know it, this is not just a debate about numbers. We are talking about policies that will dramatically affect people's lives, the quality or lack of quality of people's lives, depending on what we do. We do not just disagree about numbers. There are major policy differences in the health care area, in children's issues, environment issues, in terms of what constitutes fair taxes—you name it.

The fact of the matter is—and people in the country know it—there should not be some rush to recklessness. These differences are not going to be worked out in 4 days. Nobody can force that or make a threat to make that happen. We all ought to be serious about the negotiations, and I think we all are. We should have difficult and substantive negotiations and debate, not hate. But you cannot shut the Government down and say, ''If we do not get exactly what we want when we want it, the Government will stay shut down.'' This does not serve the country well or serve any of us well. That is my first point.

My second point is that I would like to thank the Senator from Nebraska, and others. I have been involved in many of these meetings, and many of us have worked very hard. I think there is much in the Democratic alternative that makes sense. That is to say, it is clear to me that there is no question when laid alongside what the Republicans have proposed, what the Democrats have proposed, I think, at least comes much closer to meeting the Minnesota standard of fairness. It does not make any sense when my colleague from Oklahoma says, ''We want to do something that benefits the American people.'' The question becomes: Which people?

If you are going to have huge numbers of tax cuts, several hundred billion dollars of tax cuts, which, in the main, flow to the people who are most affluent, to the largest corporations, multinational corporations, and at the same time you have reductions in health care programs that are so important to seniors or children or working families, I am not sure that it does benefit most of the American people. To have zero in tax giveaways makes a great deal of sense. To make a strong commitment to medical assistance and children—everybody has heard our priorities—I think makes a great deal of sense. To do a little bit better in terms of asking some of the larger corporations to pay their fair share to eliminate some of the tax loopholes and outright tax giveaways, I think, meets a standard of fairness in this country.

So, Mr. President, I think that this budget, compared to the Republican budget, comes much closer to meeting a basic standard of fairness. I congratulate colleagues for their work on this.

Mr. President, there is, however, one question that I still have about all of this. That has to do with why it is that there is not more on the table in terms of where we can make cuts. There was a book written by Donald Barlett and James Steele, called ''America: What Went Wrong.'' It won a Pulitzer Prize. Then this book came out, which is called ''America: Who Really Pays the Taxes.''

On the first page, the sentence that caught my attention says: ''That when members of Congress talk about cutting entitlements, they mean yours—not theirs.''

Then they go on and they talk about tax law and they say there is ''one for the rich and powerful—call the Privileged Person's Tax Law; another for you and everyone else—call it the Common Person's Tax Law.''

Now I jump to a letter that the Senator from Massachusetts sent in response to some ads that have come out by some of the leading corporate executives calling for resolution of this budget crisis where the Senator from Massachusetts calls on them to agree that tax subsidies for wealthy individuals and corporations should bear their fair share of the reductions needed to reach a balanced budget.

I now read from one paragraph I think is extremely interesting:

> I make the following proposal, the Republican plan would provide a reduction of 17 percent in the Federal budget in the next 7 years, exclusive of defense spending and Social Security. Reducing the $4 trillion in tax subsidies by 17 percent would achieve savings of $680 billion. If we applied the 17 percent reduction to only one-quarter of the tax expenditures, we would save $170 billion, a huge step toward providing the additional savings needed in the current impasse to balance the budget fairly in 7 years.

This is the disconnect between Washington and the rest of the country that I do not understand, because 70 to 80 percent of the country will say, ''Look, if you are going to ask everybody to tighten their belts, look at some of these tax giveaways to some of these huge multinational corporations and ask them to be a part of the sacrifice. Why focus on nutrition for children, or Medicare for seniors, but not these subsidies for oil companies, or tobacco companies, or pharmaceutical companies, you name it?''

Mr. President, I do not understand why it is we cannot do more. As Senator KENNEDY said in this letter, we are talking about a tiny percentage, which can net $170 billion. It seems to me that what explains the difference is sort of power in America. I really think if this deficit reduction is going to be based upon a standard of fairness, this corporate welfare has to be on the table, and we have to do a better job in terms of plugging some of these loopholes and doing away with some of these tax giveaways.

The second point is the Pentagon budget. Mr. President, let me simply say that by a conservative estimate, over 10 years, you could have $114 billion of reduction in Pentagon expenditures. I have a chart of a variety of different ways. Many people have said, my God, can we not also look at the military contractors and have some reductions here? Mr. President, I remind my colleagues that the real national security is not more B–2 bombers that the Pentagon says it does not need, to the tune of $1.5 billion each. The real national security is when we invest in people in our own communities. I would argue that the corporate welfare and some of the military contracts ought to be on the table and that we can do better in terms of meeting the standard of fairness, since we all agree that we have to balance the budget.

I yield the floor.

Mr. MACK. Mr. President, I yield 4 minutes to the distinguished Senator from Michigan.

Mr. ABRAHAM. Mr. President, I want to make a couple of comments today in response to some issues that have been raised and then focus on what I think we are about here.

Earlier, concerns were raised with respect to the manner in which the nonpartisan Congressional Budget Office scores the various polices and economic projections that make up the budget. In response to these remarks, I would like to say this: In my State of Michigan, people are concerned with the way Washington does its bookkeeping. For them, the principal criticism of the Congressional Budget Office, leaving aside the issue of whether it is partisan or not, is that it is too optimistic.

In Michigan, and other States as well, average working men and women think Washington has been way too liberal in our bookkeeping for way too long. Too often in the past, we relied on rosy economic projections to make it appear as if we were taking action, whether it was in deficit reduction or in any other area of Federal Government activity, only to see those rosy scenarios unrealized.

For that reason, it is in our interest to have a budget office that scores our legislation on a conservative basis. Mr. President, I have very little fear that Congress will have difficulty figuring how to spend the surplus, should the Congressional Budget Office's numbers prove to be too conservative. On the other hand, I am confident, based upon the last 25 years of behavior, that Congress will have a very difficult time making additional spending cuts, if we use too optimistic projections that result in future deficits.

I should point out that the Congressional Budget Office is taking the same kind of conservative approach that the average American family takes when it projects how it is going to handle its finances. I know in my family, and in families across the country, nobody sits down and says, ''I think there is a good chance I am going to get a big raise in 2 years or 4 years,'' and base all of their spending decisions on that assumption. Instead, they try to be, if anything, conservative in their expectations so that they do not end up in debt. So I applaud the Congressional Budget Office for its efforts to finally bring a conservative, practical approach to the way it does its business.

Second, Mr. President, I think it is important that this resolution brings us back to what we are about. What we are about is balancing the budget and reducing the growth of Government. We are about trying to make sure that Government does not consume so much of our wealth so that the people in America, the families in this country, find themselves spending too much of their time working for us in Washington instead of the other way around.

In addition, Mr. President, what we are about is allowing those families to keep more of what they earn. This resolution—and I think we should not lose sight of it—includes provisions for reducing the tax burden on families and stimulating economic growth. That is important.

We learned in previous budget deals that increasing taxes on this country's job creators hurts families. I believe there was a significant luxury tax on boats that was imposed 5 years ago. What happened? To no one's surprise, at least to people who look at these things in the economic sense, the number of boats being produced in this country quickly and dramatically dropped. Numerous boat builders went out of business, and thousands of jobs were destroyed. So that luxury tax was repealed. A whole industry of working people with families found themselves suffering because we thought you can tax and tax and not have repercussions that affect average people. Instead, as this resolution makes clear, we should reduce the tax burden on families and businesses alike.

In conclusion, Mr. President, what we are about is balancing the budget, letting people keep more of what they earn, and putting our priorities in the right order. That is why this resolution should pass. I urge its adoption.

Mr. MACK. I yield 4 minutes to the distinguished Senator from Georgia.

Mr. COVERDELL. Mr. President, I rise in support of the resolution as well. I want to reinforce the remarks that have just been made by the distinguished Senator from Michigan.

I point out that since the Congressional Budget Office began forecasting in 1976, it has been more accurate than OMB private forecasters on the four economic indicators most important to the budget: inflation, economic growth, 3-month Treasury bills, and 10-year interest rates. In long-run forecasts, CBO has outpurchased OMB for 12 of the last 15 years. In fact, both CBO and the past five administrations have been more likely to be too optimistic instead of too pessimistic. As June O'Neill says, it is CBO's view that erring on the side of caution increases—increases—the likelihood that a balanced budget will actually be achieved in the time desired.

Mr. President, I want to respond to my colleague from Nebraska, Senator EXON's remarks, about acrimony. Certainly we have seen that, but the President does not escape the admonition of the Senator from Nebraska. If you watch any of the newscasts or any of pronouncements that have been made by the President with regard to the balanced budget, you would see immediately that he is engaged in the very practice that you suggested that we should not.

Today, because of paid advertising and the President's remarks about our proposals for Medicare, a majority of Americans believe that our budget either freezes the investment per beneficiary, or a third of the Americans believe that our budget cuts the payments—cuts them. That is not true. But the President continues to say that over and over and over. Now, in time, I am not concerned about it because the truth will come out. The fact that we are increasing our spending on Medicare by 71 percent—actually a bit more than suggested by the First Lady in the health care debate last year—that is not true, but it is repeated despite the fact that even Washington Post editorials have called his comments shameless. If you talk about the demeanor of the Senate, I hope that you would address some of those remarks to the White House itself.

With regard to the balanced budget, I think it useful from time to time to review the lineage of the debate, Mr. President. It began with the effort to pass a balanced budget amendment which failed in this Senate by one vote. Had the President supported the balanced budget amendment, I believe it would have passed with 75 votes in the Senate, because clearly a number of Members on the other side of the aisle changed their vote over the President's admonition or suggestion that we not have a balanced budget amendment.

At the time, the argument made was that the Congress simply had to have the will. We did not need an amendment to the Constitution, we needed the will. For the first time, this Congress in almost three decades has developed a will and passed a balanced budget.

I rise in support of this. I hope all my colleagues will come to the table for a Balanced Budget Act this session.

Mr. EXON. I yield 2 minutes to the Senator from Kentucky.

Mr. FORD. I thank my friend.

Mr. President, I am a little bit older than some in this Chamber and going back to the years when I was growing up, my grandfather would not make any kind of a contract on Sunday. He never had to worry about signing a paper during the week; we always shook hands. A handshake was our bond, and our word was our bond.

I hear a lot about all the blame on the President. I listened to the majority leader say now we are finally going to get some adults to negotiate the balanced budget—some adults. Well, the President calls to get the adults together, I guess. That was the majority leader, the Speaker of the House of Representatives, and the President of the United States. They shook hands after 2½ hours, or better than 2 hours, I understand, on what they would do.

The Democratic Caucus in the Senate voted unanimously under those circumstances to give to our minority leader, our Democratic leader, the ability to go and represent us. I assumed from the remarks of the majority leader that he had the same respect and admonition from those on his side. But, lo and behold, the Speaker of the House could not get his caucus to agree to sit down and work out a CR, to develop the framework, to arrive at a balanced budget in 7 years.

We hear the CBO is conservative and OMB is optimistic. Let me just say, something happened to CBO. They got optimistic and increased their projection by $135 billion and got them closer to OMB. I yield the floor.

The PRESIDING OFFICER. The Senator from Florida has 7 minutes and 25

seconds, and the Senator from Nebraska has 1 minute.

Mr. MACK. I yield 4 minutes to the Senator from Wyoming.

Mr. THOMAS. Mr. President, I rise in support of the resolution. It seems to me it is a very important restatement of where we have been.

I appreciated the enumeration of the Senator from Kentucky of what has happened here. One of the difficulties is that the Vice President came on TV and said there is no agreement, and that caused people to have some concern.

I take my 3 minutes to get away a little bit from the numbers and put myself back in Cody, WY, where I grew up, and say, what is the responsibility here to do something about balancing the budget as a citizen? It seems to me there are several that are very meaningful.

No. 1, it is personal, it is parochial, it is selfish, I suppose.

I think if we can balance the budget, it means that every family that has loans on their home, every family that has loans on their car, every family that has educational loans will find, because of lower interest, there is a benefit of $2,500 or $3,000 to many families.

I think, second, it has something to do with responsibility. If we are going to enjoy some benefits, those of us who are enjoying them, we should pay for them. This idea of enjoying the benefits and putting it on the credit card for someone else does not fly. This is a democracy. This is freedom that we protect. With that goes some responsibility to do some things.

Concern about our kids—we have to be concerned about the future, when interest becomes the largest single line item in the budget, interest on the debt, and we simply pass that along, along with $5 trillion in debt.

I think we have to have some consideration for change in the direction of Government. I really believe most people say the Federal Government is too big and it costs too much and we need to change that. That is a fundamental change we are seeking to do here. Balancing the budget and doing something about containing the growth of entitlements is a fundamental issue. It is not arithmetic. That is what is going on here. I think it is terribly important.

Credibility—I think there is a certain function of credibility in this body. We have said we are going to balance the budget. We have said, in a resolution some 30 days ago, we are going to balance the budget in 7 years, using CBO numbers. We ought to do that. Many of us came here—we have not been here as long as some others—and we said one of the things we want to do is we want to be responsible in spending and balancing the budget. There is a credibility question here for all of us.

So, Mr. President, I certainly think we have a great opportunity to move forward, not only this morning but in this total matter of balancing the budget. We can do it. We have an opportunity, the first opportunity in nearly 30 years. It would be a shame not to take advantage of it.

I yield the floor.

The PRESIDING OFFICER. Who yields time?

Mr. MACK. I inquire how much time remains.

The PRESIDING OFFICER. There remains 4 minutes and 30 seconds.

Mr. MACK. I yield 1 minute to the Senator from Idaho.

The PRESIDING OFFICER. The Senator from Idaho is recognized for 1 minute.

Mr. CRAIG. Mr. President, let me reminisce, if I could, with the Senator from Wyoming. When we talk numbers, we talk people. If we do not believe our actions here and if the President does not believe his actions have consequences on people, then we are not thinking very straight.

We watched the stock market bounce around this week as the Congress and the President tried to come to a budget agreement. While the stock market is a reaction of people, it is also a barometer of the economy and how people think the economy will work. The economy in our country clearly translates to jobs and incomes, spendable incomes, and the security of a home and a family and food on the table—and it always has.

What we are talking about in a balanced budget and a tax cut is 32 billion dollars' worth of real, disposable income. That is family income. That is food on the table. That is a college education. Mr. President, $66.2 billion of consumer expenditure, that is what the stock market was reacting to yesterday.

My time is up. Let me close.

Mr. President, our actions have consequences and a balanced budget and a tax cut going with it create the kind of economic vitality in this country that is good for people, working people, families, income, security.

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

Who yields time?

The Senator from Nebraska.

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

The PRESIDING OFFICER. The Senator has 1 minute and 12 seconds.

Mr. EXON. I understand there is some talk about a unanimous consent agreement to extend the time. Does the manager on the other side know about this?

Mr. MACK. I was under the impression what we were going to do was to have the vote at 11 o'clock; we were not extending the time on the debate.

Mr. EXON. I think that would be the best of all worlds. Let me conclude, then, on the remainder of the time that I have.

Despite the temptation that has been offered me by those on the other side, trying to bait this Senator into rancorous political discussions, I said at the outset that was not my goal. I just received a call from Leon Panetta, the Chief of Staff. Some progress has been made. We are going to have a meeting at 1 o'clock today and another meeting at 5 o'clock. Then the chief negotiators on the Senate side, Democrat and Republican, will make presentations of how well we are going forward to the White House in the morning, as I understand it, in front of the big five.

We are trying to move things along. So, despite the baiting, I am not going to become involved in a partisan debate at this time to pick each other apart. This is a time to come together, and I hope, if we extend the time for the vote, we do not extend the debate.

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

Mr. MACK. Mr. President, again I state it is my intention to conclude the debate. I believe we are extending the time for the vote to accommodate Members of the Senate, but I do not see any need to continue the debate.

Mr. President, let me close then with my remarks in asking the Senate to support the resolution that is before us. As I said a moment ago, it is unfortunate the Senate would have to spend this time to remind the President of a commitment that he made over 30 days ago.

I can remember the excitement that occurred when there was an agreement on the part of the President to a 7-year balanced budget scored by the Congressional Budget Office, thinking that that really set us on the road toward an agreement. We have now seen, again, over 30 days go by and the administration has failed to put forward a budget that balances in 7 years.

Several speakers on the other side spoke about the failure to have a continuing resolution. Frankly, I believe the House has failed to provide a continuing resolution because they have looked at the actions on the part of the administration and, based on what they perceived their promises to be over 30 days ago, they in fact feel that they were fooled. One of the things that people have learned over the years is, if you get fooled one time, you do not fall for the same trick a second time. So the House has said they want to see a balanced budget before they extend Government activities.

There is, in fact, a fundamental difference between our approach and that of our colleagues on the other side of the aisle. Our first objective is getting a balanced budget. Then Government will proceed. Their first concern is getting Government to move forward and then we will discuss a balanced budget. To us, the No. 1 concern is balancing the budget.

The reason we are concerned is because we think that as a result of that balanced budget, everyone in America will have greater opportunities—greater opportunities for jobs, there will be more businesses created, we will see interest rates come down, we will see lower payments on mortgages, on automobile loans, on student loans and so

forth. America's opportunity will be tremendous if we can just get to the point where we agree that we should not spend more than we are taking in, that we ought to let hard working men and women keep more of their earned income.

There were some remarks made with respect to corporate welfare. It is interesting, my colleagues on the other side of the aisle talk about the moneys earned by individuals and corporations as if it were the Government's and we were going to decide how much they get to keep of their money, as opposed to the other way around.

I yield whatever time I have.

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

Mr. CRAIG. May I inquire where the Senate is at this moment, with the time having expired?

The PRESIDING OFFICER. Under the previous order, the Senate is supposed to adopt the amendment of the Senator from South Dakota and then proceed to an immediate vote on the resolution.

The Senator from Florida.

Mr. MACK. Mr. President, I ask unanimous consent the vote occur on adoption of House Joint Resolution 132 at 11 a.m.

The PRESIDING OFFICER. Is there objection?

Mr. EXON. Mr. President, reserving the right to object, I would like to agree with my colleague on this. I would like to offer a substitute by asking unanimous consent that the vote occur on the adoption of House Joint Resolution 132 at 11 a.m., with the time between now and 11 a.m. equally divided as in morning business, with the time remaining on this side under the control of the Senator from North Dakota.

The PRESIDING OFFICER. Is there objection?

Mr. MACK. Mr. President, reserving the right to object.

The PRESIDING OFFICER. The Senator from Florida.

Mr. MACK. I suggest to my colleague that we just, since there seems to be some interest in this issue, since we are going to have the vote at 11, that we now just continue the debate with time equally divided.

Mr. EXON. No objection. Whatever you want.

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

Who yields time? The Senator from Nebraska.

Mr. EXON. Mr. President, how much time do I have remaining under my control, under the new arrangement?

The PRESIDING OFFICER. The Senator from Nebraska has 9 minutes and 40 seconds.

Mr. EXON. How much?

The PRESIDING OFFICER. Nine minutes and 40 seconds.

Mr. EXON. I yield 9 minutes and forty seconds to the Senator from North Dakota, with his allotment to any other Senators on our side wishing to speak out of that time.

The PRESIDING OFFICER. The Senator from North Dakota is recognized for 9 minutes and 33 seconds.

Mr. DORGAN. Mr. President, I appreciate the Senator from Nebraska providing me the time. If it is the intent of some on the other side who want to speak in the middle of this, I would be happy to accommodate that as well. I know the Senator from Idaho is waiting to speak. I will speak for a couple of minutes, and then I would be happy to let the Senator from Idaho speak, after which I would like to reclaim the balance of the time.

Mr. President, as I was listening to the debate this morning, it occurred to me that it is time, on December 21, to turn down the volume just a bit on the discussion that has been held on these budget issues, especially on the floor of the Senate and here in Washington. It is appropriate for us to be struggling to find a way to put this puzzle together. The pieces do not always seem to fit just right. It has been difficult to find a way to put it together to make it work.

On the other side, we hear that they say the top priority is a balanced budget. It is a priority. I have said two or three times—let me say again this morning—that I give the majority party credit for pushing for the balanced budget. They deserve credit for that. But it is only one of the goals. Let us balance the budget and at the same time protect other important priorities. In other words, let us balance the budget and do it the right way. If one says the only goal we have is to balance the budget, you fall short, it seems to me. Balance the budget, and do it the right way.

As we struggle to do this the right way by cutting spending, protecting Medicare and Medicaid, and trying to make sure those who are vulnerable in this country are not going to be hurt, I ask that as we sort through the menu of how we get to a balanced budget that we do it thoughtfully. And at the end of the day when people turn the page on the plan, if there is a plan that is agreed to—and I hope there is—that you do not come to a page that says, ''Wait a second. What is this? What is this deal? Who put this in? Why on Earth would this be part of the plan?''

The plan was passed here that balanced the budget. It includes a little thing called repeal of 956(A). I will bet there are not four people here in Congress who know what this meant or what it did or why it was done. I do not know whether the other Members on the Senate floor know about the repeal of section 956(A). It is only $244 million.

So when I say only in the scheme of the billions of dollars that are put into these agreements, $244 million probably does not seem like much to somebody who wrote this. What is repeal of Section 956(A)? It says to U.S. companies which have moved their jobs overseas—manufacturing plants that might have been closed in America and moved the jobs overseas—that we will give you a tax break to do that and we will make the tax break even a little more generous by about $244 million by repealing section 956(A). If anybody thinks there is a reason to make it more attractive to move American jobs overseas at taxpayer expense, about $244 million, I would like to hear the reason for that.

I only use this as an example of the things that are in a plan that, in my judgment, does not make sense. Let us decide that we will put a plan together that balances the budget, score it with the Congressional Budget Office and do it in 7 years, but do it in a way that all of us can go home and talk to people and say, ''We protected Medicare. We protected Medicaid. We are not going to hurt the vulnerable people in this program. We will protect programs that make this a better place.''

If we can do all of that, then we will have succeeded in doing something important for the future of this country. The difference, it seems to me, is that for the moment someone on the other side says we have only one goal and that is balance the budget. You need to expand that to a goal of balancing the budget while protecting the things that are important and are priorities to our country.

I understand the Senator from Idaho has a time constraint. If you do not mind, I will relinquish the floor with the intention of reclaiming the floor when the Senator from Idaho is completed.

Mr. President, I yield the floor.

Mr. MACK. Mr. President, I yield 3 minutes to the Senator from Idaho.

The PRESIDING OFFICER. The Senator from Idaho.

Mr. CRAIG. Mr. President, I thank my colleague for yielding.

Let me respond in part to the Senator that has just spoken because so many have been arguing for so long. Balancing the budget is fine. I happen to be one of those who for well over a decade has argued that this country must come to grips with its spending habits, that we are indebting a future generation in such a dramatic way that the consequences will be incalculable.

Now, there is an interesting drumbeat down at the White House amongst some who, while they will argue they support a balanced budget by concept, say let us do so without any consideration of tax cuts. The Senator happened to suggest one that is offered. I think he is right. Few would know all the details of that particular tax cut, but there is one thing that becomes very clear in the whole of what we try to do with a balanced budget.

To reduce Federal spending alone—because Federal spending has become such a very large part of the U.S. economy—does, in fact, have economic consequences that in part can become negative unless there is an appropriate stimulus on the other side that balances it out so that you get accelerated

growth in the private sector, the job-creating kind of stimulus that offsets some of that expenditure. And I happen to think that it is a more positive kind of expenditure if it is going on out in the private sector and not necessarily money being taken from the private sector funneled through the public sector and allowing us to decide how it gets spent.

There is no doubt that a pure pattern of spending reductions by Government with no consideration for economic stimulus on the outside—by recognizing some capital gains, by assuredly recognizing the ability of the individual wealth-creating, job-holding family to properly invest and to have more money to spend—might not have the right kind of economic consequences in the macro sense of the economy.

That is why we have tried to couple some tax cuts along with it to middle and lower income Americans and to some of the economic job-generating sectors of our country to create positive stimulus all the way around. There are few economists that will disagree with what I have just said; that as you offset one side of the overall large economy of Government, you have to stimulate the other. That is exactly what we are trying to do at this moment.

I have spoken enough on this. I think it is important that we talk about linking the two together. Balancing the budget is something I have strongly supported, and will, but let us also talk about the value of leaving money in the private sector and stimulating it for economic growth purposes and job creation.

Mr. DORGAN. Mr. President, I want to continue this discussion because I think it is a good discussion. I have enormous respect for the Senator from Idaho. He has been faithful to the issue of wanting to balance the budget. He and I would disagree as to whether it makes sense to propose a very significant tax cut at the same time you are trying to balance the budget. I happen to think first things first: cut spending and balance the budget. When you are done with that job, then turn to the Tax Code and talk about cuts for those who need it.

Every time I hear someone, especially on the other side, talk about a stimulating tax cut, I always look at who they are stimulating. The wrong people get stimulated. It is interesting to me that the changes that the majority party would propose in their plan on the earned income tax credit—I do not think there is any great dispute about this—would result in a higher tax burden than is now experienced by many Americans, millions of Americans who earn less than $30,000 a year.

So if one is stimulating some of the folks in this country who have the largest incomes but saying to those who have $20,000 or $15,000 in income, ''By the way, the stimulus does not work for you, you are going to have to pay a little more in taxes,'' I say, ''Gee, I think those folks might want to be stimulated a while by the majority party as well.''

I would like to yield for just a moment for a point that the Senator from New Mexico wants to make, Senator BINGAMAN.

Mr. BINGAMAN. Mr. President, I did want to ask the Senator from North Dakota a question. He referred to the old phrase ''first things first,'' and I have tried to read Peter Drucker and Steven Coffey and some of these people who advise us on proper management procedures, and they all make that same point—first things first. It seems to me the first thing we ought to be doing in this Congress is to be passing a continuing resolution to fund the Government.

My question relates to an article that is in the morning paper where it says, ''GOP Pledges to Pay Furloughed Workers.'' It says, ''Congressional Republican leaders promised yesterday that the 260,000 Federal workers idled by the budget battle would eventually actually be paid for their days they are furloughed.''

Then it goes on to say, ''At a GOP meeting yesterday, House Speaker NEWT GINGRICH persuaded party members to agree to pay employees for days missed. The employees are losing about $40 million a day in wages, according to the administration.''

The question I get most from people in my State is, if you promise to pay these people, why not send them to work? It is one thing to charge the taxpayers $40 million a day for their services—and you can argue whether that ought to be done or not if you do not like the Government—but why are we paying people and not letting them work? It just does not make any sense to the people I represent.

It seems to me that this place is becoming more Alice in Wonderland every day, and that is a classic example. If the Senator has a comment on that, I would be interested in hearing it.

Mr. DORGAN. Mr. President, I heard Ted Koppel ask one of the Members of the House last evening twice the same question: What kind of leverage are you getting if you say to Federal workers you cannot come to work but we will pay you anyway? Are you not just penalizing taxpayers? What kind of leverage do you think you are getting with that?

He asked the question twice, and, of course, there is not an answer for it. It is a case of someone having an argument with their relative and deciding, well, I am angry at my uncle here who I just had an argument with. I think I will walk across the street and punch my neighbor.

What sense does it make to suggest the Government ought to be shut down so the American taxpayer can pay Federal workers who are not allowed to come to work? That just makes no sense to me at all. And that is first things first. The Senator from New Mexico is correct. We ought to pass a clean funding resolution, a funding bill right now, within 20 minutes have those people come back to work, and at least solve that issue first.

But, second, then we ought to go to the balanced budget amendment. I am hopeful that these talks at the White House will bear some fruit. I do not believe I have the time to continue to talk about how you get to a balanced budget.

How much time is remaining, Mr. President?

The PRESIDING OFFICER. The Senator has 29 seconds.

Mr. DORGAN. But I was going to make the point about those who say, here is the menu, including all kinds of special little deals. Let us give a $7 million tax cut each to 2,000 corporations by changing the alternative minimum tax—a $7 million check to 2,000 corporations. And I am asking myself—I happen to think we ought to balance the budget—is this the way we ought to balance it?

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

Mr. MACK addressed the Chair.

The PRESIDING OFFICER. The Senator from Florida.

Mr. MACK. The time remaining, please.

The PRESIDING OFFICER. The Senator has 6 minutes 30 seconds.

Mr. MACK. I yield 6 minutes to the Senator from New Hampshire.

The PRESIDING OFFICER. The Senator from New Hampshire is recognized for 6 minutes.

Mr. GREGG. I thank the Senator from Florida.

I rise in support of the resolution. I guess the real question here is why we have reached the point where we need this resolution, which once again states that we want to have a balanced budget in 7 years and that we want to use CBO figures.

The reason we have arrived at this point is because there has been an inconsistency from the administration, specifically from the President, as to what his position is on a balanced budget, as to what his position is on a timeframe for a balanced budget, as to what his position is on how we will account for getting to a balanced budget.

We have had four different budgets sent up here by this administration. Not one of them has been in balance. Every one of them has been rejected by their own party within this Senate, if not on a formal vote, at least informally, a couple at least with formal votes, and we have an administration which has one day been in favor of a welfare reform bill which was passed by this Senate and then a few days later been opposed to the welfare reform bill passed by the Senate. We have an administration, the chief spokesman of which on health care, the wife of the President, has said that she wants to see a rate of growth in Medicare at 6 to 7 percent and the President in the same basic timeframe excoriating Republicans because we have proposed a rate

of growth in health care, in Medicare, which is 6 or 7 percent.

The inconsistency that comes forth from this administration is consistent. That is about the only consistent thing about this administration—its inconsistency.

So we are once again calling on the administration to commit to what we thought they committed to 3 or 4 weeks ago but which they have backed off of, which is to balance the budget in 7 years and use CBO figures.

We have heard a lot of discussion about why this is important, but I just want to reiterate that unless you look at the issue of how you are balancing the budget off the same baseline, unless everybody is looking at the same numbers, you can never get to any agreement assuming an agreement is possible. But there is a big issue here also, and that is that the few times we have been able to get any definitive direction out of the White House, it has become very clear that there are some deep philosophical differences between the two parties.

We believe that borrowing from our children to pay for the costs of operating the Government today is wrong, that it is fundamentally wrong. I heard the Senator from North Dakota talk about the vulnerable people in our society. Who is more vulnerable than our children, people who are being asked, even though they do not have any ability to confirm this decision, to take on the debt which our generation is running up? We have, as Republicans, said this is not right, and therefore we put together a real budget that reaches balance in 7 years.

Second, we have said you cannot run a system to assist our senior citizens if we know the system is going to go bankrupt in 7 years. We have been told by the trustees of the Medicare trust fund that it goes bankrupt in 7 years unless something is done, and so we have stood up and made a proposal which puts that system into solvency.

We have done it in a way which gives seniors more choices than they have today, which gives seniors the same options essentially as Members of Congress in choosing their health care. We have done it by using the marketplace.

We have further said that if you have a welfare system which says to people, you can stay on welfare all your life and then you can have your children on welfare, whether they are legitimate or illegitimate, and they can have their children on welfare, that is wrong; that people should not be on welfare for the remainder of their existence in this country but they should be asked to participate in the system of productivity which creates the ability to benefit those who are in need, and it is called work.

So we have proposed under our welfare proposal that people be required to go to work after a reasonable amount of time, 2 years, and after 5 years of being on welfare they not be any longer a charge to the State but be required to be out in society being a productive citizen.

These goals which we have—balancing the budget so that our children do not get the bills for this time but have an opportunity in their time to be successful; creating a Medicare system which is, first of all, solvent and, second of all, gives our seniors the same choices in the marketplace as citizens who are in the private sector; which allows a welfare system which is really directed at caring for the people who need support, not for the people who are abusing and using the system—these basic goals which we have put forward have been essentially rejected by this administration. They have either been rejected out of hand or they have been rejected in indirect ways through the manipulation of the numbers or the proposals that they have brought forward.

Underlying this administration's basic philosophy there appears to be a goal, or maybe it is their philosophy that is the goal, and it is called reelection. That is what is driving the basic decisions which we hear from the White House. There is no desire for substantive change for the purposes of improving the Medicare system or improving the Medicare system and getting our Government into balance. There does appear, however, to be a substantive drive for reelection. And that drive for reelection has caused this administration to time and again put forward proposals which are superficial, inconsistent.

The PRESIDING OFFICER. Time has expired.

Mr. GREGG. I thank the Chair for noting that. I will just simply wrap up by saying if we are going to accomplish a balanced budget, we have to get this administration to agree to a balanced budget, to do it in 7 years, to do it with CBO figures, and to do it by addressing the spending that the Government is presently involved in.

The PRESIDING OFFICER. All time has expired.

Mr. MACK. Have the yeas and nays been ordered?

The PRESIDING OFFICER. They have not been.

Mr. MACK. I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second? There is a sufficient second.

The yeas and nays were ordered.

The PRESIDING OFFICER. Under the previous order, the Senate adopts the amendment of the Senator from South Dakota, Senator DASCHLE.

So the amendment (No. 3108) was agreed to.

The PRESIDING OFFICER. The question is on the engrossment of the amendment and third reading of the joint resolution.

The amendment was ordered to be engrossed, and the joint resolution to be read a third time.

The joint resolution was read a third time.

The PRESIDING OFFICER. The joint resolution having been read the third time, the question is, Shall the joint resolution pass?

The yeas and nays have been ordered. The clerk will call the roll.

The bill clerk called the roll.

Mr. LOTT. I announce that the Senator from Texas [Mr. GRAMM], the Senator from Indiana [Mr. COATS], and the Senator from Delaware [Mr. ROTH] are necessarily absent.

I also announce that the Senator from Missouri [Mr. ASHCROFT] is absent due to a death in the family.

I further announce that, if present and voting, the Senator from Missouri [Mr. ASHCROFT] would vote ''yea.''

Mr. FORD. I announce that the Senator from New Jersey [Mr. BRADLEY] is necessarily absent.

The PRESIDING OFFICER (Mr. GREGG). Are there any other Senators in the Chamber desiring to vote?

The result was announced—yeas 94, nays 0, as follows:

[Rollcall Vote No. 611 Leg.]

YEAS—94

Abraham	Ford	Mack
Akaka	Frist	McCain
Baucus	Glenn	McConnell
Bennett	Gorton	Mikulski
Biden	Graham	Moseley-Braun
Bingaman	Grams	Moynihan
Bond	Grassley	Murkowski
Boxer	Gregg	Murray
Breaux	Harkin	Nickles
Brown	Hatch	Nunn
Bryan	Hatfield	Pell
Bumpers	Heflin	Pressler
Burns	Helms	Pryor
Byrd	Hollings	Reid
Campbell	Hutchison	Robb
Chafee	Inhofe	Rockefeller
Cochran	Inouye	Santorum
Cohen	Jeffords	Sarbanes
Conrad	Johnston	Shelby
Coverdell	Kassebaum	Simon
Craig	Kempthorne	Simpson
D'Amato	Kennedy	Smith
Daschle	Kerrey	Snowe
DeWine	Kerry	Specter
Dodd	Kohl	Stevens
Dole	Kyl	Thomas
Domenici	Lautenberg	Thompson
Dorgan	Leahy	Thurmond
Exon	Levin	Warner
Faircloth	Lieberman	Wellstone
Feingold	Lott	
Feinstein	Lugar	

NOT VOTING—5

Ashcroft	Coats	Roth
Bradley	Gramm	

So the joint resolution (H.J. Res. 132) was passed.

The preamble, as amended, was agreed to.

Mr. BENNETT. Mr. President, I move to reconsider the vote, and I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. BENNETT addressed the Chair.

The PRESIDING OFFICER. The Senator from Utah is recognized.

SECURITIES LITIGATION REFORM ACT—VETO

Mr. BENNETT. Mr. President, I understand the veto message with respect to the securities litigation bill has arrived from the House.

The PRESIDING OFFICER. The Senator is correct.

Mr. BENNETT. I ask unanimous consent that the veto message be considered as having been read and it be printed in the RECORD and spread in full upon the Journal.

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

The PRESIDING OFFICER laid before the Senate a message from the President of the United States to the House of Representatives, as follows:

To the House of Representatives:

I am returning herewith without my approval H.R. 1058, the ''Private Securities Litigation Reform Act of 1995.'' This legislation is designed to reform portions of the Federal securities laws to end frivolous lawsuits and to ensure that investors receive the best possible information by reducing the litigation risk to companies that make forward-looking statements.

I support those goals. Indeed, I made clear my willingness to support the bill passed by the Senate with appropriate ''safe harbor'' language, even though it did not include certain provisions that I favor—such as enhanced provisions with respect to joint and several liability, aider and abettor liability, and statute of limitations.

I am not however, willing to sign legislation that will have the effect of closing the courthouse door on investors who have legitimate claims. Those who are the victims of fraud should have recourse in our courts. Unfortunately, changes made in this bill during conference could well prevent that.

This country is blessed by strong and vibrant markets and I believe that they function best when corporations can raise capital by providing investors with their best good-faith assessment of future prospects, without fear of costly, unwarranted litigation. But I also know that our markets are as strong and effective as they are because they operate—and are seen to operate—with integrity. I believe that this bill, as modified in conference, could erode this crucial basis of our markets' strength.

Specifically, I object to the following elements of this bill. First, I believe that the pleading requirements of the Conference Report with regard to a defendant's state of mind impose an unacceptable procedural hurdle to meritorious claims being heard in Federal courts. I am prepared to support the high pleading standard of the U.S. Court of Appeals for the Second Circuit—the highest pleading standard of any Federal circuit court. But the conferees make crystal clear in the Statement of Managers their intent to raise the standard even beyond that level. I am not prepared to accept that.

The conferees deleted an amendment offered by Senator Specter and adopted by the Senate that specifically incorporated Second Circuit case law with respect to pleading a claim of fraud. Then they specifically indicated that they were not adopting Second Circuit case law but instead intended to ''strengthen'' the existing pleading requirements of the Second Circuit. All this shows that the conferees meant to erect a higher barrier to bringing suit than any now existing—one so high that even the most aggrieved investors with the most painful losses may get tossed out of court before they have a chance to prove their case.

Second, while I support the language of the Conference Report providing a ''safe harbor'' for companies that include meaningful cautionary statements in their projections of earnings, the Statement of Managers—which will be used by courts as a guide to the intent of the Congress with regard to the meaning of the bill—attempts to weaken the cautionary language that the bill itself requires. Once again, the end result may be that investors find their legitimate claims unfairly dismissed.

Third, the Conference Report's Rule 11 provision lacks balance, treating plaintiffs more harshly than defendants in a manner that comes too close to the ''loser pays'' standard I oppose.

I want to sign a good bill and I am prepared to do exactly that if the Congress will make the following changes to this legislation: first, adopt the Second Circuit pleading standards and reinsert the Specter amendment into the bill. I will support a bill that submits all plaintiffs to the tough pleading standards of the Second Circuit, but I am not prepared to go beyond that. Second, remove the language in the Statement of Managers that waters down the nature of the cautionary language that must be included to make the safe harbor safe. Third, restore the Rule 11 language to that of the Senate bill.

While it is true that innocent companies are hurt by frivolous lawsuits and that valuable information may be withheld from investors when companies fear the risk of such suits, it is also true that there are innocent investors who are defrauded and who are able to recover their losses only because they can go to court. It is appropriate to change the law to ensure that companies can make reasonable statements and future projections without getting sued every time earnings turn out to be lower than expected or stock prices drop. But it is not appropriate to erect procedural barriers that will keep wrongly injured persons from having their day in court.

I ask the Congress to send me a bill promptly that will put an end to litigation abuses while still protecting the legitimate rights of ordinary investors. I will sign such a bill as soon as it reaches my desk.

WILLIAM J. CLINTON.

THE WHITE HOUSE, *December 19, 1995.*

The Senate proceeded to reconsider the bill (H.R. 1058) to reform Federal securities litigation, and for other purposes, returned to the House by the President on December 19, 1995, with his objections, and passed by the House of Representatives, on reconsideration, on December 20, 1995.

The question is, Shall the bill pass, the objection of the President of the United States to the contrary notwithstanding? Who yields time?

Mr. BENNETT. Mr. President, we had a long, I think, careful and reasoned debate on this issue. It passed the Senate by a very substantial margin, indeed by a margin, which, if it had been the final vote, would have been sufficient to override a Presidential veto.

I am not sure what purpose will be served by our spending a great deal of time repeating the arguments that were made, but I am sure we will. The procedure and tradition in the Senate being what it is, we will go over this one more time.

I believe the President has made a mistake in vetoing this bill. I believe the House of Representatives has made the right decision in overriding the veto. I know the bill has been characterized as an issue between investors and corporations. The President, in his veto message, indicated that he was going to strike a blow for the investors.

Mr. President, I need to point out once more, perhaps, that the owners of corporations are the investors, and anything which damages the economic health of the corporation damages the investors who place their money in that corporation. Anything that prohibits the corporations' ability to earn a return on investment damages the investors who are seeking that return on investment.

I find it difficult to understand, therefore, those who say that we are going to help investors by supporting activities which damage the profitability of the corporation in which the investors have placed their money.

The key provisions of this bill are proinvestor provisions. I think the most significant provision of this bill is the one that allows the investors to determine who will prosecute the lawsuit when a class action suit is brought. Let me illustrate the importance of that, Mr. President, with an example that is admittedly overdrawn, but we need to overdraw these issues because some people do not seem to understand them when they are not overdrawn.

Let us assume that the ABC Corp. has 100 shares outstanding; let us assume that one investor has purchased one of those shares, and another investor has purchased the other 99. When a class action suit is brought, it is brought on behalf of all members of the class. In the circumstance I have just described, there are two members of the class—the class being the investors: One who has one share, the other who has 99 shares. If a class action suit is brought by the investor who has one share and the effect of that class action suit is to damage the ability of that corporation to perform, who is most damaged by the suit? It is the shareholder who owns the other 99 shares.

Yet the way the thing is structured now, the shareholder who owns one share can bring a class action suit on behalf of the entire class, and if he gets

to the courtroom first, he is determined to be the lead plaintiff in this suit. Now, the investor who owns the 99 shares sits down with him and says, ''Sam, this is stupid. This is going to damage the corporation. This is going to damage all of us.''

Sam smiles sweetly at Joe and says, ''Joe, what is it worth to you to get me to drop my suit?''

Joe says, ''Well, Sam, you know you will lose if we get in court.''

And Sam says ''Joe, that's not the point. What's it worth to you?''

Sam says, ''It will cost the corporation a million dollars to defend against your suit.''

Joe says, ''Fine, offer me half a million and I go away.''

It is blackmail, Mr. President, pure and simple.

So Joe finally says, ''OK, Sam, here is your $500,000. Drop your suit.''

Sam takes his $500,000 and he goes away until the next time.

I have told this story before. I have to repeat it again because I think it is an important part of the point I am trying to make. We are often told here, ''No, the only reason lawsuits are settled out of court is when the management has something to hide.'' Well, the story I am about to tell you is a real story. It really happened. It happened to my father. He served here in the Senate for some 24 years. When he retired from the Senate he was not ready to retire from life so he got himself another life and another series of activities. One of them was serving on boards of directors. He was on a number of boards. Some were charitable, some were nonprofit, some were very much profit.

On one of the boards he served, he would go to the board meetings and take his duty seriously—as my father always did—and then one day he received a stack of papers in the mail notifying him that he was being sued. The suit was made out to Wallace F. Bennett, et al., and the suit was claiming all kinds of things. My father looked through this. He was quite disturbed. It became clear to him that the ''et al.'' in this case were the other directors of the corporation. He called the legal division of the corporation whose board he was serving on and said, ''What is this all about?''

The lawyer said to him ''Oh, don't worry about that, Mr. Bennett. The reason you are named is because the directors are listed alphabetically and ''B'' comes before the letters of any of the other directors so they are suing you and all of the directors, but it is just a coincidence that your name comes first, that you are named in the suit. The entire board is being sued.''

Dad said, ''That is a little bit of comfort, but what are we being sued for? What did we do wrong?''

Well, the lawyer says ''You raised your salary.''

Dad said, ''Pardon me?''

And he said, ''Well, remember, the way this thing is structured, the compensation of the directors are tied to the profitability of the organization. So when the organization makes more money the directors' compensation goes up.''

Dad says, ''That is logical. That is proper. What is the basis of the suit?''

''There is a lawyer in New York who watches this, and whenever the compensation of the directors goes up for whatever reason, he automatically files a lawsuit against us claiming that the directors are looting the proceeds and assets of the corporation for their own profit.''

Dad said, ''Well, that lawsuit is absolutely absurd. It is sound business practice to tie the directors' compensation to the profitability of the company. That means the directors will take the actions that will make the company more profitable.''

''Don't worry about it, Senator, this lawyer knows he will never win his suit. He knows we will never spend the money to take him to court. It would cost us about $500,000 to prosecute this suit and take him to court and win and it is cheaper for us to send him a $100,000 check to settle this.''

So every time this happens, that is, there is a change in the compensation of the directors, he files the suit, we send him a $100,000 check, he goes away and the problem is solved. That is exactly what happened. They sent the lawyer a $100,000 check, he dropped his suit, and everybody went forward.

My father was outraged. But they told him, ''Senator, you can be as outraged as you want to be, but our alternative is to prosecute this lawsuit, take him to court, beat him in court, see a $500,000 legal bill run up in the process. The logical thing for us to do for the shareholders, the investors, if you will, is to pay him his $100,000, and hope he will go away.''

Now, my father was pleased when another member joined the board whose last name began with an ''A'' because then the papers were always filed on the new director rather than my father, but again and again they sent the $100,000 bribe money off to the lawyer in New York who had himself a really wonderful legal practice. All he had to do was file these papers and collect his check. There was no merit whatever in his claim and he knew it and everybody else knew it.

There is an end to this story that I kind of like. The lawyer decided to expand his practice and he started suing other companies besides the one of which my father served as a director. One of the companies he decided to sue was owned by Merrill Lynch, and the Merrill Lynch lawyers looked at this and decided the time has come to put an end to it and we have deep enough pockets that we can take this man to court and ruin him in his legal costs, trying to defend himself.

So the system that had worked for the lawyer in the one circumstance then turned against him. Merrill Lynch said, ''Whatever it takes in legal costs, it takes, but we are going to put a stop to this, force this man to go to court and force him to defend his position.'' And they ultimately did put a stop to it because when he was faced with actually proving his position in a court of law and running up the costs connected with that kind of litigation, the lawyer was finally forced to back down.

I tell this story because I want to lay to rest, once and for all, the canard that is raised on the other side of this issue by those who say that by passing this legislation we are damaging investors for the benefit of big corporations. The investors in the company where my father served as a director were benefited by the actions of Merrill Lynch and their legal department when they finally stepped in. They would be benefited by the passage of this legislation, and Merrill Lynch investors would be benefited by the fact that Merrill Lynch would no longer have to spend that kind of money to clean up that sort of an outrage.

If you want to vote on behalf of the investors, you vote for the override of the President's veto of this bill.

I was sorry to hear that the President had vetoed. We were told informally on the floor when the bill was passed that the President would probably sign it. We were told that the President and the people advising him understood that this was proinvestor legislation and the President, obviously, wants to position himself as being proinvestor.

I was also told by those who watch these kinds of things that the President would probably sign it because this legislation is very, very important in Silicon Valley. The companies that have been the target of these frivolous lawsuits are primarily located in the high-technology industry, and Silicon Valley in California is considered the seed bed of high technology in this country.

I might, in a parochial way, Mr. President, note that there are more software companies in Utah Valley than there are in Silicon Valley, but that is a parochial comment made by the Senator from Utah.

Why would it be important for the President to sign a bill that would benefit Silicon Valley? One need only look at the political map and the number of electoral votes that are contained in California to realize that anything that improves the California economy would be of political benefit to a politician who could take credit for improving the California economy. The California delegation as a whole has been most vigorous in their support of this bill. The senior Senator from California [Mrs. FEINSTEIN] has been a supporter of this bill. But the President decided, apparently, that whatever political benefit would accrue to him by doing something that would be good for Silicon Valley might be offset by his ability to pose as the defender of the small investor.

There have been many editorials written by people who perhaps do not

understand this bill, to say, no, this really does support the small investor, and the President decided to go with that rhetoric rather than with what I consider to be the true substantive benefit of this bill.

So we are back again. We have gone through this argument in committee. The bill was reported out of committee by a strong bipartisan margin. We are back into it here on the floor. As indicated, the bill was passed by the Senate by a strong bipartisan margin. It has gone through the House. The override vote was 319 to 100, more than 3 to 1. It needed only be 2 to 1, but it was more than 3 to 1. So that makes it very clear there is a strong bipartisan message here.

I am interested that the authorship of this bill began on the Democratic side of the aisle with Senator DODD, joined on the Republican side of the aisle by Senator DOMENICI. It was known as the Dodd-Domenici bill in the previous Congress. Now, given the results of the election, it is called the Domenici-Dodd bill. But it demonstrates the bipartisan nature, rising above partisan bickering, that has marked this entire effort. The effort has taken years, and in the years since Senator DODD began his crusade to get this problem fixed, there have been millions, if not hundreds of millions of dollars wasted, investor dollars wasted in dealing with these frivolous lawsuits. If this veto is upheld, there will be millions, if not hundreds of millions of dollars wasted in the future.

This legislation will ultimately pass. It will ultimately pass because it is the right thing to do and more and more people recognize that it is the right thing to do. The only question is whether it should pass in this Congress and become law in this year. I believe the time has gone long enough for us to debate this and repeat the arguments back and forth. The time has come for us to pass this bill.

So I hope the Senate will respond, as the House has done, with a strong bipartisan majority to override the President's veto. I expressed my concern that I think the President was misguided by his advisers on this one, both those who advised him on the substance and those who may have advised him on the politics. I hope we will help correct this Presidential mistake by what we do here on the floor.

Mr. President, I could go on and repeat all of the arguments that have been made in committee and on the floor on this issue, but I see the senior Senator from Maryland, who was the ranking member of the Banking Committee and who is opposed to this bill, and undoubtedly in support of the President's veto. He is on the floor, and I will be happy to yield to him for whatever opening statement he might have. Then we can go forward from there.

Mr. President, I yield the floor.

The PRESIDING OFFICER. The Senator from Maryland.

Mr. SARBANES. Mr. President, as I understand it, the distinguished Senator from Tennessee would like to address the Senate for a short period of time. I ask unanimous consent the Senator from Tennessee be recognized, and at the conclusion of his remarks I then be recognized.

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

The Senator from Tennessee.

THE HOWARD H. BAKER, JR. COURTHOUSE

Mr. THOMPSON. I thank the Senator from Maryland, and I thank the Chair.

Mr. President, one of the highest honors that I have in serving in the U.S. Senate is the fact that I hold a seat once occupied by Howard H. Baker, Jr. I have no doubt that this seat will always be known as the Baker seat, and that is how it should be.

This morning I rise and it is my honor to rise in support of the action of the Senate taken last night, just prior to adjournment. The Senate passed H.R. 2547 to name the new U.S. courthouse in Knoxville, TN, in the Senator's beloved east Tennessee, after Senator Baker.

I know that the Howard H. Baker, Jr. Courthouse will always serve as a reminder of the love and respect that all Tennesseans, as well as all Members of this body, have for him.

Mr. SARBANES. Mr. President, let me simply say I am delighted to hear the courthouse has been named for our very able colleague, Howard Baker. I did wonder whether Howard Baker would be able to practice law in the Howard Baker Courthouse, but I guess that issue can be settled when the time arises. But it is certainly a recognition that his very distinguished career here in the Senate makes well deserved.

SECURITIES LITIGATION REFORM ACT—VETO

The Senate continued with the reconsideration of the bill.

Mr. SARBANES. Mr. President, first I want to say that the logic of my colleague from Utah is absolutely right. I think he said right at the end of his remarks that I was against the bill and, therefore, he assumed that I would be in support of the veto. And he is obviously correct. I will not now—I may later—talk a bit about the broader defects which I see in the legislation. But I want to address now the items that were touched upon in the President's veto message as the basis for his vetoing the legislation.

My own view is that there are other reasons as well that go well beyond what the President indicated. But I want to focus on that for the moment since it is the veto message, the veto, that is before us. And the issue, of course, would be whether to override the veto.

I listened to my distinguished colleague from Utah as he talked, and to the various examples that he gave as a reason for why we should pass this legislation in terms of the kinds of suits that had been brought and the frivolousness of the actions. And I want to simply say to him that, if that is all the bill did, if the bill were crafted in a way to get at the kind of examples he was citing, I think the bill would have passed 99–0. So I do not really differ with him in the examples that he cited as being problems and saying that those are problems and measures ought to be taken in order to correct them. The problem is that this bill goes way beyond that. That is the problem.

The President, since the conference report was passed 2 weeks ago, has now vetoed it. That actually reflects, I think, the overwhelming position taken by newspaper and magazine editors around the country who have analyzed this legislation and who have no vested interest in it. There are a number of interest groups who have an interest on either side of this legislation. But these are common indicators outside of that framework. They have by and large strongly come down against it.

The President said in his message, ''Those who are victims of fraud should have recourse in our courts. Unfortunately, changes made in this bill during conference could well prevent that.''

I hope that the Senate will sustain the President's veto so that we could get about the business of crafting legislation better targeted at the goal that I think we all share—deterring frivolous lawsuits. I want to emphasize that again. I know of no one who argues against reasoned measures to deter frivolous lawsuits.

The President's veto message recognizes that this bill is not a balanced response to the problem of frivolous lawsuits. This legislation will affect far more than frivolous lawsuits. As I said at the outset, if the bill dealt only with the problem of frivolous lawsuits, I would be for it, and presumably the President would have signed it.

Unfortunately, this bill that is before us will make it more difficult for investors to bring and recover damages in legitimate fraud actions. Investors will find it far more difficult to bring and to recover damages in legitimate fraud actions.

The editors of Money magazine concluded that this legislation hurts investors, stating in their December editorial as follows: ''Now only Clinton can stop Congress from hurting small investors like you.'' That is Money magazine. The President has tried to do that through the veto. We should do our part now by supporting this veto.

The President's message identified three areas of concern with the bill: The pleading standard, the safe harbor, and the rule 11 provision. On the first point, the President said, and I quote him: ''The pleading requirements of the

conference report with regard to a defendant's state of mind impose an unacceptable procedural hurdle to meritorious claims being heard in Federal courts.''—''an unacceptable procedural hurdle to meritorious claims being heard in Federal court.''

What are pleading standards? Some of this, of course, gets very lawyerly, but it has to get lawyerly because you are really talking about the basis on which people have access to the courts. That may appear to be a highly technical legal matter, and in some respects it is. But the practical result is very real for people who may have been defrauded or abused in terms of making their investment decisions.

Pleading standards refer to what an investor must show in order to initiate a securities fraud lawsuit. In other words, what must you establish in order to get the lawsuit started? The bill that was reported by the Senate Banking Committee adopted the pleading standard used by the U.S. Court of Appeals for the Second Circuit. That standard says that investors seeking to file securities fraud cases must, and I quote: ''specifically allege facts giving rise to a strong inference that the defendant acted with the required state of mind.''

In other words, the plaintiff in setting out his pleading has to specifically allege facts that give rise to a strong inference that the defendant acted with the required state of mind. This is a standard more stringent than the Federal Rules of Civil Procedure. It, in fact, is a minority view amongst the circuit courts in terms of the threshold that the plaintiff has to cross in order to initiate a securities fraud lawsuit.

But that was a standard adopted in the committee, in the committee-reported bill. When the bill came to the Senate floor, the Senate adopted an amendment to this provision that was offered by the distinguished Senator from Pennsylvania, Senator SPECTER. Senator SPECTER's amendment codified, brought into the statute, additional second circuit holdings clarifying this standard. These additional second circuit holdings state that a plaintiff may meet the pleading standard by alleging facts showing the defendant had motive and opportunity to commit fraud or constituting strong circumstantial evidence of state of mind. What the second circuit has done is they have enunciated this holding with respect to pleadings, and then in subsequent opinions they had clarified this standard to make it clear that motive and opportunity to commit fraud, or facts constituting strong circumstantial evidence of a state of mind, would also meet the pleading standard.

The argument made was that, if you are going to take the second circuit standard, then you ought to take the second circuit's elaboration of its standard, which seems to me an eminently logical and reasonable position.

I think it is probably safe to say that the only pro-investor amendment adopted on the Senate floor was the Specter amendment.

I thought it was a constructive contribution to the legislation, and a majority of this body, I think on a vote of 57 to 42, agreed with that.

Unfortunately, this amendment was dropped in conference, the SPECTER amendment. The conference report deleted the SPECTER amendment, leaving investors without the protection of the additional second circuit holdings. And the President in his veto message said the following:

> The conferees deleted an amendment offered by Senator SPECTER and adopted by the Senate that specifically incorporated Second Circuit case law with respect to pleading a claim of fraud. Then they specifically indicated that they were not adopting Second Circuit case law but instead intended to strengthen the existing pleading requirements of the Second Circuit. All this shows that the conferees meant to erect a higher barrier to bringing suit than any now existing—one so high that even the most aggrieved investors with the most painful losses may get tossed out of court before they have a chance to prove their case.

Mr. President, I think that President Clinton was well advised to object to that provision of the conference report. A number of eminent law professors, experts without any axe to grind, wrote to the President warning of the consequences of that provision.

Professor Arthur Miller of the Harvard Law School, a nationally recognized expert on civil procedure, warned that the pleading standard adopted in conference, and I quote him, ''effectively will destroy the private enforcement capacities that have been given to investors to police our Nation's marketplace.''

John Sexton, the very able and distinguished dean of the New York University School of Law, one of our Nation's preeminent law schools, and also an expert on civil procedure, wrote, ''It simply will be impossible for the plaintiff, without discovery, to meet the standard inserted by the conference committee at the last minute.'' Let me repeat that from Dean Sexton. ''It simply will be impossible for the plaintiff, without discovery, to meet the standard inserted by the conference committee at the last minute.''

Joel Seligman, dean of the University of Arizona School of Law and an expert in securities law, also expressed concern that the pleading standard would ''prevent a significant number of meritorious lawsuits from going forward.''

These are all very distinguished legal experts, very knowledgeable on this particular area of the law, and all expressing these very strong judgments about the impact of what was done in the conference with respect to this issue.

I ask unanimous consent that those letters be printed in the RECORD at the end of my remarks.

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

(See exhibit 1.)

Mr. SARBANES. Mr. President, sustaining the President's veto would give the Congress a chance to craft a more reasonable pleading standard. This is a very important issue. It may not appear to be so, but the end result of not having a reasonable pleading standard is that you will prevent people with meritorious claims from being able to initiate and carry through their suit. I wish to underscore, I am talking about people with meritorious claims.

A reasonable pleading standard, as was in the original proposed bill and enhanced by the SPECTER amendment, would not provide any opening for frivolous lawsuits but it would ensure that meritorious lawsuits were not barred from the courtroom.

Let me turn to safe harbor, which, of course, was an issue on which there was extended discussion in this Chamber in the course of the consideration of this legislation and then again on the conference report. The President stated with respect to the safe harbor provision—this is the President in the veto message:

> While I support the language of the conference report providing a ''safe harbor'' for companies that include meaningful cautionary statements in their projections of earnings, the Statement of Managers—which will be used by courts as a guide to the intent of the Congress with regard to the meaning of the bill—attempts to weaken the cautionary language that the bill itself requires. Once again, the end result may be that investors find their legitimate claims unfairly dismissed.

The safe harbor provision creates a statutory exemption from liability for so-called forward-looking statements. Forward-looking statements are broadly defined in the bill to include both oral and written statements—both oral and written statements. Examples include projections of financial items such as revenues and income for the quarter or for the year, estimates of dividends to be paid to shareholders, and statements of future economic performance such as sales trends and developments of new products. In short, forward-looking statements include the type of information that is important to investors deciding whether to purchase a particular stock.

I differ somewhat with the President on his analysis because I think the safe harbor language in the bill as well as the language in the statement of managers is troublesome. It is my very deep concern that the safe harbor provision in this legislation will, for the first time, protect fraudulent statements under the Federal securities law. The American Bar Association wrote the President that the safe harbor ''has been transformed not simply into a shelter for the reckless but for the intentional wrongdoer as well.''

Think of that, not simply into a shelter for the reckless but for the intentional wrongdoer as well.

Projections by corporate insiders will be protected, even though they may be

unreasonable, misleading, and fraudulent, if accompanied by boilerplate cautionary language.

The claim is made that the bill codifies a legal doctrine applied by the courts known as ''bespeaks caution.'' As I understand it, all courts that have applied this doctrine have required that projections be accompanied by disclaimers specifically tailored to the projections. If companies want to immunize their projections, they must alert investors to the specific risks affecting those projections.

In other words, general boilerplate language will not do that. The bill before us today does not include—does not include—this requirement of specific cautionary language to investors.

The Association of the Bar of the city of New York warned of this provision stating:

> . . . the proposed statutory language, while superficially appearing to track the concepts and standards of the leading cases in this field, in fact radically departs from them and could immunize artfully packaged and intentional misstatements and omissions of known facts.

Let me just repeat that because the Association of the Bar of the city of New York is a very distinguished organization and they do in-depth studies of important legal issues. Their studies are widely respected and widely referred to in the legal profession.

What they warned about in this safe harbor provision was that:

> . . . the proposed statutory language, while superficially appearing to track the concepts and standards of the leading cases in this field, in fact radically departs from them and could immunize artfully packaged and intentional misstatements and omissions of known facts.

This letter was signed for the bar association by Stephen Friedman, a former SEC Commissioner.

Prof. John Coffee, a distinguished professor at the Columbia Law School, wrote to the President:

> . . . rather than simply codify the emerging 'bespeaks caution' doctrine, it is much closer to the truth to say that the Act overrules that doctrine.

Mr. President, I ask unanimous consent that the Coffee letter discussing this issue and another by him be printed in the RECORD at the conclusion of my remarks.

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

(See exhibit 2.)

Mr. SARBANES. While I believe the safe harbor language in this bill is a problem, the President in his veto message has raised an additional valid point with respect to the safe harbor language in the statement of managers.

The President points out that the language in the statement of managers attempts to weaken the cautionary language that the bill itself requires. The President received advice on this point from Professor Coffee, who wrote:

> . . . under the proposed legislative history there now appears to be no obligation to disclose the most important reasons why the forward-looking statement may prove false.

And Professor Coffee went on to state:

> . . . no public policy justification can support such selective disclosure of the less important facts while withholding the most important.

So I have difficulty with the provision in the legislation itself, as I have indicated, but on top of that you have this Statement of Managers seeking to create legislative interpretation which, as the President pointed out, attempts to weaken the cautionary language that the bill itself requires.

So that a weak provision has been rendered, well, Professor Coffee, I guess, would say, nonexistent. He stated earlier:

> . . . rather than simply codify the emerging ''bespeaks caution'' doctrine, it is much closer to the truth to say that the Act overrules that doctrine.

Sustaining the veto would give the Congress the chance to craft a more reasonable legislative approach on the safe harbor issue.

Let me turn to the rule 11 provision. The President's veto message on this matter states:

> . . . The Conference Report's Rule 11 provision lacks balance, treating plaintiffs more harshly than defendants in a manner that comes too close to the ''loser pays'' standard I oppose.

We had a discussion about this when we dealt with the conference report, I say to my colleagues. When we sent the bill to conference, the way we drafted the bill in the Senate, under Rule 11, we treated plaintiffs and defendants evenhandedly with respect to either bringing of frivolous suits or asserting a frivolous defense.

It is clear to me that that is the way it ought to be done. Rule 11 of the Federal Rules of Civil Procedure is the principal sanction against the filing of frivolous lawsuits in the Federal courts. It requires all cases filed in the Federal courts to be based on reasonable legal arguments and supported by the facts. As passed by the Senate, the bill required that courts include specific findings in securities class actions regarding compliance by all parties and attorneys with rule 11(b) of the Federal Rules of Civil Procedure.

This is as passed by the Senate. If a court found a violation of rule 11 by the plaintiff or the defendant, the court was required to impose sanctions. The provision was balanced. The sanctions would have applied equally to plaintiffs and defendants. This was intended as a deterrent to frivolous cases. I believe it would have worked well. In conference, this balance was removed so the legislation now applies more harshly to investors than to corporate insiders.

The Senate bill as we passed it contained a presumption that the appropriate sanction for failure of the complaint or the responsive pleading or motion to comply with rule 11 was an award of reasonable attorneys fees and other expenses incurred as a direct result of the violation.

The conference changed this presumption so it no longer applies equally to plaintiffs and defendants. I defy any of my colleagues to justify this either in logic or reason. This was a change made by the conference so that it no longer applies equally to plaintiffs and defendants. If the defendant substantially violates rule 11, he pays only reasonable attorneys fees and other expenses incurred as a direct result of the violation; this is the standard that was in the Senate-passed bill. If the plaintiff is found to have substantially violated rule 11, he pays all attorneys fees incurred in the action, not just those resulting from the violation.

This is a major and significant disparity. There is no justification for such disparate treatment. Of course, its result will be to scare investors from bringing meritorious fraud suits. The legal experts agree that that will be the result of this provision.

Professor Miller, of Harvard Law School, wrote of this provision—and I quote him—and listen carefully to this quote:

> . . . It is inconceivable that any citizen, even one with considerable wealth and a strong case on the merits, could undertake securities fraud litigation in the face of the risks created by these provisions.

Dean Sexton, of New York University Law School, wrote:

> . . . the obvious effect of these provisions: who but a fool would risk the remainder of his or her life savings, having already been defrauded out of much of them? Even wealthy interest will not expose their assets to the possible onslaught of unlimited defense costs, or judicial fee-shifting excesses.

Sustaining the President's veto would give Congress the chance to craft a more reasonable rule 11 provision, actually to go back to the provision that the Senate passed before it was mutilated in the conference committee.

Sustaining the President's veto, of course, obviously would not be the end of this legislative effort. There is, obviously, very strong support in the Congress for dealing with the issue of frivolous lawsuits. The difference is not to go so far that you have an unbalanced product. The debate tends to be a citation of abusive instances, and I want to make it very clear that those of us who support the veto do not defend the abusive instances and would support legislation designed to deal with it.

But this legislation goes too far, as I have indicated, in the three provisions the President focused on in his veto message: the pleading standard, the safe harbor and the now unbalanced rule 11 provision. In each instance, that would make it more difficult for innocent investors to bring lawsuits and to recover damages when they have been defrauded.

This is a piece of legislation people are going to have to live with on their history, and I am prepared to predict here today that the consequence of this legislation will be that innocent people

with meritorious claims will not be able to assert them in court; the people who have been defrauded will not be able to obtain a remedy; the Charles Keatings of the world will walk free; and senior citizens, pension plans, ordinary investors will have no recourse. The stories then that are going to be told are going to be the stories of predatory actions against innocent people, with them not having any way to obtain justice.

The President said in the veto message:

> It is not appropriate to erect procedural barriers that will keep wrongly injured persons from having their day in court.

The Congress ought to take the opportunity to rework this legislation to eliminate these defects, to get a piece of legislation that we could all agree on as being worthwhile and meritorious, that was not subjected to the sort of scathing criticism that is reflected in these letters from some very distinguished legal scholars with respect to this matter.

These people do not argue against doing something about frivolous lawsuits, but they are saying in the course of trying to do that, do not go so far that you are ruling out meritorious lawsuits. There is plenty of time remaining in this Congress. It is not as though we are at the end of a Congress, so that if you do not act, you have to start all over again. There is plenty of time remaining in this Congress to deal with this matter.

Other provisions in this legislation, which no one has raised an issue about, provide protection against the professional plaintiff, against class action lawyers who abuse investors who have been defrauded. Those provisions no one is questioning.

Most of the debate focuses on extreme cases. The provisions in the legislation that address the extreme cases no one is arguing against. So I want it clearly understood, when we hear these various horror stories, the provisions that would get at those instances, no one is questioning. We are prepared to see those go into law.

But I think we have to really narrow the focus down to what is at issue here.

There is a great tendency to cite the extreme examples, but no one is contesting the extreme examples. We need to craft a piece of legislation, of which we can be proud, that stands legal scrutiny and that will not result in individual investors, pension funds, local governments suffering when they are defrauded in the securities markets and are denied their day in court.

Sustaining the veto would enable us to do that, and I think the end result would be that we would have a better piece of legislation, and the end result then would be that we would not come back on another day citing the horror stories of investors who have been defrauded who, by any standard, ought to be able to obtain justice and are denied their day in court.

Mr. President, I yield the floor.

EXHIBIT 1

HARVARD LAW SCHOOL,
Cambridge, MA, December 19, 1995.

Hon. WILLIAM J. CLINTON,
President of the United States,
The White House,
Washington, DC.

DEAR MR. PRESIDENT: On December 12 I wrote to you concerning the so called ''securities reform'' legislation, then embodied in Senate Bill 240. I urged you to oppose that legislation because (1) it was based on a totally erroneous assumption that there had been a sharp increase in securities litigation in the recent past, which is completely belied by every statistical measure available; (2) the federal courts, exploiting a variety of procedural tools such as pretrial management, summary judgment motions, sanctions, and enhanced pleading requirements, were achieving many of the goals of the so called reformists, most particularly the deterrence of ''frivolous'' litigation; (3) recent history suggests that the same vigilance is needed today to guard against market fraud as was needed during the superheated activity in the securities business in the mid-1980's; and (4) the SEC simply is unable to perform the necessary prophylaxis to safeguard the nation's investors, and private enforcement is an absolutely integral part of policing the nation's marketplaces.

I am writing again because the latest version of the legislation, H.R. 1058, contains provisions regarding pleading in securities cases and sanction procedures that, if anything, make the legislation even more draconian and access-barring than Senate Bill 240. It simply is perverse to consider it a ''reform'' measure.

I have always taken great pride in the fact that the words ''equal justice under law'' are engraved on the portico of the United States Supreme Court. I fear, however, that if the proposed legislation is signed into law, access to the federal courts for those who have been victimized by illicit practices in our securities markets will be foreclosed, effectively discriminating against millions of Americans who entrust their earnings to the securities markets. As difficult as the existing Federals Rules of Civil Procedure already make it to plead a claim for securities fraud sufficient to survive a motion to dismiss, especially given existing judicial attitudes toward these cases, the passage in House Bill 1058 requiring that the plaintiff ''state with particularity facts giving rise to a strong inference'' that the defendant acted with scienter, in conjunction with the automatic stay of discovery pending adjudication of dismissal motions, effectively will destroy the private enforcement capacities that have been given to investors to police our nation's marketplace. Despite misleading statements in the Statement of Managers that this provision is designed to make the legislation consistent with existing Federal Rule 9, the truth is diametrically the opposite, since the existing Rule clearly provides that matters relating to state of mind need not be pleaded with particularly. Indeed, it would be more accurate to describe the proposal as a reversion to Nineteenth Century notions of procedure. The proposed legislation also does considerable damage to notions of privilege and confidence by demanding that allegations on information and belief must be accompanied by a particularization of ''all facts on which that belief is formed.''

The situation is compounded by the proposed fee shifting and bond provisions that relate to the enhanced sanction language in the legislation. It is inconceivable that any citizen, even one with considerable wealth and a strong case on the merits, could undertake securities fraud litigation in the face of the risks created by these provisions. As the person who was the Reporter to the Federal Rules Advisory Committee during the formulation and promulgation of the 1983 revision of Federal Rule 11, the primary sanction provision in those Rules, I can assure you that no one on that distinguished committee would have possibly supported what is now so cavalierly inserted into the legislation.

I use the word ''cavalierly'' intentionally, because, as I indicated to you in my earlier letter, there is not one whit of empiric research that justifies any of the procedural aspects of this so called ''reform'' legislation. Not only does every piece of statistical evidence available belie the notion that there is any upsurge in securities fraud cases, but these proposals, with their devastating impact on our nation's investors, have completely bypassed the carefully crafted structure established in the 1930's for procedural revision that has enabled the Federal Rules to maintain their stature as the model for procedural fairness and currency. Thus, the proposed legislation represents a mortal blow both to the policies that support the private enforcement of major federal regulatory legislation and to the orderly consideration and evaluation of all proposals for the modification of the Federal Rules. From my perspective, which is that of a practitioner in the federal courts, a teacher of civil procedure for almost thirty-five years, and a co-author of the standard work on federal practice and procedure, I fear that all of this is extremely regrettable.

I hope you will give serious consideration to vetoing the legislation. If I can be of any further assistance to you or your staff in considering these and related matters, please do not hesitate to inquire. My telephone number is 617/495–4111.

My very best to you and your family during this wonderful holiday season.

Sincerely yours,

ARTHUR R. MILLER,
Bruce Bromley Professor of Law.

THE UNIVERSITY OF ARIZONA,
Tucson, AZ, December 13, 1995.

Hon. WILLIAM J. CLINTON,
The President,
The White House,
Washington, DC.

DEAR MR. PRESIDENT: I am writing to urge you to veto pending legislation, The Private Securities Litigation Reform Act H.R. 1058.

For the past 18 years, my principal work has been in the field of federal Securities Regulation. I am the co-author with Harvard Law School Professor Louis Loss of an 11 volume treatise on Securities Regulation, published by Little, Brown & Co., which is generally considered to be the leading treatise in the field. I have written four other securities regulation related books and over 25 Law Review articles in this area. Earlier I had a discussion with respect to a different version of H.R. 1050 with your General Counsel, Abner Mikva.

The current bill, while an improvement over legislation that was introduced last January, is unduly heavy handed and clumsily drafted and would prevent a significant number of meritorious law suits from going forward. I am particularly concerned no only about the safe harbor provisions, but also about provisions concerning Rule 11, the pleading requirements; and the extraordinarily one-side language that appears in the legislative history. Legislative history may not be a point many people have emphasized, but it is my understanding that it was written without earlier review by the Securities and Exchange Commission or its staff, and reflects policy preferences more typical of what appeared in the January 1995 version of this legislation. I take legislative history very seriously, for having studied every reported federal securities Law decision over

the past 12 or so years as a result of my work with Professor Loss, I am well aware that it is frequently dispositive in questions such as those addressed in this particular legislation.

If this bill is vetoed, I am confident it will not be the end of the road for this process. It is possible for Congress if the veto is sustained to draft a more balanced and appropriate bill within a matter of weeks. On the other hand, if this bill is not vetoed, this will provide opportunity for that small number of corporations that do engage in federal securities fraud to feel a greater sense of immunity from private litigation, and in many instances, given the limitations of the SEC and Justice Departments budgets, from any litigation deterrent at all.

Sincerely,

JOEL SELIGMAN,
Dean and Samuel M. Fegtly Professor of Law.

NEW YORK UNIVERSITY
SCHOOL OF LAW,
New York, NY, December 13, 1995.

President WILLIAM J. CLINTON,
The White House,
Washington, DC.

DEAR MR. PRESIDENT: I am a student and teacher of Civil Procedure and the principal active author of the most widely used textbook on the subject. I approach matters of Civil Procedure not as an advocate for particular parties, but as a scholar interested in coherence, fairness and efficiency in the system. I am imposing upon your time with this letter because I feel compelled to convey my view that the Conference Committee Securities Litigation Reform bill (which in critical respects is dramatically different from the Senate bill) is a procedural nightmare that will chill meritorious litigation by victims of securities fraud—and equally importantly, will provide a precedent for substantive procedural rules which most certainly will be copied with disastrous consequences in other areas (for example, in the area of civil rights).

The Conference Committee bill effects far-reaching procedural changes that will govern both class and individual litigation in one type of federal case—litigation under the federal securities laws. These will affect not only shareholder claims, but also insurance policyholders and limited partnership claims, among others, which seek relief under federal securities laws. The bill advances these procedural changes, which undermine fifty years of procedural reform, without consulting even a single judicial witness in its hearings. Cumulatively, the reforms will impose obstacles that will make it impossible for the average citizen to pursue, let alone to prevail upon, virtually any securities claims, no matter how valid.

I will not examine every section of the bill; rather, I will confine my comments to the provisions which, viewed from the perspective of a proceduralist, seem most perverse.

HEIGHTENED PLEADING REQUIREMENTS

Although the Senate bill purported to adopt the Second Circuit's already elevated (beyond Rule 9) pleading requirements for fraud, the Conference Report goes beyond that, requiring that the complaint shall "state with particularity facts giving rise to a strong inference" that the defendant acted with scienter (emphasis supplied). In addition, the Conference Report contains an automatic stay of discovery pending adjudication of a motion to dismiss.

In essence, the Conference Report establishes almost insurmountable hurdles in the form of pleading requirements as a barrier to federal court. Absent the most extraordinary circumstances (such as a prior federal indictment), it simply will be impossible for the plaintiff, without discovery, to meet the standard inserted by the Conference Committee at the last minute, which is to state "with particularity" facts that give rise to a strong inference that a defendant acted with the required state of mind at the outset of the case. While the Statement of Managers recites that the words "with particularity" were added to make this requirement consistent with Federal Rule of Civil Procedure 9, that Rule explicitly states that facts on state of mind need not be specifically set forth. No other type of case requires such precise pleading—because it was long ago recognized as impossible to achieve except for those intimately involved in an action, a status not enjoyed by people buying stock on the open market.

In addition, the pleading requirement states that "if an allegation regarding a fraudulent statement or omission is made on information and belief, the complaint shall state with particularity all facts on which that belief is formed." That requirement would appear to provide that the plaintiff would have to set forth all confidential sources in the complaint, including the names of whistleblowers and members of the media. This disclosure requirement deters pre-complaint investigation and completely reverses the attorney-work product protection afforded other types of litigants.

ENHANCED SANCTIONS AND BOND REQUIREMENT

I am opposed to fee-shifting, and I always have understood that was your policy as well. Any significant chance of fee-shifting will deter all meritorious cases in which a plaintiff has little to gain in potential recovery in relation to the magnitude of the fees to be shifted, as is frequently the case in securities class action litigation. In these circumstances, any significant chance of fee-shifting is going to be a major deterrent. The simple mathematics of the situation suggests the obvious effect of these provisions: who but a fool would risk the remainder of his or her life savings, having already been defrauded out of much of them? Even wealthy interests will not expose their assets to the possible onslaught of unlimited defense costs, or judicial fee-shifting excesses.

Similarly the bond provision, which has no standard to guide its administration, is completely inequitable and will operate only against plaintiffs. The notion that such a bond provision could run against defendants is preposterous, as it is clearly unconstitutional to require an individual to post a bond in order to defend himself or herself in court.

PERVERSE CUMULATIVE SYNERGY OF PROCEDURAL CHANGES

The disastrous effects of all these changes on meritorious litigation can be seen easily if one hypothetically shifts the context to Title VII litigation—the likely next target for the "reformers" if this bill becomes law. Given the extraordinarily high economic exposure (resulting from the possibility of sanctions), the necessity of a bond, and the difficulty in meeting the pleading requirement without discovery, is it possible to imagine many plaintiffs (even those with what appear to be winning cases) taking the risk even of initiating litigation? And, of course, this will be the case in securities litigation as well. Essentially, through "procedural reform" and a selective return to Nineteenth Century pleading rules, real victims will be prevented from seeking redress.

Because much litigation will never come to be, it would be wrong to assert that the courts will be able to ameliorate these rules. Moreover, in the case of the highly problematic pleading requirements, even in those suits which materialize the courts would not have the power to overrule a directive from a statute. Thus, though the Second Circuit could promulgate its interpretation of the pleading requirement of Rule 9 on matters other than intent, it could not have applied its test in the area of intent, because the Rule (by its terms) exempted intent; so also, if the Committee Bill becomes law, the Second Circuit would not be free to exempt intent, because the statute includes it.

In my opinion, you should veto this bill. I would appreciate any consideration you can give to my views. If any member of your staff has questions, please do not hesitate to call me at 212–998–6000.

Best of luck in this and all things. Love to all.

Sincerely,

JOHN SEXTON.

EXHIBIT 2

COLUMBIA UNIVERSITY IN
THE CITY OF NEW YORK,
New York, NY, December 6, 1995.

The PRESIDENT,
The White House,
Washington, DC.

DEAR MR. PRESIDENT: I am writing with regard to the proposed "Private Securities Litigation Reform Act of 1995" (the "Act") in light of the November 28, 1995 Proposed Conference Report and the accompanying "Statement of Managers", which constitutes its primary legislative history.

The special focus of my letter is on the proposed "safe harbor for forward-looking statements" that the Act would codify. Although there are other serious problems with the Act, it is this area where its deficiencies are the most glaring and where the recently drafted legislative history most clearly distorts the original intent of the proponents of such a safe harbor. Over the last two years, I have repeatedly testified before Congressional committees on the subject of securities legislation, have drafted a proposed administrative "safe harbor" rule at the request of the SEC, and have served as an informal consultant to attorneys on the staff of the White House counsel on the subject to such a safe harbor. Throughout this process, I have strongly supported the desirability of such a safe harbor, believing that it will encourage fuller disclosure from issuers who would otherwise be chilled from making projections by the threat of private civil liability. Unfortunately, I believe the formulation of the proposed "safe harbor" in Section 102 of the Act, when read in light of its legislative history, does the reverse. That is, its adoption would seriously erode the quality of disclosure in our national securities markets and, in some cases, would give issuers a virtual "license to lie".

Simply put the core problem is that the Act's safe harbor, as finally drafted, does not require the issuer to identify the substantive factors known to it that are most likely to cause actual results to differ materially from projected results. Rather, the issuer could simply provide a representative list of "important factors" that could cause actual results to differ materially from projected results. Thus, for example, an issuer might be aware of ten factors that could cause its projection to go awry and could deliberately list only the third, fifth, seventh and tenth most important factors, intentionally omitting the first, second, fourth factors (or three out of the first four). This outcome is very different from what would be tolerated today by the federal courts, because these courts have crafted a protective doctrine (known) as the "bespeaks caution" doctrine) to shelter issuers from liability when their projections prove materially inaccurate. However, this judicial doctrine applies only when the projection is accompanied by cautionary language that is "specifically tailored" to the actual projection made and the

special risks faced by the issuer. Not only does the Act lack any requirement that the cautionary statements be in any respect ''tailored'' to the projections made, but its legislative history now makes clear for the first time (and at the last minute) that the issuer need only disclose some of the reasons known to it why the projection may prove false (and apparently not the most important such reasons). In this light, rather than simply codify the emerging ''bespeak caution'' doctrine, it is much closer to the trust to say that the Act overrules that doctrine.

To understand this assessment, it is necessary to focus briefly on the legislative language and its accompanying legislative history. Under proposed §27A (and also under a companion provision that amends the Securities Exchange Act of 1934), a defendant cannot be held liable in a private action with respect to a forward-looking statement if and to the extent that either of the following occurs:

(A) The forward-looking statement is identified as such and ''is accompanied by meaningful cautionary statements identifying important factors that could cause actual results to differ materially from those in the forward-looking statement;'' or

(B) the plaintiff fails to prove that the defendant (or certain officers thereof) had ''actual knowledge . . . [of] an untrue statement of a material fact or omisssion of a material fact. . .''

Thus, even if knowingly false statement is made, the defendant escapes liability if ''meaningful cautionary statement'' are added to the forward-looking statement. This is bad enough, but under the proposed legislative history there now appears to be no obligation to disclose the most important reasons why the forward-looking statement may prove false (so long as some ''important factors'' are indicated). Specifically, the Statement of the Managers directs:

''Failure to include the particular factor that ultimately causes the forward-looking statement not to come true will not mean that the statement is not protected by the safe harbor. The Conference Committee specifies that the cautionary statements identify ''important' factors to provide guidance to issuers and not to provide the opportunity for plaintiff counsel to conduct discovery on what factors were known to the issuer at the time the forward-looking statement was made. . . .The first prong of the safe harbor requires courts to examine only the cautionary statement accompanying the forward-looking statement. Courts should not examine the state of mind of the person making the statement.'' (at pp. 17–18).

On this basin, a court would not be able to ascertain what ''important factors'' the issuer was aware of but failed to disclose. It is at least arguable than if the issuer disclosed factors that were ''important'' but not among the top four or five reasons why actual results might deviate materially from predicted results, such disclosure would still satisfy this standard. Simply put, no public policy justification can support such selective disclosure of the less important factors while withholding the most important.

Throughout the legislative drafting process, the managers of the Act have argued that their safe harbor provision largely codified the ''bespeaks caution'' doctrine, but just avoided overly exacting (and litigation-promoting) terms, such as ''specifically tailored.'' Perhaps, it was understandable those fearful of an excessive incentive to litigate would wish to avoid such a formulation. Thus a weak compromise was reached under which the disclosures would only have to include ''meaningful cautionary statements.'' Now, however, with the appearance of the legislative history, even that compromise has been undercut by language suggesting that only a few representative factors need be disclosed.

The impact of this change is shown by the following entirely realistic examples:

1. A biotech company, whose future depends on the development of a new drug, projects that it will be in the market within 18 months, but acknowledges that this projection is subject to the uncertainties of FDA approval. However, it fails to disclose that the FDA has just questioned the adequacy of its tests and suggested that a new round of testing may be necessary.

2. A company projects a 50% increase in its earnings for the next year and specifies that this projection is conditioned on (i) the current level of interest rates, (2) continued high demand for its products, (3) the availability of certain scarce supplies, and (4) its ability to obtain adequate financing from its lenders to exploit business opportunities. Omitted from this list of important factors is the critical factor that 50% of its sales come from a single contract with a major customer, who has experienced major business and financial difficulties and has sought to renegotiate its future payments, claiming that it might be unable to pay for future deliveries.

In both these cases, some ''important factors'' are disclosed, but the critical facts are omitted. Under current law, the forward-looking statements would not be protected, because the cautionary statements were not ''specifically tailored.'' However, under the Act, they may be insulated from private liability—with the result that the securities market will become somewhat more ''noisy'' and less transparent and investors will have to discount projections for the risk that material information was not disclosed.

So what should be done? Ultimately, the options at this point are limited. Nonetheless, I suggest that there are two options that do not require the sacrifice of the federal securities laws' traditional objective of full and fair disclosure:

(1) Veto Plus An Administrative Rule. The President could veto the Act, but simultaneously announce the promulgation by the SEC of an administrative safe harbor rule that protects forward-looking statements so long as the principal risk factors known to management at the time the forward-looking statement is made are disclosed (along with any material facts bearing on these risk factors); or

(2) Signature Plus An Administrative Rule. The President could sign the Act, but instruct the SEC to adopt an interpretative rule defining what constitutes adequate ''meaningful cautionary statements'' for purposes of the Act's safe harbor. This administrative definition would, of course, require an issuer to identify the principal factors known to it that are in its judgment most likely to cause actual results to deviate from projected results.

This second option deserves a brief word of explanation. Although the legislative history in the Statement of Managers is adverse, it is not decisive. Nothing in it clearly prohibits an SEC interpretative rule along the lines indicated above. In any event, the Supreme Court is divided on the weight to be given to legislative history. Particularly because the term ''meaningful cautionary statements'' is not self-evident, but has soft edges, courts are likely to give substantial discretion to an administrative agency to define the critical terms in the statute under which it operates. See Chevron, U.S.A. Inc. v. Natural Resources Defense Council, Inc., 467 U.S. 837 (1984) (agency has substantial powers to resolve legal ambiguities in its statute and federal court should give deference to its greater expertise).

The advantage of this latter approach is that allows the other provisions of the Act to take effect. Although I and many others also have problems with these provisions, they are of a lesser order of magnitude.

to sum up, the latest changes and associated legislative history has made a bad provision worse. I, therefore, urge you to either veto the Private securities Litigation Reform Act of 1995, or sign it only after receiving the assurance of the SEC that it can and will correct the excesses of the safe harbor provision through administrative rule-making.

Respectfully submitted,

JOHN C. COFFEE, Jr.

COLUMBIA UNIVERSITY IN
THE CITY OF NEW YORK,
New York, NY, December 13, 1995.

Re private Securities Litigation Reform Act of 1995 (the ''Act'') Safe Harbor Provisions.

BRUCE LINDSEY, *Esq.*
Associate White House Counsel, The White House,
Washington, DC.

DEAR MR. LINDSEY: This is a follow-up to my letter to the President of December 6, 1995, in which I voiced my criticisms of the ''safe harbor for forward-looking statements.'' While I stated (and continue to believe) that the safe harbor provisions represent the most glaring deficiency in the Act, I also suggested that these problems could be substantially corrected by SEC rule-making. Subsequently, I have been asked to clarify my views on the SEC's authority to adopt a definitional rule in light of the legislative history that will accompany the Act (which I had reviewed but did not specifically discuss in my earlier letter).

Initially, it should be noted that both the Securities Act of 1933 (in Section 19) and the Securities Exchange Act of 1934 (in Section 3(b)) delegate broad authority to the SEC ''by rules and regulations to define technical, trade, accounting, and other terms used in this title, consistently with the provisions and purposes of this title.''[1] Indeed, the Commission used this authority over a decade ago to adopt a ''safe harbor for forward-looking information.'' See SEC Rules 175 and 3b–6 (''Liability for Certain Statements by Issuers'').

My suggestion was that the SEC could adopt a new rule under both the 1933 Act and the 1934 Act to define what constituted ''meaningful cautionary statements.'' I asserted that the Supreme Court's decision in *Chevron, U.S.A. Inc.* v. *Natural Resources Defense Council, Inc.*, 467 U.S. §837 (1984) indicated that courts would be required to deter to such an agency rule. As I understand it, some concern has been raised as to whether the legislative history to the Act so clearly indicates a contrary Congressional intent on this question as to preclude such a rule. this letter is intended to address this concern.

Under the *Chevron* decision, judicial review of an agency's construction of the statute that it administers has two stages. First, the court considers ''whether Congress has directly spoken to the precise question at issue.'' Id. at 842. Second, ''[i]f * * * the court determines Congress has not directly addressed the precise question at issue,'' the court determines ''whether the agency's answer is based on a permissible construction of the statute.'' Id. at 843. In this latter inquiry, substantial deference must be given to the agency's greater institutional expertise.

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[1] This is the language of § 3(b); § 19(a) of the 1933 Act has some immaterial differences, which, if anything, give broader authority to the SEC ''to make, amend, and rescind such rules and regulations as may be necessary to carry out the provisions of this title.

Let us suppose then that the SEC were to adopt a definitional rule defining ''meaningful cautionary statements'' so as to require the corporation seeking to rely on the statutory safe harbor to ''identify those substantive factors then known to the corporation's executive officers that were in their judgment most likely to cause actual results to differ materially from the results projected in the forward-looking statement.''[2]

Obviously, the first issue is whether the legislative history indicates that Congress has directly spoken to ''the precise question at issue.'' Whether ''the precise question'' be broadly defined as the meaning of ''meaningful cautionary statements'' or more narrowly defined as whether such statements should indicate the most important reasons why actual results may deviate from predicted results, my answer is the same: Congress has not spoken to either question. Reviewing the Statement of Managers, one finds only two statements that address these issues, even indirectly. First, at p. 17, it states:

''The Conference Committee expects that the cautionary statements identify important factors that could cause results to differ materially—but not all factors. Failure to include the particular factor that ultimately causes the forward-looking statement not to come true will not mean that the statement is not protected by the safe harbor.''

This understandable position does not, however, conflict with an SEC definition that required the issuer to identify the most important factors then known to it. Logically, the failure to identify the particular factor may have been because that factor was remote and unlikely to occur (i.e. number thirteen on a list of fifteen recognized factors). Hence, there is no necessary conflict. Moreover, the proposed rule could accommodate this point by expressly providing that the failure to identify the particular factor would not be decisive if the issuer had not perceived it to be among the most important factors (ranked either in order of probability of occurrence or magnitude of the consequences if it occurred) or had identified several other factors that it considered to be of greater importance. Put simply, a Congressional intent to permit omission of the actual factor does not preclude a rule requiring disclosure of the most important factors.

A second and more oblique statement of Congressional intent may arguably be inferred from the Statement of Managers' attempt to limit discovery. At pp. 17–18, that statement directs:

''The Conference Committee specifies that the cautionary statements identify 'important' factors to provide guidance to issuers and not to provide an opportunity for plaintiff counsel to conduct discovery on what factors were known to the issuer at the time the forward-looking statement was made. * * * The first prong of the safe harbor requires courts to examine only the cautionary statement accompanying the forward-looking statement. Courts should not examine the mind of the person making the statement.''

Initially, it should be observed that the above language addresses only discovery and not the substantive content of the ''meaningful cautionary statements.'' Moreover, this language may be in direct conflict with the statutory language (in which case the statute should trump the legislative history). Both Sections 27A((f) and 21E(f) expressly authorize discovery ''specifically directed to the applicability of the exemption provided for in this Section.'' Nonetheless, someone may potentially argue that this hostility to discovery as to issuer's state of mind precludes a rule requiring the ''meaningful cautionary statements'' to identify the most important risk factors then known to the issuer. This seems a weak and very inferential claim. Even without discovery addressed to the issuer's state of mind, a court can assess whether the factors most likely to cause a projection not to be realized have been disclosed. Indeed, one possible answer to this objection is to frame the definition in terms of disclosure of the factors that a reasonable person in the corporation's position would have foreseen as being most likely to cause actual and predicted results to deviate materially. Then, the focus becomes objective and not subjective, and there is no conflict with the Congressional prohibition on discovery as to the corporation's state of mind. Discovery could then focus on whether the risk factors were generally recognized in the relevant industry (without focusing on the issuer's state of mind). In short, both objections to the proposed rule can be easily outflanked.

This then takes us to the second level of analysis: is the SEC's interpretation ''based on a permissible construction of the statute?'' See *Chevron, U.S.A.* v. *Natural Resources Defense Council,* 467 U.S. at 843. If it is, ''a court may not substitute its own construction of a statutory provision for a reasonable interpretation made by the administrator of an agency,'' Id. at 844. There seems no need to belabor the reasonableness of requiring disclosure of the factors most likely to cause the projection to go awry. Disclosure of remote factors would indeed not be ''meaningful'' because it would not convey an accurate sense of the relevant risk level.

Independently, I should note that respected legal commentators have recently stressed the role of presidential interpretations in the proper judicial construction of a statute's meaning. See Thomas W. Merrill, Judicial Deference to Executive Precedent, 101 Yale L.J. 969 (1992). While it is not necessary to rely on this ''executive precedent model,'' its availability could be strengthened by a contemporaneous statement by the President as to how he believes the term ''meaningful cautionary statements'' should be read. Such a declaration is not necessary, but cannot hurt.

I hope these comments are useful. If I can be helpful in any way, please do not hestitate to contact me.

Yours tryly,

JOHN C. COFFEE, Jr.

Mr. DOMENICI addressed the Chair.

The PRESIDING OFFICER. The Chair recognizes the Senator from New Mexico.

Mr. DOMENICI. Parliamentary inquiry, Mr. President. There are no time limits on this yet, are there?

The PRESIDING OFFICER. There are no time limits.

Mr. DOMENICI. Have we agreed on the time to vote yet?

The PRESIDING OFFICER. We have not.

Mr. DOMENICI. Mr. President, I am pleased to have an opportunity to speak before 1 o'clock, because I will not be back on the Senate floor for a few hours after that. I thank the floor manager for accommodating me, and I thank the Senate for giving me this chance to talk for just a few minutes.

I think the issue is pretty simple, although my good friend from Maryland can, indeed, make it very complex with reference to rules of procedure, cites of precedent and Federal rule requirements. This issue is very simple, we have a situation in the country where many who want to sustain the President's veto talk about saving, protecting the investors so that lawsuits can be filed on their behalf against those who would perpetrate fraud against them as the management or executive part of a corporation. The scenario is ''people need protection because somebody is going to do them in.''

Let me tell you, the basic problem is that the system we have right now does in the investor and it does in the company. It does the stockholder in, whether it is a small stockholder or somebody who is in one of the giant investment groups in the country as a stockholder. Remember, there are always shareholders on both sides of a case. The nonsuing shareholders receive lower dividends and lower stock prices when their companies are sued in these class actions. And the members of the plaintiff class don't do too well either. The ones who do well are the class action lawyers. The attorneys run these cases, decide who to sue and when to settle. According to the Millberg Weiss data that were submitted to the U.S. Senate, and it was not a submission that we easily obtained, the problem is that if you collect total damages in one of these suits and let us just say it is a dollar—it is never a dollar, it is more like $30 million—if it is a dollar, 14 cents of that goes to the investors. I am not saying that the entire 86 cents goes to the lawyers, but it does not go to the investor.

Essentially, there is a lot going on behind that simple fact. There are many factors that affect what is going on in the litigation cosmos against corporations on the so-called behalf of the so-called stockholders. But, in essence, the system we have is not working. In fact, it is detrimental to the people we allege we are trying to protect by a Federal court-made rule, the private right of action under Section 10b.

There is no statutory law in America that created class action lawsuits under section 10b of the Securities and Exchange Act of 1934.

The courts created the implied private right of action as a method of getting justice and expediting matters so that each stockholder, in the case of these kinds of suits, did not have to file their own lawsuits. In the process, let me suggest that it is very simple to come to the floor and say we ought to fix that. It is very simple for my friend from Maryland to come to the floor and say, ''We agree on some things.''

Mr. President, we have been trying to reform the system, in an active way, for at least 5 years. We probably have been trying to fix it for 10 years. But, that I am aware of, we have been actively trying to fix it for 5 years—fix this problem, the problem that lawyers are no longer lawyers in the sense that people understand them to be. They are entrepreneurial lawyers. That means

[2] Of course, this is intended only as a first approximation, but I do not believe that such a rule would be hard to draft.

they are in the business of manufacturing lawsuits and making money, if they can find the situation where a stock price drops and the lawyers can allege fraud. Believe you me, they look for them, they find them, they recruit them, and they use the same plaintiff many times in many suits. They have their favorites. They are called professional plaintiffs or pet plaintiffs.

In one set of facts before the committee last year, we found that a very elderly man—I think he was over 90—owned small amounts of stock in a whole in a large number of corporations because, if he had enough, he would be the favored plaintiff of this new breed of lawyers. In exchange for letting the lawyer use your name, the professional plaintiff gets a bonus payment of thousands of dollars. Entrepreneurial lawyers agree with statements that say, ''Once we get one of these suits, it is wonderful. We do not work for the stockholders, we work for ourselves because our interest becomes how much money can we finally get if a president of a company, an auditor who did part of the work, a CPA that did work, a board of directors that voted it—how many of these can we bring into a lawsuit?'' At some point, they all add up a little money and they have a nice pot, and it is looking good. ''Gee, we might make $10 million, $20 million out of this.'' And now we settle it. And this results, right here on this chart.

My friend from Maryland would say, well, you have come a long way, and many of the provisions in this bill we agree with. But my question is: How long do we have to debate? How many hearings do we have to have? How many Senators do we have to have voting for this? How many House Members do we have to have voting on it—only to find that those that support the President's veto come to the floor and say there is something really bad with what is going on out there. And this is a good bill.

Mr. SARBANES. Will the Senator yield?

Mr. DOMENICI. But the opponents say we did not quite fix it right. Let me suggest to the Senators that are going to vote here tonight, we fixed it about as right as Democrat and Republican Senators—Democrat and Republican House Members, in large numbers—can do with a piece of legislation over a sustained period of time, with a lot of effort. And they did it. As a matter of fact, there has been more bipartisan participation on this bill, and from different spectrums of the ideological makeup of this Congress, than any bill I have seen since I have been here.

It has Senators HELMS, LOTT, and GRAMM voting for it, and it has Senators MIKULSKI, KENNEDY, and HARKIN on the bill and voting for the bill. And then when the bill came back from conference, a wide spectrum of Senators voted for it again.

So, Mr. President, the truth of the matter is—I do not say this to my friend from Maryland, I make it as a broad statement—there are about 90 lawyers out there in the United States—maybe 110, or something like that—that you will never satisfy. They are powerful, they are strong, they have a lot of money, and they are listened to by a lot of people; they make huge political contributions, and everybody knows that. And you will never satisfy them because they like the system as it is.

There is an old gypsy curse that goes like this: ''May you be the innocent defendant in a frivolous lawsuit.'' It is a curse stopping companies from creating good jobs, high-paying jobs. It is a curse for our economy. If it was not the most powerful around, we would probably easily find the enormous damage being done. It is so big and so strong that all we can do is add up all the horror stories and find out that ''something is wrong in Denmark.'' It is a curse of the Silicon Valley, which breeds entrepreneurial companies that have scattered across America and made growth in jobs and competition a reality. All of the high-tech companies are concerned almost every day that the President makes any statements about their company—biotech and high-growth companies.

This issue is the electronics industry's No. 1 issue.

Frankly, you will find them listed by the hundreds—not a few, but by the hundreds—through their chief executive officers, begging the President to sign this legislation. I am sorry he did not. I think he made a very bad mistake.

It has been a difficult job. This bill was first introduced—and it was not as good as it is now—by Senator DODD and Senator DOMENICI 3½ years ago. It was introduced by Senator DOMENICI and Senator DODD, and there was a counterpart in the House sponsored by Congressman TAUZIN. It has been dramatically improved and we are here with it today.

Mr. SPECTER. Will the Senator yield for a question on the President's action?

Mr. DOMENICI. Yes.

Mr. SPECTER. The President, in his veto message, focused on one narrow question. Actually, he focused on three, but they boil down to one. That is, on the somewhat arcane question of pleading. The question goes to the distinguished Senator from New Mexico, whom I compliment for his laborious work here. He is an attorney himself, and he is the proud father of an attorney, as am I.

Mr. DOMENICI. Three attorneys.

Mr. SPECTER. He is the proud father of three attorneys. He only talked to me about one, so I will have to find out about the other two. I want to ask the Senator from New Mexico a question which relates to the core problem here about the requirements on proving state of mind, where the President's veto message takes up this question, with the conference report adopting the toughest standard in existence, the standard of the second circuit. But the conference report dropped an amendment which this Senator had offered, which was approved by a substantial majority, 57 to 42, codifying the second circuit's method of proving state of mind. And then the conference report also added the requirement that state of mind be pleaded with particularity, which is a direct contradiction to the general rule of civil procedure that state of mind be averred generally as opposed to fraud, which has to be pleaded with particularity.

Now, this is classified as an arcane subject, which means very few people know anything about it. The President called me the night before last because I had written to the President—and I will go into this a little more when I seek the floor on my own behalf—but in the context where you have a short statute of limitations, where you have the unique—not unusual, but unique—provision in the law for a mandatory stay of discovery when a defendant files a motion to dismiss, so that you have a requirement that the plaintiff plead with particularity facts on the defendant's state of mind. Does that not go too far in closing the courthouse door to plaintiffs? I say that without an ax to grind, and with some substantial experience as a practicing lawyer, although not in class action fields for the plaintiff. I represented some defendants in securities act litigation.

As I take a look at the current state of the bill, different from the bill passed by the Senate, the President raises three points which would change in the conference report, but they boil down to this extraordinarily high standard of pleading. Is it fair to require investors in a field where we have stock security transactions, approximating $4 trillion in this country each year, bearing in mind the gross national product in this country is——

Mr. DOMENICI. I have great respect for the Senator, but I would like him to ask the question.

Mr. SPECTER. Is it fair to have that kind of particularity required in that bill?

Mr. DOMENICI. I think it is fair. My answer is briefer than your question but let me insert in the RECORD a letter dated October 31, from the U.S. Court of Appeals for the Third Circuit, Judge Scirica, circuit judge. He writes on behalf of the Judicial Conference.

One portion of the concern you have, as expressed by the Senator from Pennsylvania, is that the Senate Banking Committee provision provided that the complaint must ''specifically allege facts giving rise to a strong inference.'' The conference report states that the complaint must ''state with particularity the facts giving rise to a strong inference.''

The reason we put in ''state with particularity the facts giving rise to a strong inference'' is because that is what Judge Scirica, speaking on behalf of the Judicial Conference, asked Congress to do. He indicated in this letter

that he thought—and he was speaking for many others that are concerned about pleadings—that it was more appropriate to say ''state with particularity facts giving rise to a strong inference'' as compared with ''specifically allege facts giving rise to a strong inference.'' That is the change made, and it was made at the suggestion of an eminent jurist.

Now, let me complete my remarks. The point I want to make is that there have been many Senators on both sides of the aisle work on this legislation. I want to thank Senator DODD, in particular, for the tremendous effort he made in behalf of this legislation. I am not sure, Mr. President, and I say this to all of those who are out there in America—and they are by the hundreds of the thousands—who were overjoyed when this bill passed the Senate and passed the House and who will be overjoyed tonight if we override the President. Without Senator DODD, we would not have made it.

Second, there is no doubt that without the tremendous efforts put forth by the chairman of that committee, the Senator from New York, Senator D'AMATO, who started out skeptical and ended up powerfully on the side of common sense and protecting our investors while we protect our corporations from the abuses of a burgeoning entrepreneurial litigation complex out there where lawyers decide who get sued, when cases are settled, when they have gotten enough out of the system, to take it and run, and when the end product is that they and the process take most of the money.

I am delighted that those two Senators—there are many others—decided to take this thing to heart. I had an early role, and I can tell you my role came because I read about this litigation. I had no interest. I just have a lot of time traveling from here to New Mexico and occasionally I read—not often—and I read one story and it enticed me to read two, and finally I read three or four major stories, exposés, stories, about this burgeoning type of American litigation. I could not believe that nothing could be done about it.

Frankly, I set about to draft a bill. Senator DODD actually was not the first cosponsor. Actually, Senator Sanford was my first cosponsor. That only lasted 3 or 4 months, and then Senator DODD came on board. We have had nothing since then but a difficult battle. We have had advertisements, we have had millions spent talking about what evil people we are, how we are taking things away from the small investors of America. Who are we trying to protect? Obviously, not average folks.

I am very, very pleased that for once there was a countervailing message out there from people who know we have fixed some abuses that should not go on in this country under the name of using the courts to protect small investors. We do not have to have that kind of system. Today, if the vote goes right, we will strike—without question, we will restore integrity to our securities litigation reform system—a giant strike will be made for commonsense, reasonable litigation in America, instead of litigation that goes to the extreme as far as the minds of bright lawyers can carry. There are many who think that is the way the system ought to evolve. I do not believe so. I do not think we ought to put to work the genius of our minds in figuring out how to litigate to get something out of the system. That is what I think has happened. I think we will fix that.

There are 182 Members of the House from both sides of the aisle as original cosponsors. There were 52 in the U.S. Senate as original cosponsors. I must say, in all honesty, the bill is much better now than when they cosponsored it. In fact, I must say it is even better for that portion of the plaintiff's bar that chooses to participate in this kind of litigation. It is better for them, too because they will be forced to be better lawyers and to make the merits matter.

I came to the floor just to express a few remarks. We will be here for perhaps a few hours. I also want to say the President's veto message leads me to conclude that we ought to pass this legislation. I do not see in this message from the President a scathing attack on the legislation. I see some very technical points. Frankly, a statement that the managers report might go too far. I do not know—I say this with a degree of caution, but I am not sure that I have seen a President veto a bill on the basis of what is in the statement of managers, but maybe I am wrong. I would not think Presidents would do that. I do not think this President intended that. A statement of managers is not law, everyone knows that. Interpretation will evolve over time, without any question. There are more than 12,000 words in this bill and the President quibbled with 11 of them. I know this because Senator DODD did the analysis.

I ask unanimous consent that the October 31 letter from the third circuit be printed in the RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

U.S. COURT OF APPEALS,
THIRD CIRCUIT,
October 31, 1995.

MS. LAURA UNGER,
MR. ROBERT GIUFFRA,
Senate Committee on Banking, Housing and Urban Affairs, Washington, DC

DEAR LAURA AND BOB: I have a few suggestions for your consideration on the Rule 11 issue.

Page 24, line 11: Insert ''complaint'' before ''responsive pleading.''

Page 24, line 19: Insert ''substantial'' before ''failure.''

''Complaint'' would be added to item (i), so there is a clear provision that reaches any failure of the complaint to comply with Rule 11. A small offense would be met by mandatory attorney fees and expenses caused by the offense; if item (ii) is modified without this change, a gap is left in the statutory scheme. The result still is a big change from present Rule 11, which restricts an award of attorney fees to a sanction ''imposed on motion and warranted for effective deterrence.'' A serious offense—filing an unfounded action—would be reached under item (ii).

I also wish to confirm our prior conversation on scienter and the pleading requirement.

Page 31, line 5: Delete ''set forth all information'' and insert in its place ''state with particularity.''

Page 31, line 12: Delete ''specifically allege'' and insert in its place ''state with particularity.''

As I indicated, this would conform with the existing language in Rule 9(b) which provides that ''the circumstances constituting fraud or mistake shall be stated with particularity.''

Also, page 24, line 1: Delete ''entering'' and substitute ''making.''

Page 24, line 4: Delete ''of its finding.''

Many thanks.

Sincerely,

ANTHONY J. SCIRICA.

Mr. SPECTER. Mr. President, I have sought recognition to amplify some of the comments and some of the issues which I had raised in the question I posed to the distinguished Senator from New Mexico.

The narrow issue which has been raised in the President's veto message is one of enormous importance but is generally not understood unless someone has delved into the intricacies of the legal pleadings, which are, candidly, not well known, not of very great interest, but are very, very important. The issue arises in a historical context where at common law lawsuits which had great merit on the substance were thrown out of court because lawyers did not put in an adequate written pleading—a pleading is a document that is filed to start a lawsuit—because lawyers, acting on behalf of clients, did not put enough in the pleading to satisfy the requirements of law.

Most people do not really understand what the litigation process, the civil litigation process is all about. There is enormous publicity on the O.J. Simpson case, and television and radio and books talk a lot about criminal trials, but very few really go into detail on what happens in a civil lawsuit. But that is a process where one person sues another, or corporations may be involved as parties, in order to assert a cause of action or a claim for relief based on a civil wrong, where a remedy is sought. It may be money damages or an injunction to stop someone from doing something.

In the old common law, many people who had been severely injured were not given a day in court because their lawyers did not put down the proper words. There is a famous textbook, Chitty on Pleading, to tell you how to write the pleadings. These problems have been carried over to the present day. As a younger lawyer, I went to the prothonotary's office in Philadelphia. On many occasions I had my complaints returned for failure to go into the kind of specificity needed.

The leading architect, the draftsman of the Federal Rules of Civil Procedure,

was a Yale Law School professor named Charles E. Clark. Charles E. Clark later became the dean of the Yale Law School and he later became a distinguished judge on the Court of Appeals for the Second Circuit and ultimately was the Chief Judge there. Judge Clark felt so strongly about civil procedure that he took time from his busy schedule to continue to teach a class at the Yale Law School long after he left as dean and was a distinguished Federal judge. I had the good fortune to have Judge Clark as a professor on civil procedure.

Judge Clark, in a very eloquent way—and I wish he were on the floor today to talk about his deep feelings about procedure and the work that he had done—spoke about the unfairness of having highly technical rules of pleadings which stop people who have valid claims from getting into court. He developed, in the Federal Rules of Civil Procedure, what is called ''notice pleading.'' It was a very famous case, DiGuardia versus Gurney, that involved a man who was injured, wrote something on a slip of paper and filed it in Federal court, and that was sufficient to start a lawsuit, start the process. The defendant obviously objected. He wanted a lot more specification. What he really wanted to do was to win the lawsuit. He wanted to get the plaintiff, DiGuardia, out of court. But that is why we have judges who make decisions.

The distinguished Senator from New Mexico made a statement that ''the lawyers decide when cases are settled.'' It is not true. These class action cases are not settled until judges decide when the cases are going to be settled and when the cases are going to be concluded. These actions all require court approval. If one person sues another, he can discontinue the lawsuit by simply filing a praecipe, or paper saying the lawsuit is over. But in class actions the lawyers do not decide these matters, they are decided by judges. The Federal Rules of Civil Procedure were set up in an elaborate way to provide fairness, to give both parties a fair chance.

There is an interesting editorial in today's USA Today, commenting about this arcane, esoteric subject. The caption of it is, ''Sorry Securities Law.'' The key sentence is, ''President Clinton did something smart this week. He sided with investors and taxpayers in a battle for fair securities litigation reform.''

I ask unanimous consent this editorial be printed in the CONGRESSIONAL RECORD, following my remarks.

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

(See exhibit 1.)

Mr. SPECTER. The essence of my concern, albeit narrow, is very, very important, and that is what this conference report coming back from the conferees provides on how pleadings are articulated, bearing in mind that this has an enormous impact, a controlling impact on the litigation.

When this bill was before the Senate, I offered an amendment which would give some direction to how plaintiffs met a very strong pleading requirement, which was taken from the Federal Court of Appeals for the Second Circuit. It has jurisdiction over New York, Vermont, and Connecticut, and many of the big security cases are brought there. Everybody agrees that the Second Circuit has articulated the toughest standard around. That has been accepted.

When I read the decisions of the court of appeals, I noted that the court of appeals had pointed out how this tough standard could be satisfied, and I offered an amendment, which was opposed by the managers. I had a little discussion with the distinguished Senator from Utah, Senator BENNETT, who was managing the bill that day. And my amendment was adopted by the Senate by a pretty convincing vote, 57 to 42—which is a big vote around here, when the managers are opposed to it and you have about 60 cosponsors.

That amendment provided as follows:

> The required state of mind may be established either by alleging facts to show the defendant had both motive and opportunity to commit fraud, or by alleging facts that constitute strong circumstantial evidence of conscious misbehavior or recklessness by the defendant.

That was adopted by a strong vote in this body. Why was it adopted? Because, while the Senate agreed that we ought to have a tough standard on pleading, the Senate said we ought to look to the same court which established that pleading standard which explained how the proof would be made. But this important provision was dropped in the conference. That means the conferees did not like it. There was a little feeding frenzy as to how this legislation is finally crafted, in my opinion. There is a little feeding frenzy going on in a lot of subjects in the Congress today.

Not only was this important provision dropped, but the conference report came back and made it even tougher, saying that plaintiff had to plead ''with particularity'' the facts giving rise to a strong inference that the defendant acted with a certain state of mind.

This is a little tough, but I hope my colleagues, who will be voting on this matter, will follow this, will listen to it—or the staffs will.

In the context of what the Federal Rules of Civil Procedure provide, and these are worked out by the judges and by the rules committee of the Judicial Conference after years of experience as to what is fair, rule 9(b) of the Federal Rules of Civil Procedure requires that fraud be pleaded with particularity. That is where you have fraud.

But the same rule, when dealing with state of mind, says that the particularity pleading is not required because it is unrealistic. That rule says that state of mind can be ''averred generally.'' Here we come back with legislation on this subject which virtually closes the courthouse door to plaintiffs in legitimate cases, where there are very important issues and very important damages.

When the distinguished Senator from New Mexico, Senator DOMENICI, was saying that hundreds of thousands of people will be pleased with overriding the President's veto, I would respond that millions of Americans will be displeased when they understand that what the Senate has done here is to make it virtually impossible for them to get a case into Federal court.

These are not trivial matters. It is hard to comprehend the enormous billions and trillions of dollars which we talk about in the Senate. The gross national product of the United States of America—that is what everybody produces, all the cars, washing machines, and the services—what everybody produces in this country amounts to $7 trillion, everything that goes on in this country. The transactions on the stock exchanges, the sale of stock, approximate $4 trillion.

We are not talking about a small group of lawyers, or a hundred thousand people who Senator DOMENICI says will be pleased if we override the President's veto. We are talking about millions of people in America who invest in stocks and bonds and who need to be treated fairly. We are talking about the greatest country in the world with an economic development which has developed a corporate mechanism, the corporate machine for acquiring capital by stock offerings on the basis of fairness where we have laws which say what the offerors must do in terms of honest representations. These are matters involving enormous sums of money.

Just a few of the cases are:

Wedtech, which involved a matter where investors recovered $77 million of their losses which had exceeded more than $100 million in a class action suit;

Platinum Software, where investors lost over $100 million, recovered $22 million in a class action suit against the company for overstating revenues;

The famous Charles Keating, American Continental, Lincoln Savings case where a jury awarded $4.4 billion against Mr. Keating and others for fraud;

The Drexel Burnham Lambert case where a New York securities law firm settled the claims of 40,000 class members who had invested in municipal bonds underwritten by Drexel for $26.5 million. Drexel subsequently went bankrupt in the aftermath of the Michael Milken insider trading scandal;

A matter pending today involving investors in Orange County municipal bonds who lost more than $1.5 billion due to the high-risk trading and investment strategy pursued by Orange County, and suit is currently pending;

Hedged Investments Associates, a $40 million settlement against Kidder, Peabody and Morgan Stanley to resolve a class action brought on behalf

of 1,000 investors, mostly elderly retirees who had sustained losses of $72 million where there was a Ponzi-like scheme;

The case of LA Gear, an athletic equipment maker, a class action settled for over $35 million to resolve a suit over allegations of a false public statement about stock value;

Chambers Development suit settled for $75 million on allegations of false statements by management over corporate earnings and accounting methods;

The Washington Public Power Supply System, 26,000 investors were defrauded of over $2 billion for fraud in selling bonds using false information, and over $800 million was recovered in a class action suit.

This is a very brief statement illustrating the kind of problems for which these cases are brought.

Let me point out, Mr. President, that President Clinton has committed to signing the bill with three changes which would leave the reform program provisions essentially intact.

There would be reform of joint liability, which has been urged by many. That stays in. Safe harbor for forward-looking nonfraudulent statements which turn out to be incorrect—that change stays in. The elimination of liability under RICO, something which should have been changed a long time ago, stays in. Procedural changes to make certain that the plaintiffs, rather than their attorneys, control the litigation stays in.

The Wall Street Journal has an interesting comment in today's edition saying that only one of the three major—let me read a paragraph. It is relatively brief. ''While supporters [that is, supporters for the bill] weren't admitting it publicly yesterday, only one of the three major interest groups pushing the bill, the high technology companies often targeted for fraud suits, regard the bill's strict pleadings standards as essential. The other two groups, accounting and securities firms, are more interested in other aspects of the lawsuit-limiting bill such as limits on their financial liability.'' And those would all be retained.

President Clinton went into this pleading issue in some detail. He filed a short three-page veto message. But I can personally attest to the thoroughness of the President's analysis of this issue because he called me on Tuesday night, night before last, rather late, 10:15 at night, and told me that he was issuing a veto message and made a comment that a letter which I had written him on December 8 this year had brought to his attention matters that he had not previously understood.

The letter which I wrote to him said, in part, that I urged the veto because of the restrictive method of pleading scienter; that is, knowledge on the behalf of the defendants, and talking about the sanctions which could be applied and the strong limitations on plaintiffs' suits where you have this extraordinary standard of pleading, the short statute of limitations, and the mandatory review for sanctions under rule 11, which would so discourage any litigation from being brought. And, at the bottom of the letter, I printed in longhand this note: ''Going back to my roots on studying this issue at the Yale Law School, I think that my Federal procedure professor—Judge Charles Clark—would roll over in his grave to see the specific pleading standard in this bill, prohibition on discovery until a motion to dismiss is denied, and the chilling sanctions. Your veto would send it back for important revisions.''

When the President called—and we had a conversation lasting about half an hour—he went in into these pleading provisions in detail, and talked about his own procedure professor at the Yale Law School, fully understood precisely what he was doing, and said in his veto message that he was prepared to sign the bill and supported the goals of the bill but thought it unfair to virtually close the courthouse door with these requirements.

Mr. President, I ask unanimous consent that the following documents be printed in the RECORD following my statement:

No. 1. My letter to the President dated December 8, 1995;

No. 2. The President's veto message dated December 19;

No. 3. My ''Dear Colleague'' letter dated December 20;

No. 4. The article in the Wall Street Journal of today, December 21; and

No. 5. The editorial in USA Today dated December 21, today.

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

(See exhibits 1, 2, 3, 4, and 5.)

Mr. SPECTER. Mr. President, in conclusion, the two most popular words of any speech, I ask my colleagues and the staffs just to take a look at what we are doing here. The President is prepared to sign a bill and to sign into law very substantial changes in the securities fields which have been urged and would become law—limitations on joint liability, reforms, so-called, in the safe harbor provisions, the elimination of liability under RICO—and I have had many people, especially the accountants, urge that change be made—procedural changes to ensure plaintiffs, not their attorneys, control the litigation; really very major and enormous changes.

But this one provision as to how you state your case is just unfairly, unduly restrictive in this bill because it turns the Federal Rules of Civil Procedure on their head. It turns in a revolutionary way—more than revolutionary, really destructively revolutionary—the established rules of notice pleading. It strikes the amendment which this body had adopted on my introduction telling people how to meet the tough standard of specific pleading and then adds to it a particularity requirement which makes it a virtual impossibility that sufficient facts can be alleged and in a unique way cuts off discovery. The only situation like it that I know about. It mandates the cut off of discovery when a motion to dismiss is pending, because characteristically and especially when you want to get inside somebody's head you cannot do it unless you ask them a question or two.

So this is something of really enormous importance. What we would be doing in effect is returning to a common law pleading standard, the common law of ancient England, probably even tougher than common law in ancient England, which would be closing the courthouse doors on millions of Americans who invest their money. And the long-range effect of what it does to the lawyers is minuscule but not what it will do to investors and what it will do to capital formation in the United States. So I think that if we make these changes, simple but critical, as the President has said he will sign this law and we can move forward in a fair way.

I thank the Chair. I yield the floor.

EXHIBIT 1

[From USA Today, Dec. 21, 1995]

SORRY SECURITIES LAW

Caught between two big Democratic Party contributors—trial attorneys and new high-tech companies, President Clinton did something smart this week. He sided with investors and taxpayers in a battle for fair securities-litigation reform.

Clinton vetoed a bill aimed at limiting frivolous lawsuits against corporations that simply went too far.

As passed last week, the legislation gave a deserving slap to a group of trial attorneys who've literally paid people to start class-action suits against companies whose stocks decline dramatically.

To defend against such suits, companies on average pay $700,000 in attorney fees and lose nearly a half-year's worth of top managers' time. Such high costs especially threaten new high-tech firms. All of Silicon Valley's young electronics companies report being hit by so-called strike suits.

Legitimate investors aren't helped either when lawsuits harass a company in which they've put money.

The bill would benefit investors and business by allowing executives to speak more freely about their plans with less fear of suits if the plans go sour.

That's what securities reform was supposed to be about. But the legislation Clinton vetoed leapt beyond that with provisions that would open the door to fraud.

For example, the bill would allow executives to knowingly deceive investors as long as they included general cautions while hyping products. Thus, a drug company executive talking up a new drug could keep from investors the fact that the government had denied approval of it without risking suit as long as he noted the uncertainty of the drug approval process.

Worse, the legislation also would require investors to provide proof of intent to commit fraud when a complaint is filed. That standard would have kept the government from recovering money from Charles Keating and other savings and loan crooks for their billions of dollars in fraud against depositors and taxpayers.

Those problems are easily remedied. As Sen. Arlen Specter, R-Pa., argues, plaintiffs aren't mind readers. They should only have to show motive and opportunity to commit

fraud to lodge a complaint. And honest executives and businesses don't need a safe harbor for lies.

Wednesday, the House foolishly rejected those quick Clinton fixes to the bill and voted to override the veto. The Senate should take Clinton up on them.

Securities laws need to be fair to all, starting with investors and taxpayers.

EXHIBIT 2

U.S. SENATE,
COMMITTEE ON THE JUDICIARY,
Washington, DC, December 8, 1995.

The PRESIDENT,
The White House, Washington, DC.

DEAR MR. PRESIDENT: This week, both the Senate and the House of Representatives passed the conference report to H.R. 1058, the Private Securities Litigation Reform Act of 1995.

I urge you to veto this conference report. While the bill contains some reasonable provisions to eliminate frivolous securities suits, it goes too far. The bill fails to extend the statute of limitations shortened by the Supreme Court several years ago. It imposes a highly restrictive method for pleading scienter. It provides a mandatory stay of discovery when a motion to dismiss is filed, thereby preventing plaintiffs from discovering salient facts that would allow them to amend their complaints to satisfy the new pleading standard. It requires mandatory review at the completion of each case for sanctions under Rule 11 of the Federal Rules of Civil Procedure and, in what amounts to fee-shifting, provides a presumption that the remedy for any Rule 11 violation in the complaint is reimbursement of the defendants' attorneys' fees.

As a practical matter, this combination of factors will choke off many important law suits to protect innocent investors. In very few cases will either potential plaintiffs or their lawyers have a sufficient interest to justify risking sanctions because, after the fact, a judge decides that they may have violated a stringent and arbitrary pleading standard. I fear that enactment of this bill would represent the end of the private enforcement of the nation's securities laws, which have provided the most stable markets in the world.

I assure you that in the event that you veto this bill, I will support your veto and work to defeat any override effort.

Thank you for your consideration.

Sincerely,

ARLEN SPECTER.

EXHIBIT 3

To the House of Representatives:

I am returning herewith without my approval H.R. 1058, the ''Private Securities Litigation Reform Act of 1995.'' This legislation is designed to reform portions of the Federal securities laws to end frivolous lawsuits and to ensure that investors receive the best possible information by reducing the litigation risk to companies that make forward-looking statements.

I support those goals. Indeed, I made clear my willingness to support the bill passed by the Senate with appropriate ''safe harbor'' language, even though it did not include certain provisions that I favor—such as enhanced provisions with respect to joint and several liability, aider and abettor liability, and statute of limitations.

I am not, however, willing up to sign legislation that will have the effect of closing the courthouse door on investors who have legitimate claims. Those who are the victims of fraud should have resource in our courts. Unfortunately, changes made in this bill during conference could well prevent that.

This country is blessed by strong and vibrant markets and I believe that they function best when corporations can raise capital by providing investors with their best good-faith assessment of future prospects, without fear of costly, unwarranted litigation. But I also know that our markets are as strong and effective as they are because they operate—and are seen to operate—with integrity. I believe that this bill, as modified in conference, could erode this crucial basis of our markets' strength.

Specifically, I object to the following elements of this bill. First, I believe that the pleading requirements of the Conference Report with regard to defendant's state of mind impose an unacceptable procedural hurdle to meritorious claims being heard in Federal courts. I am prepared to support the standards of the Second Circuit, but I am not prepared to go beyond that. Second, remove the language in the Statement of Managers that waters down the nature of the cautionary language that must be included to make the safe harbor safe. Third, restore the Rule 11 language to that of the Senate bill.

While it is true that innocent companies are hurt by frivolous lawsuits and that valuable information may be withheld from investors when companies fear the risk of such suits, it is also true that there are innocent investors who are defrauded and who are able to recover their losses only because they can go to court. It is appropriate to change the law to ensure that companies can make reasonable statements and future projections without getting sued every time earnings turn out to be lower than expected or stock prices drop. But it is not appropriate to erect procedural barriers that will keep wrongly injured persons from having their day in court.

I ask the Congress to send me a bill promptly that will put an end to litigation abuses while still protecting the legitimate rights of ordinary investors. I will sign such a bill as soon as it reaches my desk.

WILLIAM J. CLINTON.

THE WHITE HOUSE, *December 19, 1995.*

EXHIBIT 4

U.S. SENATE,
COMMITTEE ON THE JUDICIARY,
Washington, DC, December 20, 1995.

DEAR COLLEAGUE: I urge you to sustain the President's veto on the Securities Bill.

The President vetoed the Conference Report because it significantly changed the Senate's version of the Bill. If the Senate changes three provisions, the President has committed to signing a revised Bill which would contain most of the legislative reforms such as: reform of joint liability; safe harbor for forward-looking nonfraudulent statements which turn out to be incorrect; elimination of liability under RICO; procedural changes to insure that plaintiffs, not their attorneys, control cases.

The President vetoed the Conference Report because it established virtually impossible pleading requirements. The President accepted the toughest pleading standard of the Second Circuit on the defendant's state of mind, but the President wanted the Bill to include my amendment (adopted by the Senate 57 to 42) which codified the Second Circuit's standard on how that state of mind could be proved.

That tough pleading standard becomes even more important in the context that the Bill prohibits discovery while the defendant's motion to dismiss is pending. That means that the plaintiff must specify his entire case without the benefit of discovery. That is a virtually impossible pleading standard which turns the Federal Rules of Civil Procedure on their head.

The Conference Report's safe harbor provision excludes liability for knowingly false forward-looking statements. The President would sign a bill which retained the Senate's version.

Sustaining the President's veto would retain most of the reform measures in the Conference Report but will not close the courthouse door to legitimate claims by these draconian pleading standards.

Transactions on the stock exchanges now approximate $4 trillion annually which is more than half the U.S. gross national product.

Fairness to investors requires these revisions in the final bill which would follow the Senate's sustaining the President's veto.

Sincerely,

ARLEN SPECTER.

EXHIBIT 5

[From the Wall Street Journal, Dec. 21, 1995]

HOUSE VOTES TO OVERRIDE VETO OF SECURITIES-SUIT BILL

(By Jeffrey Taylor)

WASHINGTON.—The House voted 319–100 to override President Clinton's unexpected veto of a bill restricting investors' securities-fraud lawsuits, but the bill's supporters may find an override harder to come by in the Senate

Late Tuesday night, Mr. Clinton stunned a coalition of publicly owned companies, accountants and securities firms advocating the bill by vetoing the legislation—after indicating earlier that he planned to sign it. The bill would make it harder for investors to file lawsuits seeking damages when companies' stock prices drop and would limit the liability of accountants and underwriters for fraud by their corporate clients.

An override vote in the Senate may come as early as today. White House aides expressed confidence that Mr. Clinton's legislative staff could muster enough votes to defeat it. The Senate approved the final version of the bill two weeks ago by a 65–30 vote, barely enough for the two-thirds margin needed for an override. Both sides in the debate spent much of yesterday lobbying five senators who voted for the bill but are seen as swing votes.

In addition to his usual Republican adversaries, the president faces some unaccustomed opponents in the override fight including Sen. Christopher Dodd (D., Conn.), the Democratic National Committee chairman who aggressively supports the bill. In a speech to House Democrats yesterday morning, Sen. Dodd urged them to vote for their body's override. And in a terse public statement, Mr. Dodd vowed to ''work hard . . . to enact this legislation into law,'' which would amount to a defeat for his own party's president.

If the Senate override effort fails, the bill's supporters may be forced to reshape the bill to conform with some of Mr. Clinton's concerns about it. The first of these, the president said in his veto message, was that the bill's so-called pleading standards—or the facts investors must establish so courts will let their lawsuits proceed—impose ''an unacceptable procedural hurdle'' to many worthy lawsuits in the federal-court system. Thus, he concluded, the standards would damage the legal rights of defrauded investors.

While supporters weren't admitting it publicly yesterday, only one of the three major interest groups pushing the bill—the high-technology companies often targeted for fraud lawsuits—regards the bill's strict pleading standards as essential. The other two groups—accounting and securities firms—are more interested in other aspects of the lawsuit-limiting bill, such as its limits on their financial liability.

Mr. Clinton appears to have counted on that fact in crafting his veto message. In it, he calls for restoration of an amendment introduced by Sen. Arlen Specter (R., Pa.), who opposes the bill, which would have softened

the pleading standards. The amendment was approved by the Senate in June but was dropped in subsequent negotiations to merge the Senate bill with its House counterpart.

In a letter to Mr. Clinton this month, Sen. Specter urged Mr. Clinton to veto the bill and, if he did, promised to help defeat any override effort in the Senate. Sen. Specter, who like Mr. Clinton is an alumnus of Yale Law School, said in his letter that his former federal-procedure professor at Yale would ''roll over in his grave to see the specific pleading standard in the bill.''

In a statement issued before yesterday's House vote, Rep. Christopher Cox (R., Calif.), one of the bill's architects and most ardent supporters, dismissed the concerns raised in Mr. Clinton's message and painted the veto as a concession to class-action trial lawyers who oppose the bill. Mr. Clinton vetoed the bill, Rep. Cox asserted, ''at the bidding of securities lawyers who are some of his and the Democratic Party's biggest donors.''

The President's message also criticized the managers' statement that accompanied the bill, in which its congressional supporters explained what their intentions were in drafting it. Mr. Clinton complained about how the managers' statement described a key provision of the bill protecting companies from legal liability for their forecasts about earnings and other matters. The statement, he said, ''attempts to weaken the cautionary language'' the bill requires for companies to describe factors that might skew their forecasts.

Mr. BENNETT addressed the Chair.

The PRESIDING OFFICER (Mr. KYL). The Senator from Utah is recognized.

Mr. BENNETT. Mr. President, I thank my colleague from Pennsylvania.

If we were not in the veto circumstance we are in, we might well be able to work out some of the issues that he raises. My only comment with respect to some of the comments he made is to remind Senators that this bill deals with forward-looking statements, not with fraud that is committed in terms of reporting inaccurate stock prices, earnings, asset value, et cetera. I hope Members of the Senate and any who are listening will understand the point we have made over and over again, that had this bill been in place at the time of Charles Keating's defalcations this bill would not have prevented a class action suit against Charles Keating. Had this bill been in place at the time of the class action suit brought in Orange County, this bill would not have prevented those class action suits.

There is a clear difference between fraud when one is making a false statement about the performance in the past and forward-looking statements where one is making predictions about the future. That is one of the cruxes here of this argument that has been lost. People have stood in the Chamber again and again and said to those of us who are in support of this legislation, how can you support fraud on the part of corporate executives? The answer is, we do not support fraud on the part of corporate executives. We have never supported fraud on the part of corporate executives.

If I may be somewhat predictive in my forward statements, Mr. President, I see charts that are being set up in the Chamber that we have seen before which make this point, that investors are being defrauded and therefore how can you support legislation that would support this kind of defrauding.

The fact is, stating it once again for the record, we are not talking about the Charles Keatings of this world. We are not talking about that for which Michael Milken was sent to jail, acts where information is hidden from investors or information is distorted to defraud and mislead investors. We are talking about the circumstance where an executive is asked a question about the future and gives his best answer, and then after the fact, if the future does not come to pass the way that executive had speculated, he gets sued.

If I may, Mr. President, I would like to put that in the context of the present budget debate because that is so much on everybody's mind. We are seeing estimates of the future that are coming out of the Office of Management and Budget. We are seeing estimates of the future that are coming out from the Congressional Budget Office. We are seeing estimates of the future that are coming out of the Mainstream Bipartisan Coalition, with whom I met yesterday, about what the economy is going to do and what the budget is going to do. Without the protection contained in this bill, if the Members of the Senate and the House, if, indeed, the President himself, were corporate executives making these estimates about the future, we would all be subject to class action lawsuits if it turned out we were wrong.

I guarantee you, Mr. President, we are all wrong. The only thing I know about the Congressional Budget Office projections for the future and the Office of Management and Budget projections for the future and the President's projections for the future and my projections for the future is that we will all be wrong. The future is not knowable with any degree of certainty. If it were, we would all be rich because we would all bet on the right side of every football game. We would all make the right choices for every stock that was purchased. We would all be rich because we could all predict the future with certainty.

None of us can, and yet that is the standard to which too many executives have been held in this arena: You said you were going to have product x ready for us by September and you missed it by 30 days. We are going to sue you for misleading us.

What protection does the executive have in that circumstance when they say, Mr. Executive, when do you expect to have product x ready for market? He says, I will not tell you because if I say September and it turns out to be October, you are going to sue me. And if I say September and it turns out to be August, you are going to sue me. So I will not tell you. Well, how can I make an intelligent guess as to whether or not I should invest in your company if you will not even tell me what you expect to happen? Tough luck.

That is what we have now, Mr. President. In the name of protecting the investor, we are depriving the investor of the very best guesses so labeled, estimates so labeled, conjectures so labeled, of the people who know the most about the company. We are asking the investor to fly even more blind than they would be if they had those guesses.

So let us understand as we debate this that we are talking about protecting people from lawsuits based on their inability to guess the future, not about protecting people from liars, cheats, and thieves. The liars, cheats, and thieves will still be subjected to class action lawsuits and the class action lawsuits will still end up recovering millions of dollars for investors. But if this legislation passes, honest executives who want to share their best guesses of the future with investors will be able to do so with the knowledge that if they happen to be wrong and product x comes out in October rather than September, they will not have to spend millions of the investors' money to pay off some professional plaintiff that has brought a suit against them on the technicality that exists in the present circumstance.

Mr. President, I see that my colleagues are now prepared. I am happy to yield the floor to those who have a differing point of view.

Mrs. BOXER addressed the Chair.

The PRESIDING OFFICER. The Senator from California.

Mrs. BOXER. Thank you very much, Mr. President.

I think we have an opportunity here to make a bill better, to fix some flaws in a bill that had the best of intentions when it started out, to make sure that we let people know if they are even thinking of filing fraudulent, frivolous lawsuits that they should not even think about it because they are not going to succeed in the end.

That is something I care a lot about. I represent a State that has a lot of businesses which have been hit by lawsuits that in many cases should not have been filed. On the other hand, many of them should have been filed.

My concern here is for small investors. I do not worry about the giant, wealthy investors who, frankly, can take a hit or two and not have any problem. I am worried about those people who save for their retirement, who are basically in the middle class of this country, who count on—the truth in deciding where to put their money so it is there for their retirement.

If they do get hit with one of these problems, it means big trouble. We saw it coming home to roost in the case of those who were defrauded by Charles Keating. We certainly do not want to pass a bill here—I do not think any of us would—that would make it easier for the Charles Keatings of the world to succeed in defrauding unsuspecting investors. Nobody wants that—nobody.

Yet, we know that as this bill has been analyzed by the experts, by the people in academia, by the people who know the law, by people who are really charged with protecting small investors, they are suggesting to us in very strong language that this is not a good bill.

The President heard those people, and I think it took some courage for him to veto this legislation. I think this override vote is going to be very, very close. I do not know where it is going to come out. But I hope, if Senators are making up their minds on this matter, that they would read the President's veto statement. I think it is very clear as to what problems he sees. I hope, also, they will read some of the many, many newspaper editorials that have appeared all across the country warning this Congress not to move forward with this bill.

Here is Money magazine. This is not a magazine of lawyers. As the Senator from New Mexico, Senator DOMENICI, said, ''Well, it is only the lawyers.'' This is Money magazine. It is very interested in this editorial in warning investors about this bill. ''Congress Aims at Lawyers and Ends Up Shooting Small Investors in the Back.'' I just think that sums it up.

We want to stop frivolous lawsuits. We want to stop anyone who would put a company through a lawsuit where there was no foundation for it. But we do not want to in the end shoot small investors in the back. They say:

> At a time when massive securities fraud has become one of this country's growth industries, this law would cheat victims out of whatever chance they may have of getting their money back * * *. In the final analysis, this legislation * * * would actually be a grand slam for the sleaziest elements of the financial industry at the expense of ordinary investors.

Mr. President, that is strong language. What they are saying here is what I said when I began: we had a reason to take a look at all this. Our reason was frivolous lawsuits. And what we wound up doing is hurting small investors and creating a climate where the lowest of the low, the people who prey on others, who count on information to make investment decisions, are going to be rewarded by this bill. We do not want to do that, I believe.

I think what the President has done is to call our attention to the failings of this bill. I was a stockbroker many, many years ago. I was quite young at the time. But the one thing I understood was that people relied on me. It was a big responsibility. I often thought, you know, if you really did not have the best interests of the people in mind, you could get these people in an awful lot of trouble. You could churn their investments so that you would get a commission. You could hurt people.

It seems to me that type of person certainly is not the majority, but they do exist. As a matter of fact, if you look at current trends, unfortunately, there are more and more of these people than we would like to believe.

Here are some other newspapers. These are editors who have absolutely no stake in this from a financial point of view. As a matter of fact, most newspapers tend to be more conservative, more conservative, more probusiness than others. But look what they say.

''Protecting Investors From Securities Fraud.'' This is the Oakland Tribune.

> Say you have a spare $1,000 or so, and don't want to salt it away in a simple savings account. You hear about a company's stock that is touted to go up because executives are forecasting greatly increased earnings. You decide to use your $1,000 to buy that company's stock based on the rosy predictions of future earnings, but the earnings forecasts turn out to be bogus. You learn the executives knew their earnings forecast was unattainable, yet they hyped their stock anyway. The stock price does not rise as the company's executives hinted it would, and your $1,000 is not worth $1,000 anymore, but less. And if you want to sue to recover your losses—

They point out—

> you can now. But if a House-Senate conference bill passes—

And that is what is before us, Mr. President—he basically says:

> it will be much more difficult to do so—

Meaning to sue. And they call on President Clinton to veto the measure—

> because it leaves individual investors and an array of institutional investors, like pension funds, municipalities and other Government units without enough protection from manipulators like Charles Keating, Ivan Boesky and Michael Milken.

They go on to explain the bill. And they talk about how in fact these charlatans would really be popping their champagne in their boardrooms, in their homes tonight if we in fact do not sustain this veto.

Another editorial, the San Francisco Chronicle. The reason I think it is important, Mr. President, to read these is because, again, the way this bill is presented to us by the people who want to pass it is as if there were 90 lawyers in the entire country who really care about this, that they control this debate. Clearly, I am going to prove by the type and number of examples that I raise here that is not the case.

''Opening The Door To Fraud.'' And this says:

> Legislation would wipe out important consumer protections. Securities fraud lawsuits—

This is in the San Francisco Chronicle—

> Securities fraud lawsuits are the primary means for individuals, local governments and other investors to recover losses from investment fraud, whether that fraud is related to money, invested in stocks, bonds, mutual funds, individual retirement accounts, pensions or employee benefit plans. As the draft report stands—

That is essentially what is before us—

> investors would be the losers, and their hopes of receiving convictions in suits similar to those against such well-known con men as Michael Milken and Ivan Boesky would be severely hampered. In the name of the little guy, Clinton should not let that happen.

Our President did not let that happen. Now there is a chance for us to stand up and be counted on behalf of the little guy, the little guy, the small investor, those of us in America—and that is most of us—who are really in the middle class, who would be greatly hurt if in fact we did not have the ability to go to court and to, if we were defrauded, have a chance at recovering even some of our investment.

This is a Michigan headline, and I think it is pretty strong. ''How Come GOP's 'Contract' Allows Ripoffs Of Investors?'' The reason they talk about it as the ''GOP contract''—and it is in many ways certainly supported on both sides of the aisle—is that the contract contains language that is in many ways the father of this bill. The Michigan paper says:

> . . . let the bill's backers explain to the rest of us why stock swindlers need to be ''protected'' from lawsuits.

This is in the Muskegon Chronicle in Michigan.

The fact is we can stop this bill now. We can start all over again with a better bill. We can follow the advice of President Clinton. He has given us for the record, many, many letters from experts in this field who really convinced him that, in the end, this bill, as written, would hurt middle-class investors.

We have a road map from the President of some of the things that we can fix.

I would like to read a letter from the Fraternal Order of Police that I have to read before on this floor. It is a letter to the President:

> On behalf of the National Fraternal Order of Police, I urge you to veto the ''Securities Litigation Reform Act.'' The single most significant result of this legislation would be to create a privileged class of criminals. . . . our 270,000 members stand with you in your commitment to war on crime. I urge you to reject a bill which would make it less risky for white collar criminals to steal from police pension funds while the police are risking their lives against violent criminals.

I think this really says it all. Here is a letter written by police who are protecting our lives, they are on the line, and they are worried that their pensions will not be protected because this bill would make it possible for their pension plan to be raided and for them to lose their retirement funds.

Those who present this as an issue about special interests have a perfect right to do that, but I say to you, what we are doing goes quite beyond that. It termed called reform, but it overturns legal protections that have been there for investors since the thirties. How quickly we seem to forget history, that people, small investors deserve and need this protection.

We do not need to do this so much for those who are wealthy. They are not too worried about their being defrauded. But it is our small investors,

it is our people, particularly the elderly, who count on getting their retirement from these investments, that we should be protecting. The wealthiest do not need us to worry about them and, frankly, the very poor simply do not have the funds to make these investments. So I think this is a vote on whether you are going to stand behind the middle class, the small investor, or are you going to abandon them in the name of frivolous lawsuits, which is a wonderful and noble objective which, frankly, has just gone awry.

The President vetoed this bill because I think he wants to stand with the middle class. He is certainly standing with them in this budget fight, and there is a connection. When you fight for the elderly to protect their Medicare, you are saying you care about these people. But at the same time, if you leave their pension plans open to raiding by people like Keating and Boesky, and we know the cast of characters we have seen come out of the eighties, then you are harming them. If you protect their Medicare on the one hand, but you leave their pension plans and retirement savings prey to those that, frankly, would take advantage of them only too quickly if they knew that the legal protections have been changed, you abandon them.

So I say the bill, as it is currently, is against the middle class. The bill targets small investors, the elderly and those saving for old age through their retirement.

Again, I do not think we can really bifurcate this argument from the rest of what we are trying to do. We stand here and we say we fight for the middle class. We are fighting against those Medicare cuts, those Medicaid cuts to our elderly in nursing homes and to make sure that kids have access to college loans so their middle-class families can afford to send them to college. Protecting them from securities fraud is part of standing up and fighting for people who count on us and who rely on us.

Many of us stand up here and say we are not going to see a budget go into effect that gives large tax cuts to the wealthiest among us while we hurt our middle class by cutting all these other programs. There is a nexus here. We should stand proudly for the small investor and those who need us.

The President's three objections, I think, are very clearly stated in his veto message. First of all, he talks about the bill's pleading standards which he believes would make it virtually impossible for those who have been defrauded to even bring a lawsuit in the first place. I think this is very important, because the bill, as it currently stands, requires defrauded investors to know the state of mind of the people who defrauded them before they even file a lawsuit.

How can you possibly know what is in the heads of people you have never even met? How can you prove what was in their minds before you have had a chance to find out what, in fact, they did have on their minds when defrauding you? You cannot. That is an impossible standard.

The President was willing to accept a bill which adopted the most difficult pleading standards adopted by any Federal Circuit Court of Appeals, and that is the second circuit. But what the President was not willing to do, was to make those standards even more difficult.

That is very important. The President is not saying in his veto message this is a terrible thing, we should not even be looking at this bill. He is saying there are things wrong with it. One of them is its pleading standards. In the President's own words,

> the bill would erect a barrier so high that even the most aggrieved investors with the most painful losses may get tossed out of court before they have a chance to prove their case.

The President was particularly concerned that the conference dropped an amendment overwhelmingly adopted by the U.S. Senate, an amendment offered by Senator SPECTER. I know Senator SPECTER was on the floor talking about his amendment. It would have remedied the problem that too draconian a pleading standard would have created. The SPECTER amendment would have allowed lawsuits to be filed if the defrauded investors could show that the defendant had the ''motive and opportunity'' to defraud them.

After that standard was met, the plaintiffs would be allowed to go forward and test whether the defendants actually defrauded them. But the operative language here, ''motive and opportunity,'' would be the standard, instead of the impossible standard where you have to describe the mind of people you do not even know who have defrauded you, proving what was their state of mind before you can even get into the courthouse.

That is not what American justice is all about. We are proud of our legal system because its doors are open. They are open to the wealthiest. They are open to the poorest. This really would slam that door on the small investor. That is wrong.

The President also opposes the bill's draconian safe harbor which permits outright frauds as long as they are couched as predictions and estimates of future profits and income. The President is saying, if you allow companies who do not tell the truth to cover over outright lies using ''predictions'' and ''estimates,'' then you are not giving these companies a safe harbor, but rather, what has been described on this floor, as a ''pirate's cove'' filled with sharks and barracudas. You are going to have sharks and barracudas hiding in the safe harbor, calling something a prediction and the investor, who is not sophisticated making an investment based on this very misleading language.

Fraudulent future predictions and estimates would be permitted under this bill if those defrauding attach ''some'' possible reasons why the prediction might not come true. Those defrauding can hide the real reason that their fraudulent prediction will not come true and they cannot be sued.

In other words, they know that what they are saying to unsuspecting investors is not true, but they couch it in terms such as ''this is a prediction,'' ''this is an estimate.'' Then they are home free protected by the ''safe harbor'' from successful suit.

The President has been reasonable. He is willing to allow greater protections for predictions and estimates of a company's prospects, but he is not willing to permit outright fraud.

I think the President is being extremely reasonable when he says bill needs to be changed. The safe harbor is the one change and the pleading requirements are the other.

The President is also opposed to the bill's unfairly treating plaintiffs more harshly than defendants. That moves us toward a loser-pay standard which we all say we do not think is a good thing but, frankly, it is in this bill.

The bill creates a presumption that small investors must pay all of the other side's legal fees if their initial fraud complaint violates rule 11 of the Federal Rules of Civil Procedure, but it does not require defendants who violate that same rule in similar situations to pay all of the plaintiff's legal fees. So what kind of justice is that? That is so blatantly unfair, I do not even know how to express my outrage at that particular provision.

I do not happen to believe in loser-pays for either side. I just think that is a way to basically send a message to people that they could get stuck—mightily stuck—with large bills. They could be small investors or, frankly, small companies. I think that is totally wrong. The fact is, we have a legal system that has worked pretty well, and I am very fearful that if we start introducing a modified version of loser-pays in this bill, there is no stopping it. I think that would be a very dangerous thing to do.

If you are a very small investor and you think you have a really good case, but you know if you have an unfriendly judge, for example, you could get stuck paying the other side's legal fees, you might walk away and allow a real swindler to get off the hook. So this troubles the President, as well it should, and it troubles me, as well.

We believe, really, that small investors would be terrorized into not filing lawsuits for fear of having to pay these legal fees of large well-heeled corporate defendants who could run up very large legal bills. So for at least 100 years, the American court system has rejected loser-pays because it prevents aggrieved parties from asserting their rights.

I have already put into the RECORD today a number of newspaper articles. But I have to say, Mr. President, again, to those who try to dismiss the opposition of this bill, they are really not

being fair. It is true that everybody wants to stop frivolous lawsuits. So it was hard for many of us to stand up and oppose this bill. But I have to tell you, if you listen to some of the groups in the country who oppose this bill, I think it would be an impressive list:

The Government Finance Officers Association [GFOA], a professional association of State and local government officials, both elected and appointed, whose duties include the investment of cash balances and pension funds and issuance of municipal debt. These are the people who know what is at stake here. The Government Finance Officers Association opposes this bill.

The U.S. Conference of Mayors opposes this bill. Why? Because they have large security investments, including pension funds. For example, the city of San Jose in California was completely ripped off by an unscrupulous broker many years ago. They were able to recover because we had good laws on the books—laws that are going to be changed, and their city attorney came before our committee to testify and said it would be very dangerous to change these laws.

Then there is the North American Securities Administrators Association, who represents the 50 States' securities regulators, responsible for investor protection, and the efficient functioning of the capital market at the grassroots level. The North American Securities Administrators Association opposes this.

I have a letter from the California County Officials. They oppose this.

The American Bar Association.

I just, Mr. President, fear very much that we will be back on this floor if we cannot work this into a better bill, when the first scandal hits, with Senators saying, ''My God, I never knew, we did not mean it, and we have to take another look at this.'' You know that is going to happen.

I think we should listen to the people in the local counties across our country. I think it is pretty effective. We have a letter signed by 99 California government officials, including the mayors of San Francisco, San Jose, and officials in 43 of our State's 58 counties. Mr. President, I want to say that many of these counties who signed this letter are extremely conservative local government officials. It is rare that they call me and are so united on such an issue.

I have, also, a letter signed by 34 county treasurers in Arkansas, 51 public officials in Georgia, 58 public officials in Massachusetts, including the Massachusetts Association of County Commissioners. I have a letter signed by 39 officials in New Jersey, including the New Jersey Conference of Mayors and the New Jersey State League of Municipalities.

So it is very important. In this letter signed by California county officials that I talked about, they say:

> In recent years, local California governments, most notably Orange County, have lost more than $2 billion in the securities markets, partly due to derivative investments. Some of these governments have pending securities fraud cases; others are still deciding whether to use the courts to pursue recovery of losses.
>
> Now is not the time to weaken defrauded investors' rights to pursue civil action, as would occur—

Under the bill that is pending before us—

> unless institutional investors that are defrauded have the ability to recover their losses in court, they will have to make the unenviable choice [as Orange County did] between cutting essential services, such as education programs, or raising taxes.
>
> We urge you to do the right thing and protect taxpayers' investments from securities fraud and oppose this unbalanced, unnecessary and dangerous legislation.

Again, this is from Fresno to Los Angeles to Riverside and Stanislaus County, Kings County, Tulare County, Yuba, Shasta, Monterey, Siskiyou, Sierra. I am talking about counties from the city to the rural areas—everywhere. Inyo, Mariposa, Santa Ana, Fremont, Stockton, Riverside, Oceanside, Elmonte, Thousand Oaks, Westminster, Newport Beach, Arcadia, Barstow, Contra Costa Water District, South Pasadena, South Tahoe Public Utility District, city of Hemet, San Benito County, and others. My State has 31 million people in it—31 million people in it, Mr. President. Every time we do something here, it affects my State more than any other State just by virtue of that fact. To have these Republican and Democratic elected officials be so united in their opposition is very, very unusual. Retirement associations all throughout the State, including my home county of Marin, where I served on the county board of supervisors—they are very conservative—they do not want to see us weaken these laws.

The American Bar Association, their new president, Roberta Ramo, has written an excellent letter to the President outlining their problems with this bill.

I want to conclude my remarks, Mr. President, by saying this: Again, my State represents a lot of the companies that have legitimate problems with frivolous lawsuits. I promised those companies I would do everything I can to work on legislation that really addressed their problems. I do not want to see anything hurt decent business people. On the other hand, I want a balanced bill and one that does not go so far that the charlatans that may be stockbrokers, investment advisers, corporations—we have seen them so much in the 1980's, and we see more now—we do not want to open the door to that kind of investor fraud.

I think the President took a strong stand to protect the middle-class investors. I applaud him. I hope we can in fact sustain that veto. I know if we do, it will be very close one way or the other, if we fail or if we succeed. But I have to say this: What is at stake here is really, I think, in the long run, the health of the securities markets. The worst thing we can do is have a situation where the laws on our books have been weakened to a point where they do not provide investor confidence. People will not invest their money, and we will have a situation where decent companies are going to have to pay a premium—it is really a premium—in order to convince people to invest with them. That will cost these good companies more money. They will have to pay more interest to these investors because many investors, as soon as we have that first scandal, are going to say, ''You know what? Maybe I am better off with Government bonds. Maybe I am just better off getting a certificate of deposit that is insured by the Federal Government.''

So that would be the worst thing that could happen, in the long run—if we try to address one problem, frivolous lawsuits, and weaken our laws to such a point that people do not have confidence to invest their money in the market.

So I hope we will stand with the President. He has really laid out a clear path on how to fix this bill. I want to thank Senator BRYAN and Senator SARBANES.

I have been proud to be on their time as we have tried to bring these issues to the President's attention, to our colleague's attention and frankly to the attention of the American people. I hope we will sustain this veto. I yield the floor.

(Mr. CAMPBELL assumed the chair.)

Mr. GRAMS. As a conferee for this bill, I am here on the floor today to also join those others in urging my colleagues to vote to override the President's—what I consider—ill-advised veto of the conference report on securities litigation reform.

Back on December 5, 65 of us voted in favor of the conference report that the President has now vetoed. Mr. President, 69 of us voted for S. 240, which was substantially similar to the conference report.

Now, the principal authors of this legislation are Senators D'AMATO, Senator DODD, and Senator DOMENICI. These Senators put aside their political and partisan differences to do something right for small investors, for workers and for the consumer. All of us did. When you have legislation that is authored and supported by the general chairman of the Democratic National Committee and the chairman of the Republican Senatorial Committee, I believe that is what you would call compromise. When you have almost 70 Senators from both sides of the aisle voting for this legislation, that is also called compromise. So, why did the President veto this measure?

Well, in his letter accompanying the veto, the President said that he wants to protect innocent investors from being defrauded. Well, this legislation protects those investors. It preserves the right of these investors who are truly victimized by securities fraud, but it does much more than that, as

well. It also will protect the worker who is out there and worried about being laid off because his employer had to pay attorney's fees instead of being able to pay his salary.

It will help the consumer who has to pay higher prices for products today because of the hidden costs of frivolous legislation and litigation.

It will pay off for the legitimate investors and for the pensioners whose life savings are being jeopardized by strike-suit attorneys.

Finally, it will also benefit the thousands of honest, hard-working attorneys who have watched the public image of their profession being tarnished by a few greedy quick change artists.

It is also for the sake of those Americans that we have put in long hours of hard work to craft what I believe is a very balanced and reasonable bill.

The only people who will lose under this legislation are the small class of attorneys who have used professional plaintiffs to file frivolous and meritless suits, again just to make a quick dollar. They use joint and several liability to bring secondary defendants into their cases simply to try and extort a higher settlement out of them as well.

Now, the social costs of these suits are very, very high. Again, they would result in fewer jobs because employers would be paying high costs for frivolous litigation, rather than being able to put that money where it would make a difference, and that is in the higher salaries or more jobs. Higher prices for the consumers who end up having to pay these costs because they are passed along in the cost of doing business. They go into the products and the services that these people provide, so consumers end up paying more because, again, of the costs—the hidden costs—of frivolous litigation, and it has diminished returns for the innocent investors. The very investors that the President says he wants to help protect are the ones who would benefit from this bill, as well.

What do investors get in return for those abusive lawsuits? In the past they have received about 6 cents on the dollar that has gone back to the victims. The rest has gone into litigation, legal expenses and lawyer's fees. Who is the President really trying to protect? Investors, the consumers, or the workers, or a small group of unethical lawyers? I think that answer was obvious.

Legislation is not meant to protect political constituencies. When we do the work of the people we should think of what the voters called for in the last election—not the commercials that consultants will be running in the next election. That is not what the President did when he vetoed this bill. We should not stand for it as well.

For those reasons and for the sake of the small investors and the consumers, the job creators and the workers, we should override this veto, because if the White House will not stand up for these individuals, who will? We must. I believe that we will.

Again, I urge my colleagues to override the veto and to enact the commonsense legal reform that is contained in this bill. I yield the floor.

The PRESIDING OFFICER. The Senator from Utah [Mr. HATCH] is recognized.

Mr. HATCH. I thank the Chair.

Mr. President, on December 19, 1995, President Clinton vetoed the conference report to H.R. 1058, the Securities Litigation Reform Act of 1995. This act represents a very modest step forward in addressing some of the egregious abuses present in our litigation system today. In doing so, I believe President Clinton has sided with a handful of very wealthy lawyers and against the interests of the American people at large. President Clinton is a tenacious defender of the status quo. I do not think the status quo is serving us well.

The securities bill was developed over the past several Congresses by a dedicated, bipartisan, moderate group of reformers who have long seen the need to change our securities litigation system. Senators CHRISTOPHER DODD and PETE DOMENICI have led this effort for a number of years and finally saw the opportunity for meaningful reform in this Congress.

The securities litigation conference report passed the Senate by a bipartisan vote of 65 to 30. A total of 19 of our colleagues on the other side of the aisle voted in support of this moderate and meaningful bill.

The legislation sought to make securities litigation fairer by curbing the abusive litigation practices that have been employed by a small number of plaintiffs lawyers in securities litigation class action lawsuits. That very small group of trial lawyers who specialize in securities litigation lawsuits represents the only ones who are truly hurt by the securities litigation reform bill. Likewise, they are the only ones who are helped by the President's veto—just a few, very wealthy litigation lawyers in the field of securities law.

The plaintiffs lawyers who benefit from the President's veto are the ones who perfected the so-called strike suits. Strike suits are filed against companies after a drop in the stock price, frequently without regard to whether there has been any fraud or wrongdoing on the part of the company. And by the time the suit really gets in full swing, the litigation is so expensive for the companies that many of these companies just settle for defense costs to get rid of the problem and the embarrassment, and to not have to take a chance with some of the juries in some of the more, shall we say, jury-liberal States in our country.

For example, in 1990, when LA Gear, the sportswear and sneaker manufacturer, announced lower than expected earnings, one law firm filed 15 lawsuits just 3 days after the announcement.

The Banking Committee heard testimony concerning other cases in which securities lawsuits were filed within 90 minutes of the drop in share prices. These kinds of filings without regard to the merits are ridiculous. They are hurting American businesses and consumers.

I am particularly concerned because perhaps hardest hit have been high-technology companies. Those companies form a key part of the American economy and are vitally important to the economies of Utah and many other States. They are being disproportionately hurt by these lawsuits.

A Stanford University law professor, conducting a study of securities class action lawsuits filed in the 1980's, most involving high-technology firms, found that every single company, every single high-technology firm that experienced a market loss in stock price of at least $20 million was sued. Every single company. Those kinds of abuses are an outrage and an affront to the legal system. These are some of the most successful American companies, and they are being besieged with lawsuits. Some think it should be called legal extortion. It simply cannot be that every single high-technology firm that has suffered a $20 million or more loss is engaged in securities fraud. It just is not true. But by the time the lawsuits start and the litigation begins, and the depositions start and the discovery becomes burdensome and onerous, a lot of companies just throw up their hands in the air and pay whatever they have to to get out of it because they know that kind of litigation is never ending.

The current litigation system encourages wasteful and needless litigation even where there is absolutely no evidence of wrongdoing. The unavoidable fact is that because of current skewed incentives in the litigation system, the small group of lawyers who file most strike suits are not filing such suits to protect shareholders against corporate fraud and wrongdoing. They are doing so to line their own pockets.

I happen to be a lawyer. I happen to understand securities law. And I can tell you that is what is happening. The Banking Committee heard testimony that plaintiffs in these suits typically receive only 14 cents for every dollar while the trial lawyers collect a whopping 39 percent of these settlements. That is abominable and everybody knows it. Other studies have suggested even lower plaintiff recoveries. We are talking about the people who are supposedly wronged getting 14 cents out of every dollar while the attorneys get 39 cents out of every dollar.

These lawyers are filing these lawsuits so that they can terrorize American companies into paying exorbitant settlements because they know these companies cannot afford the high legal fees that would be required to defend themselves even against meritless lawsuits.

When companies must pay for needless litigation, settlement and insurance costs with dollars that could be

going to create jobs or to further research and development, consumers and stockholders, virtually all Americans in fact are hurt. Due to wasted resources, profits and stock prices are lower than they would otherwise be and the shareholders in the end lose out. That should not be lost in this debate.

The truth is that shareholders are very well protected under the securities laws and under this securities bill. This legislation ensures that the class action device remains available for those shareholders who have been in fact victims of securities fraud. In fact, it improves that device so that injured investors, not a small group of greedy lawyers, can control the litigation.

Although the President pointed to what he claimed are a number of shortcomings in the bill that justify his veto, his excuses are just that—slender excuses for siding with some of these jackal lawyers.

First, the President nitpicked with the bill's pleading requirements. However, legislative history in the House and Senate makes clear why a heightened standard requiring pleading with particularity is necessary to eliminate securities lawsuit abuses. The conference report sensibly requires a heightened pleading standard to weed out frivolous litigation and to free parties against whom claims are made from being subject to abusive and expensive discovery.

Second, the President went after the safe harbor provision, which creates a safe harbor for forward-looking, predictive statements. Some companies have faced damaging lawsuits merely on the basis of vague but optimistic projections that the company would do well even though it was clear that the prediction was speculative and future oriented. The safe harbor provision sensibly addresses those problems.

In fact, President Clinton notes that he supports the conference report language but is concerned with some language in the statement of the managers of the bill on this provision. Now, the Constitution gives the President the authority to veto legislation, but nowhere does it give the President authority to veto legislative history. I think a veto on the grounds of legislative history in this case is extreme, especially in light of the clear language of the bill.

In short, President Clinton was stretching for excuses to veto this legislation. The only thing President Clinton has shown with his veto of the securities litigation reform bill is that he will side with a handful of trial lawyers against the interests of all Americans—especially American consumers and shareholders. He has proven that he is not an agent of meaningful and needed change but instead a tenacious defender of the status quo.

I encourage my colleagues to override his veto so we can provide meaningful change to Americans who are fed up with lawsuit abuse in this country. My good friend and colleague from Pennsylvania has joined the Clinton administration in questioning the pleadings standards contained in this bill. I should note, for the record, that in June of this year this very administration that has vetoed this bill called the bill's pleadings standards ''sensible'' or ''workable.'' I would also note that these pleadings standards were based, in part, on the recommendations of Judge Anthony Scirica of the Third Circuit Court of Appeals.

Mr. President, I ask that the June administration policy statement and an October 31 letter from Judge Scirica be printed in the RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

STATEMENT OF ADMINISTRATION POLICY

The Administration supports appropriate reforms of the federal securities laws. The goal should be to and litigation abuses and to clarify the law, without improperly limiting the rights of investors to pursue civil actions against financial fraud.

As reported by the Senate Banking Committee, S. 240 contains a number of provisions designed to end litigation abuses which the Administration endorses. A number of its original provisions that had been the focus of committee discussions have been modified appropriately or deleted. S. 240 is now a substantial improvement on H.R. 1058, which the Administration could not support. For instance, S. 240 rejects certain of H.R. 1058's egregious provisions, such as its ''loser-pays'' approach and its too-stringent definition of recklessness. At the same time, S. 240 adopts several sensible provisions, including a workable pleading standard taken from the Second Circuit, and appropriate class action reform provisions.

The Administration recommends the following modifications to two provisions in the bill:

Safe Harbor—The Administration supports the Committee's attempt to craft a statutory safe harbor that would encourage the dissemination of forward—looking statements without protecting statements made with an intent to mislead. The Administration does not believe a safe harbor should protect statements known to be materially false or misleading when made. The Senate should clarify whether the safe harbor's current language would protect such statements.

Proportionate Liability—The Administration opposes the bill's provision that would establish proportionate liability for reckless defendants because in cases involving insolvent defendants, the provision would leave investors unable to recover their full damages. Culpable solvent defendants, rather than defrauded investor, should at least bear a substantial portion of this noncollection risk. Accordingly, the Administration supports an amendment that would require culpable solvent defendants to pay up to twice their proportionate share of damages (rather than 150 percent as in the Committee bill), when other defendants have gone bankrupt or fled.

The Administration recommends that the Senate adopt the following measures, which are not included in S. 240:

Private Aiding-and Abetting—The Committee bill explicitly retains the SEC's authority to take action against those who knowingly aid and abet securities fraud. Congress should also restore this action for the SEC against reckless aiders and abetters, as well as for private actions that follow a successful SEC action.

Status of Limitations—The Administration recommends extending the statute of limitations for private securities fraud actions to five years after a violation occurs. Although S. 240 as originally introduced addressed this issue, the Committee deleted it from the bill.

It should be noted that the Securities and Exchange Commission has expressed many of the same concerns with respect to this legislation. The Administration encourages the Senate to continue to work with the Securities and Exchange Commission to ensure that S. 240 redresses litigation abuses while preserving the ability of investors to bring class-action lawsuits against financial fraud, a legal device that is critical to the maintenance and integrity of our financial markets.

Pay-As-You-Go Scoring.

S. 240 could affect receipts; therefore, it is subject to the pay-as-you-go (PAYGO) requirement of the Omnibus Budget Reconciliation Act of 1990. The preliminary OMB PAYGO estimate is zero. Final scoring of this legislation may deviate from this estimate.

UNITED STATES COURT OF APPEALS,
Philadelphia, PA, October 31, 1995.

MS. LAURA UNGER,
MR. ROBERT GIUFFRA,
Senate Committee on Banking, Housing and Urban Affairs, Dirksen Senate Office Building, Washington, DC.

DEAR LAURA AND BOB: I have a few suggstions for your consideration on the Rule 11 issue.

Page 24, line 11: Insert ''complaint'' before ''responsive pleading.''

Page 24, line 19: Insert ''substantial'' before ''failure.''

''Complaint'' would be added to item (i), so there is a clear provision that reaches any failure of the complaint to comply with Rule 11. A small offense would be met by mandatory attorney fees and expenses caused by the offense; if item (ii) is modified without this change, a gap is left in the statutory scheme. The result still is a big change from present Rule 11, which restricts an award of attorney fees to a sanction ''imposed on motion and warranted for effective deterrence.'' A serious offense—filing an unfounded action—would be reached under item (ii).

I also wish to confirm our prior conversation on scienter and the pleading requirement.

Page 31, line 5: Delete ''set forth all information and insert in its place ''state with particularity.''

Page 31, line 12: Delete ''Specifically allege'' and insert in its place ''state with particularity.''

As I indicated, this would conform with the existing language in Rule 9(b) which provides that ''the circumstances constituting fraud or mistake shall be stated with particularity.''

Also, page 24, line 1: Delete ''entering'' and substitute ''making.''

Page 24, line 4: Delete ''of its finding.''

Many thanks.

Sincerely,

ANTHONY J. SCIRICA.

Mr. HATCH. Mr. President, this is an important bill. It is true reform. Having read and studied securities litigation, under the securities law true fraud can be prosecuted, true fraud can be brought.

This bill is not going to interfere with those cases. What it does is stop the abuse and misuse of the class action litigation and even things out. This will stop the abuse of companies

that have a downturn in their stocks, which happens to a lot of companies, and perhaps through no fault of their own or through some economic downturn that affects them, and will stop the litigation that is brought in many cases just to get defense costs. Too often, it costs more for companies to defend themselves, even though the case is meritless, than it would just to settle the case and get rid of the nasty hornet that has been buzzing around the company's head, for the use of these sometimes very greedy lawyers.

Not all lawyers are greedy; not all lawyers are bad. Most of them are very good people. But there are abuses in the law. In this area it is particularly pronounced. This bill is brought to try and correct some of those pronounced abuses.

Mr. BRYAN. Mr. President, I am looking around the gallery today, as citizens visit our Nation's Capitol, and those that are tuned in on television across the country are saying to themselves, ''I do not understand what this debate is all about. Are there not bigger problems that the Nation faces?''

Clearly, we are in a state of paralysis here in Washington today. Part of the Federal Government is shut down. There is no clear path, as I speak at near 2 o'clock in the afternoon, eastern standard time, as to how we are going to break this gridlock or logjam that has gripped us in this confrontation as to how we balance the budget in 7 years, and the road we use to get it. That is a major issue. No question about that.

Let me try to put this debate into some context because I acknowledge that the country's attention is focused on the macroeconomic picture, the kind of thing that will affect the future of our country and of our Nation.

What is at stake here? Is this an argument between a handful of greedy lawyers, as the proponents of this legislation argue, in disagreement with a small group of people on Wall Street—brokers, accountants, entrepreneurs—who wish to access the capital markets of our country and issue stock? Is that what this thing is all about? I say to our visitors and Americans across the country, this is a far, far bigger issue.

I acknowledge that it is terribly esoteric, arcane, highly technical. Why should somebody listening in on this debate have an interest or concern in the outcome? Anyone who has a single share of stock in any publicly traded corporation has an interest in the outcome of this legislation because that individual, he or she, could become a victim of a fraudulent action. The ability of that individual to recover as a consequence of that fraud is, in my judgment and those of us who have fought this legislation, severely limited and compromised. That is tens of millions of people. In addition, there are probably tens of millions of people more who do not own a direct interest and say, ''Look, I have never invested in the stock market. I have no money. My wife and I and my family are lucky if we have a few dollars in the local credit union or the bank. I don't deal with these Wall Street issues. What do I have at stake in this debate? You lawyer types and Senators have sure lost me in this debate. I do not understand what I have involved.''

The answer, that there are tens of millions of people out there in this country, good people who have worked all of their lives, who have retirement funds—their security, their safety blanket—these people have tens and tens of millions of shares invested across America in retirement funds. Those retirement funds could be victimized by fraudulent actions, and as a consequence of that fraud, those retirement funds can be severely impaired financially, devastated, and depending upon the magnitude of the fraud could, conceivably, be wiped out.

What does the average American have that interests him in this piece of legislation? His or her retirement could be at risk if they are not able to adequately recover against those malefactors, those that have been involved in perpetrating a fraud. So those who have money in a retirement out there, whether a company-sponsored family or one of the many variations of a 401(k), you have an interest in this debate and your children have an interest in this debate, because some of you are hoping that you have a little money put away, and maybe their inheritance can be affected, as well.

Broadly stated, 260 million Americans have an interest in the outcome of this debate because we are all taxpayers, every single one of us, directly or indirectly. That is why such widely divergent groups such as State financial officials, State treasurers, State controllers, State financial officers—Democrat and Republican, East and West, big cities and small towns—have expressed their opposition and concern; because they know that their community, their village, their town, investing money on behalf of the taxpayers in a securities portfolio, that they can be victimized as well. They do not want to jeopardize their ability to recover on behalf of the taxpayers of their town or their community or village. That is why they have joined in opposition.

I do not doubt relatively few if any are lawyers or stockbrokers or involved as entrepreneurs. So it is their interest on behalf of each of us as American citizens that has dictated that they write us to inform us they are gravely concerned and strongly oppose this bill. I will go into some of the reasons in a moment.

University and college officials who are involved in the management of investment portfolios of American colleges and universities—whether they be private universities, private colleges, or the great State-supported institutions in our country—they, too, have called and written. They strongly oppose this legislation because they know that the investment portfolio upon which their college or university depends can be impaired and financially wiped out if investor fraud occurs and they are unable to recover on behalf of those funds the losses sustained as a result of that fraud.

So we are here today, not talking about 90 greedy lawyers or the entrepreneurs. I think all of us in this country, irrespective of our political leaning or philosophical inclination, are highly supportive of the entrepreneurs in America. They do provide the mainstream for our free enterprise system. But this issue is much broader than that debate. Every citizen in America has an interest in the outcome of what we do.

It has been said that only the dead have seen the last of war. Tragically, I suspect that is true, as much as we would hope that is not the case. Let me just say that only the dead have seen the last of investor fraud in America. The Wall Street Journal, in a fairly recent publication, has told us that investor fraud has increased. In another article we are told that, notwithstanding the efforts of the Securities and Exchange Commission—no partisan commentary is intended—that indeed they have fallen behind. Maybe to some extent we are losing that fight, in terms of pursuing with the kind of diligence that every American would want us to pursue those individuals who practice fraud in the securities markets and who rip us off. So why are we here talking about this thing less than a week before Christmas? It is because every American is affected.

Let me try to say a few words about our system, the system we have created, Democrats and Republicans alike, over a period of some six decades and a little more now, to protect investors, to protect them against fraud. To those people out there who are motivated by greed, who cut corners a little tightly and whose primary interest is to line their own pockets and who care not a whit about whom they hurt—there are still those people out there in America. Unfortunately, they are still involved in investor securities activities.

We set up, over the years, a system that depends upon three pillars to protect the consumer, the investor, the American taxpayer in this broad sense. One, we have empowered the Securities and Exchange Commission. It is a Federal agency. They are out there monitoring the market, responding to complaints. That has been true under Republican and Democratic administrations alike. The agency traces its origin back into the aftermath of the collapse in the Great Depression in the 1930's. And they are out there. By and large they do a good job. Sure, some of us may have some criticism of this or that. Criticism can be found with each of us. But they are out there doing a good job.

But the system does not depend, in terms of the enforcement and the policing of the markets, solely upon the Securities and Exchange Commission.

Its premise and predicate contemplates that there are two additional pillars upon which investor protection is predicated.

Another one of those is what we have done at the State level. If I might say for a moment, as my colleagues know, I have had some experience in the State level serving as the chief executive of my State. They are banded together in a group called the North American Association of Securities Administrators. Their job is to try to protect their citizens in each of the 50 States against the kinds of frauds that occur in our society with respect to the issuance of securities. By and large, I think they do a good job as well. They are not lawyers per se; accountants, per se. They are individuals appointed, by and large, by the respective Governors of their States to help to protect citizens of those States against the kind of securities fraud that occurs. So they, too, have written us in the strongest, most urgent, compelling language to say in our considered judgment this would limit the ability to protect the citizens of our State. We do not speak as lawyers. We do not speak as accountants. We speak as one who, like yourself, is impressed with the public trust to protect the citizens of our State. That is the way our system works.

Finally, the system, contemplated and acknowledged by all, that notwithstanding the fact that we have people at the Federal level and at the State level who are part of our system of Federal and State government who are charged with protecting the consumer, particularly as it relates to investor fraud in the securities market—it is contemplated that the private investor, through his or her ability to file class actions in the Federal court system of America, is a very important adjunct to this system. It is absolutely indispensable; absolutely indispensable. Those statements can be heard from Republicans who have Chaired the Securities and Exchange Commission, by Democrats, and by all commentators, that the private sector is critically important in terms of monitoring the market and in terms of recovering for investors who are defrauded as a result of security fraud.

In point of fact, that is going to be even more important. Whether one characterizes himself or herself as liberal or conservative or middle of the road, everyone in this Chamber, and I think most people in America, would acknowledge today that our budgets over the next few years are going to be tighter and tighter and tighter. And that means, no matter how much we would like to allocate to certain programs, there is going to be less money. So the notion that somehow we are going to be able to provide the Securities and Exchange Commission with more money to monitor and enforce in the marketplace so that there needs to be less reliance upon the private sector and its ability, through class actions, to bring lawsuits, is simply misplaced.

Nobody in this Chamber and nobody in the other body believes for one moment that we are going to have those kind of resources, wish as we may. The budgets are going to be tighter next year and the year thereafter and the year after that. I say that, Mr. President, as one who recognizes that, who supports the need for that, who is one Democrat who believes that a constitutional amendment to require a balanced budget is a necessary and desirable objective. And I recognize that there are going to be some constraints. So there is going to be less money available.

This legislation delivers a series of crippling blows to the small investor to recover through the process of a class action securities case. Having said that, is there no problem out there? Is nothing wrong? The answer to both of those questions is yes, there is a problem out there, yes, there are some things that need corrections. I acknowledge that. The focus ought to be the frivolous lawsuit.

I am a lawyer. I am proud to be a lawyer. I was never involved in this type of work at all, have never represented plaintiffs in class actions, mercifully have never been sued as part of a class action, and have never defended anybody. But there are lawyers out there who abuse the process, and who abuse the courts, and I have absolutely no sympathy at all for those kind of lawyers. As I have said previously on the floor, let Heaven and Earth and the wrath of God Almighty fall upon those lawyers who abuse the system, and there are some.

So the focus, it seems to me, ought to be to deal with the frivolous lawsuits and to deal with some of the problems that exist in our present regulatory structure. Let me tell you, there are some things that we can agree upon and that I think are good in this legislation, things that I have agreed to support, and indeed things that I have sponsored in other pieces of legislation and which my distinguished colleague from California, who spoke so eloquently a moment ago, would agree on. So there is some consensus. Let me talk about those for a moment because I am not opposed to legislation to correct the problems in the market. I support that enthusiastically.

There has been a practice that has grown up that ought to be eliminated. That is the payment of referral fees to brokers. We ought not to give incentives to brokers to refer potential security fraud to class action lawyers.

So this legislation, my friends, prohibits the payment of referral fees to brokers. That is a good and desirable reform. I am for that. There has been a practice that has grown up that sometimes in class actions certainly plaintiffs' lawyers are given bonus payments. That, too, is a practice which is wrong, and we ought to eliminate the so-called ''bounty'' payments or bonuses.

This legislation limits the class representative's recovery to his or to her pro rata share of the settlement for final judgment, no bonus payments, and I agree with that. That has been an abuse that we need to correct. And there are occasions in which lawyers are involved in a conflict of interest. This Senator has no sympathy for those lawyers, and we ought to eliminate that practice very wisely, and correctly. This legislation does so. I agree and wholeheartedly support that provision.

We need to make sure that, before any settlement is effected, that the person for whose benefit the lawsuit was commenced in the first instance—that is, the investors themselves in the class who have lost money—ought to be adequately informed as to the proposed settlement and what it means for them. That is reasonable, is proper, and we ought to make sure that is done.

This legislation improves the information requirements to make sure that meaningful information about the terms of the proposed settlement are included, that it would also include the average amount of damages per share that would be recoverable—and the settlement parties can agree on the proposed figure—and it also must explain the attorney fees and costs.

Let me emphasize that point again. The lawyers have to be up front, and their clients ought to know what they are getting out of any recovery. I agree and support that as well.

Finally, there is the provision which empowers the court to monitor and to limit attorney fees to make sure that no small investor is gouged as a consequence of lawyer fees. We agree with this. Let me go a little bit further.

I have sponsored a piece of legislation called the Frivolous Lawsuit Prevention Act in which I believe that the provisions of rule 11—that is one of the Rules of Civil Procedure—which, in effect, requires a lawyer who files a lawsuit to, in effect, show that it is a meritorious lawsuit, not that the lawsuit will in fact be won. There are few certainties in life, and certainly filing lawsuits and being certain that you are going to win is not one of them. I tried a number of lawsuits in my time, not in this field. I have won cases that I thought I had very little chance of winning, and I have lost cases that I thought were about as certain as could be possible.

So the standard is not whether you are going to win, but is it meritorious? There are some lawyers who file frivolous lawsuits. My friends who support this legislation and I would agree, as I have said previously, about strong sanctions. I favor enhanced sanctions through the rule 11 mechanism that would require a judge who finds that there has been frivolous conduct on the part of an attorney to impose sanctions, costs and fees. But let me say that not only plaintiffs' lawyers abuse the process in the system. Defense lawyers do as well. Those sanctions in the provisions that attach ought to apply equally to both sides.

It is some indication of the bias of this legislation that the sanctions that we provide for, the enhanced sanctions, essentially apply in a very disparate way only with respect to the lawyers who represent the plaintiffs. Those lawyers should in fact be subject to the sanctions. But their counterparts who are involved in defending actions, if there are frivolous actions undertaken by the defendants' lawyers, those lawyers ought to be subject to similar sanctions. There is an old expression, ''What is sauce for the goose is sauce for the gander.'' I do not think you have to be a Harvard law graduate to understand the fairness and the soundness of that policy. Unfortunately, this legislation does not do that.

What has happened as this legislation has been developed is something that is characteristic of what has happened in this Congress. Most of the legislation that has been introduced—not all, but most of it—is designed to deal with the problem in which in a very broad and generic sense there is some legitimacy. Yes, there is a problem there that requires action. But if this Congress is noted for anything, it is noted for its propensity to overreach. Yes, there is a problem. But rather than just addressing the problem, what occurs is that the gates are opened up, and those folks who, again, are motivated by greed see an opportunity to make them immune from liability, fail to address the statute of limitations which has nothing to do with the merits of the lawsuit, but just when can an injured or defrauded party be able to file the lawsuit under the law. And this is a classic case of overreaching, and it is, in my view, an extravagance.

It is also, it seems to me, litigation that takes flight and lift only because of some of the myths that are repeatedly mentioned in this Chamber. Myth No. 1, securities class action suits are exploding in number.

Mr. President, as I indicated earlier in my comments, this legislation derives much of its support from anecdotal evidence, information, and from what I call a number of myths that have circulated through the Chamber and around the country that have taken on a life of their own and have assumed the stature of uncontradicted fact. I want to take some of these myths for a moment and discuss them.

We are told that we need this legislation with all of the overbreadth, in my view, that is contained in it because there is a securities class action lawsuit explosion crisis in America, that the courts are literally being overwhelmed by these actions that have been filed, and, therefore, the Congress must take action to address that situation.

I want my comments to be placed in the context in which I earlier commented. I recognize the need, and do in fact agree with reforms addressed to the frivolous lawsuit. But here are the facts with respect to the assertions that there is a security class action lawsuit explosion crisis that is overwhelming and inundating our court system and that we must urgently address.

The Administrative Office of the United States Courts—that is the organization that keeps the statistical records, what is happening in the court system. No one has suggested that it has any bias on behalf of plaintiffs' lawyers or investor fraud plaintiffs nor with respect to defense lawyers or securities folks. This is an outfit that collects the data. Here is what they have to say.

According to the Administrative Office of the United States Courts there were 305 securities class action lawsuits filed nationwide 2 decades ago in 1974. That would be 21 years ago. There were some 305 security class actions filed. And slightly less—let me emphasize that—slightly less than that, some 290, in 1994. So rather than the class action explosion argument, in point of fact there is approximately a 5 percent decrease.

This is at the same time in which the country has grown substantially. There are nearly 260 million people in this country. So our population has grown by millions and millions of people, and yet the number of lawsuits in this area have declined.

They go on to say,

''These numbers count multiple filings in the same case before the actions are consolidated. So the actual number of new cases is far less. Over the last several years on average suits have been filed against approximately 120 companies annually''—about 120 companies annually—''out of more than 14,000 public corporations reporting to the Securities and Exchange Commission. Out of the total of 235,000 new Federal court civil filings,''—a civil filing is as opposed to a criminal proceeding—under this total of 235,000 new civil court filings, in fact even using the preconsolidation figure of 290 cases, ''security class actions represent 0.12 of a percent of the new Federal civil cases filed in 1994.''

Those are the facts. I know that sometimes my colleagues who are so much more eloquent than I, sort of from these lofty heights make it appear that we have had a litigation avalanche. But the facts are that there are in fact fewer cases filed today in this area than there were in 1974, and that approximately 120 companies annually, out of more than 14,000, are subjected to these filings, which represents about .12 of the new Federal civil cases filed in 1994.

I do not, by making that observation, suggest that all 120 may be meritorious. There may be indeed some frivolous lawsuits that indeed the reforms that I and I think all of our colleagues can agree upon—there are some things we can do and we ought to do in that area.

Let me just share a little insight. The Rand Corp. indicates that business-to-business contract disputes, that is one business filing a lawsuit against another business, constitutes by far the largest single category of lawsuits filed in Federal court.

Although corporate executives claim that minuscule numbers by individual victims cause them to lose time, divert resources and lessen their ability to compete, I think it is fair to question why 120 suits nationwide are taking such a toll, while thousands upon thousands of suits brought by one business against another business presumably has no impact whatsoever.

As The Wall Street Journal has noted:

> Businesses may be their own worst enemies when it comes to the so-called litigation explosion.

I think the Rand Corp.'s observation is of some insight here because this legislation before us, this conference report, does absolutely nothing with respect to business suits filed against other businesses. Its scope is designed to limit private lawsuits brought as class actions to recover for investors who have lost money as a result of a securities fraud.

Here is another myth. We hear this, it is repeated, and the volume is overpowering: Securities class action suits are hurting capital formation, we are told, and that is a legitimate question. If it is hurting capital formation, we need to examine to see if it is true and, if it is true, what corrective action might be appropriate for us to consider.

But here are the facts, Mr. President. The volume of initial public stock offerings has risen exponentially over the past several years, and the number and size of public securities offerings has been at an all-time high. The number of initial public securities offerings over the past 20 years has risen by 9,000 percent.

That is the volume of the offerings, setting aside for a moment the amount of the capital that is sought to be raised through those offerings. So we have had an increase of 9,000 percent. Let me say, I think that is good for America, that is good for job creation, that is good for the economy, and I am pleased to see that.

The proceeds raised during that period of time from 1974 to 1993 increased by 58,000 percent from $98 million in 1974 to $57 billion in 1993. So in slightly less than 20 years, or approximately 20 years, the amount of capital raised through these offerings has increased from $98 million in 1974 to $57 billion in 1993, and during the same period of time, the number of securities class actions filed had actually declined by 2.3 percent.

So, Mr. President, I would say that the notion that somehow capital formation has been impeded or restricted or limited simply does not bear out, under a careful analysis, for the data that is available, and, as I say, I think this is extraordinarily good news for entrepreneurial companies and their investors, for jobs, for the economy.

I note the distinguished chairman of the Senate Banking Committee has risen to his feet. If he needs to interject, I certainly would be happy to accommodate him, because I may be a bit longer.

The PRESIDING OFFICER. The Senator from New York is recognized.

Mr. D'AMATO. Mr. President, I want to thank my colleague for his graciousness, but as I only have several minutes of remarks, I can certainly wait. I would just as soon listen to my colleague, because I want him to know that even when we differ on subject matters, I find myself always learning when he speaks, particularly when he speaks on the subject of law. I have great respect for the cogent arguments that my colleague and friend presents.

I might also say, that yesterday we heard some remarks as it relates to how members in this body, in particular, should treat each other. I daresay, that while my colleague and I probably had some very diametrically opposed positions, I hope that in the context of our discourse today, Mr. President, we understand that might even be encouraged and learn from these differences at times. I cannot ever recall an occasion where I have felt better about coming away with a slightly different opinion. If you keep your mind open, sometimes—even if you arrive at a different position—you learn something. You learn that there is something out there that maybe you have not factored in fully and later on if we have kept an open mind and are willing to learn, as this is not a static body and the law is not static, whether it is securities reform litigation or some other legislation, we can correct positions if they have to be corrected.

I must say, Senator BRYAN has been one of those Senators whose views have been very instructive to this Senator personally, and I thank him for the manner in which he has always conducted himself. It is exemplary.

I do not ever envy or look forward to the opportunity of debating with the Senator. They are always good debates, but I have to tell you, he is one of the finest debaters, and he is a gentleman, in the truest sense, in terms of the great traditions of the Senate of the United States.

I just thought during this season as we approach a very special holiday season, sometimes it would pay for us to reflect, that even though we have differences of opinion and, indeed, as is the case of the legislation that is before this body today, I look back at our differences and I think we have been able to maintain our position without losing a sense of balance.

Mr. BRYAN. Mr. President, I am most grateful for the very generous and kind remarks. Let me just say by way of response before returning to the issue of the day, the Senator from New York, the very able chairman of this committee, takes a back seat to no Member in this institution or in the other body in terms of his tenacity, in terms of his persistence and effective advocacy on behalf of the causes in which he believes.

I can recall when the Senator occupied a different chair on this floor, more to the rear of the Chamber, where he was absolutely dedicated to a proposition which affected the citizens of his State and spoke, I do not recall whether it was 10, 11 or 12 hours. This is the kind of advocate that you get.

So I have learned from experience that he is always civil in disagreement, he has always been courteous and very fair to me, and we have worked together on a lot of issues. I acknowledge and appreciate that. I would rather have him on my side, because when he is with you, things not only happen on that committee but on the floor of the Senate. I appreciate his advocacy.

Again, I pledge to him we are going to continue the discussion we have on this measure and any other on which we might find ourselves honestly and sincerely having a difference of opinion in the same spirit in which our relationship has always been, and I thank him for the very generous comments.

We were talking about the underpinning of this legislation and what has been said as an arguable predicate for its enactment, and I shared a couple of myths. I think it would be helpful if I mentioned two or three more and then comment on a couple of things before yielding the floor to the distinguished chairman.

It has been asserted in defense of the legislation that is before us that security suits are filed without reason. Every time a stock price goes down 10 percent or more, there is a lawsuit. We have heard the strike lawyers are out there kind of prowling, and any time there is a dip in the stock price, bam, they are out there and they have these suits. That may occur on occasion.

I am not here to say there is no abuse. I reemphasize somewhat ad nauseam that when there is abuse, we need to change the law to make sure that kind of conduct is punished in a way which is most understood and that is a financial sanction.

But here is the data, here are the facts, not the anecdotal information, not the story that someone heard about someone who had been sued in a securities suit. Here are the facts.

The empirical data established that over 95 percent of the companies whose stock falls more than 15 percent in one day are not sued. These recent detailed studies document the falsity of the argument of the proponents of the legislation. A comparison of the number of stock price drops 10 percent or more in one day between 1986 and 1992, and a number of suits filed against those companies whose stock price dropped revealed that only 2.8 percent of those companies were sued.

A second study by the University of California at Berkeley, completed in August of last year, 1994, tested a sample of 589 cases of large stock price declines following a quarters earnings announcement. Extensive research revealed that only 20 lawsuits, amounting to about 3.4 percent of the sample, were filed. This finding is hardly consistent with the widespread belief that shareholder litigations are automatically triggered by large stock price declines.

The study was consistent with yet a third study conducted by academics at the University of Chicago in March of 1993. That study revealed that out of 51 companies that had sustained 20 percent or greater declines in earnings and sales, only one company of those 51 was the target of a shareholders' suit. Again, one of these myths that have assumed lifelike reality that is being asserted is that the suits are filed every time a stock price goes down. That simply is not borne out by the evidence.

Let me address just a couple more of these myths. Another one is that securities class action suits do not help investors, and private litigation is, in fact, the only way for individual citizens to collect damages from those who commit fraud. For most small investors, who do not have the resources to file their own lawsuit, class action representation is the only hope they have of collecting damages from wrongdoers. The Securities and Exchange Commission may prosecute some securities frauds, but it does not have, as I indicated earlier, the resources to help all victims of fraud recover their losses. That is the province and responsibility of private legal actions, which the Securities and Exchange Commission has repeatedly termed a ''necessary supplement'' to its activities.

Finally, let me just say the other myth that we hear a good bit is that plaintiff lawyers get all the money in these suits, and victims are left with pennies. The average attorney's fee and expense award is 15.2 percent of recovery, according to the authoritative Journal of Class Action Reports. The Journal based its findings on a most comprehensive independent study of attorney's fees in class action lawsuits involving 334 securities class actions, in which $4.2 billion was recovered for victims of fraud. The same journal reported in 1993 that, on average, for every dollar recovered in securities class actions, approximately 83 cents has been distributed to shareholders, and only 17 cents has gone to attorneys, including their expenses.

Let me just say that I have heard the argument here from a number of my distinguished and very able colleagues that we have to do something, that innocent investors get only a small pittance of the amount recovered in these class actions. Let us assume, for the sake of argument, that were true—assuming but not conceding. Mr. President, not one single thing in this legislation would alter that—nothing. There is nothing in this legislation that would provide any type of change in our present system that would increase the amount of money that

would be allocated in a recovery between plaintiffs' attorneys' fees and the amount of money that the individual plaintiff recovers.

Now, it is argued that this legislation is being introduced on behalf of the small investor, that we are really doing this, the proponents assert, because the small investor needs protection out there; that we have all of these ravenous lawyers here taking advantage of the system and taking advantage of the small investors, and that we really strike a blow for truth, justice, and the American way, and small investors if we support this legislation.

Regardless of how little or how much you may know about this area of law—and I am frank to disclaim any expertise other than what I have gleaned from my review of this legislation as it has been processed—I think it is fair to say, who would best represent small investors in protecting their interests? Let us set aside the lawyers for a moment because, hey, look, clearly they make money as a result of these lawsuits. There is no question about that. Let us set aside the accountants, let us set aside the brokerage folks, let us set aside the companies that are issuing stock. I think it can be conceded that each of those groups across the philosophical divide have a vested interest. No question about it. So let us look to other groups that are not lawyer-based or involved in securities industry work, or its allied fields, and let us see what those folks say about this legislation as it has been processed.

I think it is fair to conclude that this legislation is proposed by every major consumer group—every one of them, including the Consumer Federation of America; all major senior citizens groups, including the AARP; all major State and local organizations responsible for investing taxpayer pension funds; the Conference of Mayors; the League of Cities; the Association of Counties; Government and Finance Officers; Law Enforcement Officials; the North American Securities Administrators Association; a good many State attorneys general; the Fraternal Order of Police; educational institutions, and others, all have opposed it.

Now, any one of those groups may not be your cup of tea. You may have some reason, philosophically to disagree with positions they have taken on other matters of public policy, or other legislation before this Congress. But I think it taxes credibility beyond the point of being sustained to conclude that each and every one of these groups oppose this legislation, even in the conference form, unless they were asserting that in their own judgment, representing the organizational interests that they do, that they honestly and sincerely believe that this is not in the best interest of the small investor. These are the folks, unless we assert that there is some monstrous conspiracy organized by these ravenous plaintiff lawyers that has corrupted these organizations, ranging from the Consumer Federation to the Conference of Mayors, to the League of Cities, to the Association of Counties, to the Fraternal Order of Police—let me say, even those that are enamored with the Oliver Stone approach to life and film, I suspect, have some difficulty believing that—unless one subscribes to the conspiracy theories in history—there is a conspiracy of this magnitude involved. I respectfully submit, Mr. President, that these organizations express their opposition because they believe it is not in the best interests of consumers.

The North American Securities Administrators Association is not a partisan group. There are 50 States—parenthetically, a majority of those States, I think, or a fair majority, are now States that have Republican Governors. So I offer this context so that it not be asserted that there is any partisan bias that may be reflected by this statement.

Here is a letter sent by way of fax yesterday, December 20. I think it is worth sharing because, you will recall, I mentioned that in terms of the enforcement mechanisms that are provided to police for monitoring the securities markets in America—public protection, investor protection, if you will, are predicated upon three pillars: The Securities and Exchange Commission at the Federal level, the private class action investor lawsuit which we have talked about in our discussion this afternoon, and finally, at the State level, the North American Securities Administrators Association, which I would daresay, without having reviewed the legislative structure of each of the States, is subject to appointment through the executive branch of Government, either the Governor's office or the Attorney's General Office.

Here is what that group has to say, representing the States. I think a State perspective, and rightly so, have taken on an enhanced appreciation in this Congress. I commend my colleagues on the other side of the aisle for focusing much attention in terms of what is occurring at the State level. I think we can gain considerable insight.

Here is what their correspondence of yesterday said with respect to this legislation:

DEAR SENATOR: I am writing today on behalf of the North American Securities Administrator's Association to urge you to sustain President Clinton's veto of H.R. 1058, the Securities Litigation Reform Act. In the U.S., NASAA is the national organization of the 50 State securities agencies.

While everyone agrees on the need for constructive improvement in the Federal securities litigation process, the reality is that the major provisions of H.R. 1058 go well beyond curbing frivolous lawsuits and will work to shield some of the most egregious wrongdoers from legitimate lawsuits brought by defrauded investors. NASAA supports reform measures that achieve a balance between protecting the rights of defrauded investors and providing relief to honest companies and professionals who may unfairly find themselves the target of frivolous lawsuits.

Unfortunately, H.R. 1058 does not achieve this balance. NASAA is concerned with H.R. 1058 go beyond the concerns articulated by President Clinton in his veto message. In sum, NASAA has the following concerns with 1058.

Mr. President, I will give these abbreviated treatment. The bill fails to incorporate a meaningful statute of limitations. I will say more about that later during the course of our discussion this afternoon and this evening. I assure my patient colleague that I will wind these comments up so he may have a chance to express his views.

The bill's safe harbor lowers the standard for assuring truthfulness of predictive statements about future performance. My colleagues will recall it was not until 1974 that future or predictive statements were even permitted, because of the inherent risk and the temptation of those who were involved in selling and marketing, to overstate propositions to the decided disadvantage of prospective purchasers of securities.

No. 3, the bill fails to include aiding and abetting liability for those who participate in fraudulent activity, and a provision of the bill's proportionate liability section is unworkable and disfavors older Americans.

Mr. President, I am very interested, and I am sure that those who support the bill will be addressing themselves on this, but I do not know, how do we impeach the integrity of their comment? These are 50 securities administrators who tell us that in their judgment small investors are losing a great deal in terms of protection by this legislation, while acknowledging, as do I, that we need some balance. That, clearly, frivolous lawsuits ought not to be tolerated. Some of that is occurring. We ought to come down with a heavy hammer, in my view, to preclude that activity. I think it is instructive to listen to what that group had to say.

Let me be parochial for a moment and then I will leave the floor to my good friend. The State of Nevada, for whatever it is worth, a plurality of registered voters in my State are Republican. I offer that in the context of what I am about to say in terms of the kinds of letters that we are getting and the position taken.

Churchill County, a small rural county in our State, expresses their opposition to this legislation; the city of Boulder City; the city of Carlin, through the mayor; the city of Las Vegas, expressing its opposition to the Treasurer; the city of Lovelock, another small community; the city of Mesquite, our newest incorporated city, through the mayor; the city of Reno; The city of West Wendover; Clark County, the largest county in our State, the county treasurer expresses his strong opposition; the Clark County school district; the Douglas County Board of Commissioners; the Elko County Board of Commissioners; the Eureka County Board of County Commissioners; the Nevada League of

Cities; Nevada Public Agency Insurance Board; the Pershing County Board of Commissioners; the Reno Sparks Convention Visitors Authority; the Nevada Attorney General; the State of Nevada Employees Association in Washoe County school district, White Plain County, to name just a few.

I find it incomprehensible to believe that all of these folks are simply tools of class action plaintiff lawyers. I just do not think that a fair analysis—just using our own intuitive judgments, why would all of those folks in our State, as many other States, have expressed those concerns? They have expressed those concerns, Mr. President, because cities and school boards rely upon the securities market. They have investor portfolios. They are potential victims of fraud.

The Orange County situation is one that each of us is familiar with. They want to be sure on behalf of the local county or city or school district, whatever the entity might be, that if indeed they are victimized by fraud, they can be covered on behalf of the constituents whose money ultimately is what is at risk. That is why I have asserted every American has an interest in the outcome of this legislation.

I yield the floor and I thank the chairman for his great courtesy in allowing me to proceed at some length when I know he has been waiting a while.

Mr. D'AMATO. Mr. President, I ask unanimous consent for the purposes of bringing the Senate up to date, that I may be permitted to proceed for no longer than 5 minutes in morning business.

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

SUBPOENA ENFORCEMENT

Mr. D'AMATO. Mr. President, yesterday, after a full day of debate, the Senate voted to authorize Senate legal counsel to go to court to enforce the subpoena of the Whitewater Special Committee for the notes of William Kennedy. Mr. Kennedy took these notes at a Whitewater defense meeting at the offices of Williams and Connolly. This meeting was attended by private counsel for the Clintons and four Government employees.

I have today asked the Senate legal counsel to begin the process of enforcing the subpoena as quickly as possible. The Senate will ask the court to rule on a Senate enforcement action on an expedited basis so that we can get a determination in the courts as quickly as possible.

Now, the Senate legal counsel will file papers with the court on Wednesday, December 27. There are a number of things he must do prior to that. I have been informed he has attempted to contact counsel for Mr. Kennedy, personal counsel for the President and Mrs. Clinton, and the White House counsel to discuss a schedule in order to obtain a court ruling as fast as possible. That is so that we can have an expedited proceeding. I hope they will try to arrange for that.

As I have said repeatedly, and I want to reiterate, the Senate will stop any action to enforce the subpoena as soon as we have Mr. Kennedy's notes. Until that time, though, we will continue and take all action necessary to enforce the subpoena. So there will be no mistake, while I hope we can get these notes without having to go to court, we are not going to wait or delay and then have a situation where negotiations may break down. I understand they are negotiating—that is, ''they'' being White House counsel and the President's counsel—right now with Members of the House.

As I said before, I believe that the Senate and the American people have a right to all of the facts about Whitewater. If these notes help us obtain those, certainly, they should be provided. Again, we are going forward, but I say if we get the notes we will stop the proceedings. At this time, though, we are attempting to get an expedited proceeding. It is our intent to be in court on December 27.

Mr. President, I thank my colleague for permitting the opportunity for bringing that update.

Mr. SARBANES. Mr. President, will the Senator yield for a moment?

Mr. D'AMATO. Certainly.

Mr. SARBANES. Is the Senator now going to address the securities bill?

Mr. D'AMATO. Yes. I asked I might be permitted to proceed in morning business for no more than 5 minutes, just for the purposes of that update. That was the only thing I asked. But I was now going to address the securities reform litigation.

Mr. SARBANES. I would like to address the issue the Senator addressed. I can defer until he finishes the securities matter?

Mr. D'AMATO. No, I yield to my friend, certainly. I think it would be appropriate, if he wants to do that, to yield to him now for purposes of making his remarks at this time.

The PRESIDING OFFICER. The Senator from Maryland.

Mr. SARBANES. Mr. President, I appreciate the Senator from New York yielding.

I think the report that was just brought to the floor underscores what I thought was the wisdom and the reasonableness of the amendment that was offered yesterday and the suggestion that we ought to try to resolve this matter without moving to a confrontation. I listened carefully to my colleague. As I think he said, he intends to be in court on the 26th——

Mr. D'AMATO. The 27th.

Mr. SARBANES. That is, I think, where the majority has intended to be all along. We have consistently suggested if we would draw back here and try to resolve this matter, it could be worked out without a court test.

The assertion is made that by going to court, they will speed the process up. In fact, they will slow it down. That is very clear. Even under expedited procedures, it is going to take a fair amount of time to carry this matter through. So, if you want to get a quick resolution of it, obviously the way to do it would have been to follow the path that we outlined yesterday with respect to the furnishing of the notes and to try to have worked in obtaining from the House an agreement or understanding with the White House that would make it possible for them to do so.

They have offered to do it. They have obviously come forward in an effort to try to do it.

This push to the courtroom, I think, is simply to create, as it were, a public issue and a confrontation. As I indicated yesterday, I regret that. I continue to regret it. I think it is unnecessary. I think it is a provoked controversy, largely for political content. I think as these other negotiations seem to bear fruit, it only underscores that point.

I do think if the matter is carried to court and resolved there, that we may end up with it being clear that a very serious mistake was made by the Senate.

I thank the Senator for yielding.

The PRESIDING OFFICER. The Senator from New York.

Mr. D'AMATO. Mr. President, I am not going to speak for more than 30 seconds on this whole issue of the subpoena. I just wanted to serve notice and let the administration know that, again, if they successfully complete their negotiations with whoever they are negotiating with—the House and whatever Members—that is fine, as long as we get the notes. If we do not, if it gets protracted, we will continue. I have to do that so that the process does not break down. So I thought I would at least bring us up to date on that.

SECURITIES LITIGATION REFORM ACT—VETO

The Senate continued with the reconsideration of the bill.

Mr. D'AMATO. Mr. President, I urge my colleagues to remain firm in their support of this legislation, legislation that, just two weeks ago, was passed overwhelmingly in the Senate, legislation that was passed overwhelmingly in the House, legislation that was clearly, once again, approved by the House, when the President's veto was overturned by a huge majority, the vote was 319 to 100.

It is here now for us to consider. Let me say, Mr. President, no one can argue that the current system is not broken because it is broken. Some of my colleagues raise some objections related to pleadings, the pleading requirements and some things of a very technical nature—whether or not, for example, the second circuit opinion should be incorporated into this law—we are really getting into hair splitting.

But I will tell you an area where no one can split hairs, no one can divide. The system as it presently exists is shameful—shameful—horrendous. This system does not protect investors. This is the Full Employment Opportunity Act for a handful of lawyers. They are out there mining, prospecting for gold. They do not protect the average citizen. They do not protect the small fry investor.

Let me tell you what the leading advocate of this system says, as it relates to the practice of law. He says, and I quote, ''I have the best practice in the world.'' Do you know why he says that? It is amazing. Does he say it because he is able to help people? Because he is able to bring comfort to them? Because he is able to help widows and orphans who are in need, who have been ripped off? That he has helped? That would be laudable. Does he say that because he is able to go after those who have robbed, who have pilfered, who have cheated? That would be laudable.

''I have the best practice in the world,'' he says. And why? ''Because I have no clients.''

That is a heck of an attitude. And that is what exists. And he is working, working. I wonder how many millions of dollars—millions, he, himself, has pumped into the system to buy ads to scare people, to tell them they are going to take their rights away.

What we are looking to do is see to it that investors are protected, not a handful of attorneys, and one in particular, an attorney who says, ''I have the best practice in the world because I have no clients.'' His words. Why does he not come to the floor and explain that? Let him come out here and tell us how he can justify that kind of sentiment to the Senators who are going to be voting.

Does he care about widows? Orphans? Defrauded people? He cares about his pocketbook. He hires a bunch of people to file claims—hires them, professional plaintiffs we call them. Some of them get as much as $25,000, not based upon what the injury was to them.

How would you like to be this stockholder? You have 10 shares—that is what some of these guys own, 10 shares. They buy shares in every company. If the stock of the company goes down, they are recruited, the same handful of professional plaintiffs. You see, each one of them buys a share, a couple of shares in each company. If the share goes down, four or five of them sign up and this lawyer runs into court. He is now representing all the shareholders. In most of those cases, his shareholders do not own anything worth anything. You cannot even say one-tenth of 1 percent. So, when he says he represents no clients, he means that.

Now, he is in there representing, supposedly, all of the shareholders. Our bill says you cannot have professional plaintiffs anymore. You cannot have the same bunch of thieves, because that is what they are—thieves for hire. And we permit them, today, under the law. They should be banned, outlawed, they are robber barons.

Here is this lawyer who is pumping in hundreds and hundreds of thousands to protest this bill. I have not heard anybody talking about him. I have not seen anybody talking about how much money he has siphoned into various groups, money he has funneled to them so they can run their phony ads, how they fund these little groups who say, ''Oh, I am for the little guy.''

Little guy my foot. This millionaire lawyer is going around funding everybody. Why should he not? He makes tens of millions of dollars. Remember who his clients are—nobody. He is operating for himself. He is an entrepreneur—not my words, his words. ''I have the best practice in the world. I have no clients.''

It is a disgrace. We should change this system. And that is what this bill does. It protects, for the first time, people who own shares. It allows the pension fund managers who are managing hundreds of millions of dollars to have a say as to who will be selected to lead in the representation of investors when there is fraud and exploitation. Has there been exploitation? Absolutely. We have operators like Charles Keating, where people unjustly have enriched themselves at the expense of shareholders, stockholders, and pensioners. Of course, we must get them and put them in jail.

This legislation makes it easier for the Securities and Exchange Commission to do exactly that, to bring lawsuits. We created greater responsibility on the part of auditors and accountants for the first time in this bill. But, my gosh, let us not say that we have a system that is a good system when it is out of control, when we permit legal larceny because somebody may have some economic power, so, therefore, we permit someone else to hold them up and say, ''If you have even the tiniest bit of negligence, we are going to hold you liable for whatever the loss is even if you were not part of a conspiracy because you could have done better.'' Our laws should not work on that basis. It should be worked on the basis of fairness, what is fair and what is right.

It is really long overdue, the need to reform this kind of litigation from a money-making enterprise for a handful of lawyers—and it is a handful of lawyers—into a better means of recovery for those who have lost out. Curtailing abusive securities litigation while allowing investors to bring meritorious lawsuits will permit investors to have a system of redress that serves them, not one that entraps them. This bill serves investors and not a handful of lawyers who are proud to claim that they have the best practice because they have no clients.

I yield the floor.

Mrs. FEINSTEIN addressed the Chair.

The PRESIDING OFFICER. The Senator from California.

Mrs. FEINSTEIN. Mr. President, I want to address the securities reform veto override. It is my intention to support the override effort, and I would like to summarize for the RECORD my views on the legislation and my reasons for supporting the bill. Because the senior Senator from Connecticut is here, I would like to ask him a series of questions, if I might, and see if I am correct in my assumptions, and, if I am not, give him the opportunity to clarify my concerns. As you know, the senior Senator is one of the main cosponsors of this bill.

The first involves the so-called license to lie challenge to the safe harbor. I spent about 6 hours with various representatives of the high-technology companies and representatives of the SEC on the safe harbor. At the time the SEC would not sign off on language that they wanted and included in the bill. Subsequently, SEC Chairman Arthur Levitt did sign off on the safe harbor legislation, a decision confirmed by letter from Chairman Levitt, that has already been introduced into the RECORD.

I would like to state my understanding of the safe harbor and see if the senior Senator of Connecticut concurs.

To claim the protection of the safe harbor, an individual company officer must clearly identify the statement, either written or oral, as a forward-looking statement. By forward-looking statement, I mean a statement that applies it to economic projections, estimates, or other future events. The safe harbor cannot be claimed by certain groups of individuals—and I will go into that shortly. This statement must be accompanied by meaningful cautionary statements, identifying important factors that could cause actual results to differ materially from the forward-looking statement. That is to say, the statement must be accompanied by a clear warning that identifies the risk that the future may not turn out as forecast. This warning cannot be routine warning language, but must be specific to the forward-looking statement.

Is that a correct understanding of this bill?

Mr. DODD. Mr. President, I say to my colleague from California that she is absolutely correct. This is exactly what the meaning of that safe harbor language is.

Mrs. FEINSTEIN. I thank the Senator. If the statement is oral, it is my understanding that the individual must identify the statement as forward-looking; clarify that actual results may differ materially; and, state at the same time that additional information about the forward-looking statement is contained in a readily written available document with additional information which satisfies the same warning standard required of written standards.

Mr. DODD. Mr. President, I further say to my colleague from California that is absolutely correct.

Mrs. FEINSTEIN. Or, as a separate test, as I am led to believe, the safe

harbor does not apply if the statement is made with ''actual knowledge'' that the statement was ''an untrue statement of a material fact or omission of a material fact necessary to make the statement not misleading.''

Mr. DODD. Mr. President, the Senator from California is correct as well on that.

Mrs. FEINSTEIN. I appreciate the Senator from Connecticut's comments, which, I believe helps clarify the scope of safe harbor.

Let me go on.

As I understand it, the protections of the safe harbor are not available to reduce the obligations of companies to disclose historical information or current information truthfully and accurately. For instance, if a company makes misleading statements about known facts, the safe harbor does not protect the company.

Mr. DODD. That is correct, I say to my colleague.

Mrs. FEINSTEIN. I further understand the safe harbor provisions do not apply to certain companies we may have reason to have some doubt about, such as penny stock companies, initial public offerings known as IPO's, blank check companies, roll-up transactions, or companies recently convicted of specific securities law violations. All of these types of companies are excluded, as I understand it, from the protection of the safe harbor provisions. The provisions are only available to companies with an established track record.

Mr. DODD. Mr. President, I say to my colleague from California that is absolutely correct.

Mrs. FEINSTEIN. I thank the Senator.

As we discuss companies or individuals ineligible for the safe harbor, I would also want to clarify the safe harbor does not apply to brokers or analysts who may have an incentive to oversell a stock to obtain a sale. On this point, the safe harbor would not have applied to the financial concerns we experienced in Orange County, California. If Merrill Lynch is a broker selling derivatives to a county government, in my state of California or any other state, they are not protected by the safe harbor because the safe harbor does not protect brokers and does not address derivatives.

Mr. DODD. The Senator from California is correct.

Mrs. FEINSTEIN. I understand the safe harbor does not apply to a new company, but only applies to seasoned issuers. For instance, NetScape, a new high-technology company, which saw its stock explode from zero to $120 a share or more, can claim no protection under the safe harbor because it is an initial public offering.

Mr. DODD. That is correct.

Mrs. FEINSTEIN. Finally, I wish to clarify for the record that the safe harbor does not affect the jurisdiction of the Securities and Exchange Commission or the SEC's authority to work with the Justice Department to bring enforcement actions against wrongdoers for fraud, insider trading or any other enforcement action. So, in other words, the safe harbor cannot be used as a defense against the jurisdiction of the Securities and Exchange Commission.

Mr. DODD. Mr. President, I say to my colleague from California that is absolutely correct.

Mrs. FEINSTEIN. I very much thank the Senator. I would like to go on and specifically address the concerns of cities because I have received exactly some letters from various cities, 26 or so to be precise, indicating their concern. We have taken a good look at it.

I think one of the core lessons about Orange County is that cities should not be investing in speculative investments. I know from my tenure as mayor of San Francisco for 9 years, and I served on the investment body which was then the retirement board, these kinds of speculative ventures were prohibited.

We have heard some discussion about the financial concerns involving Orange County, CA, but as was discussed earlier, these circumstances would not be altered by the safe harbor under the bill. In Orange County, the treasurer was buying derivatives from Merrill Lynch. Derivatives are not protected by the safe harbor. Further, Merrill Lynch, serving as a broker, is ineligible to claim safe harbor protection. So you have protections built in two different ways. Derivatives are not protected, and a broker is not protected.

I believe—and my vote is cast on this belief—that the cities' concern appears primarily to address the proportional liability section of the bill. Under the proportional liability rules adopted in the bill, an accountant from a big accounting company would not risk bearing the full cost of a plaintiffs' loss if it audits the books, certifies them and fraud causing loss to plaintiffs subsequently arises. However, even the proportional liability rule, as I understand it, has a significant protection built in.

While the bill adopts a proportional liability rule, proportional liability will not limit the responsibility of a business or an individual who commits ''knowing securities violations.'' I think that is very important. Such an individual would remain responsible to pay, not the proportional loss, but the full loss, as I understand it.

I know the senior Senator from Connecticut will correct me if he believes that is inaccurate.

''Knowing securities fraud'' includes any defendant who had actual knowledge, or operated under circumstances in which they should have had knowledge, the fraud occurred.

So the provision will not permit accountants who commit knowing securities fraud to eliminate full liability for accountants who deserve to be fully liable. Would the Senator agree with that?

Mr. DODD. The Senator from California is correct, I would say, Mr. President, with that observation.

Mrs. FEINSTEIN. I think that is very important to the cities that are watching this debate.

Further, special rules are provided to force proportionally liable defendants to pay more if a particular plaintiff suffers a high level of losses. A significant part of the debate revolves around our concern for poor and potentially vulnerable plaintiffs. Under this bill, if a plaintiff can claim damages exceeding 10 percent of their net worth, and their net worth is less than $200,000, then a defendant remains fully liable for that loss to the plaintiff and no proportional liability can be used to reduce that liability.

Additionally, many of us have concerns with the application if this law in instances involving insolvent defendants. If a defendant cannot pay due to bankruptcy, the defendants who would otherwise be only proportionally liable must pay up to 50 percent more to make up the plaintiff's shortfall due to the bankruptcy. What this means is that if the battle comes down to an innocent plaintiff who loses and a proportionally liable defendant who feels it would be unfair to force them to bear the full loss, the defendant loses and the proportionally liable defendants must pay more.

These are very important concepts to me, and I wanted to come to the floor to place my understanding with respect to legislative intent in the RECORD. I am very pleased that the senior Senator and author of this legislation is present and has corroborated these statements.

I thank the Chair. I thank the Senator. I yield the floor.

Mrs. BOXER addressed the Chair.

The PRESIDING OFFICER. The Senator from California.

Mrs. BOXER. Mr. President, I thank you very much.

My senior Senator from California and I usually, when it comes to issues affecting our State, come down on the same side. We have clearly come down on opposing sides here. Before she leaves the floor, I just wanted—I do not ask her to stay because I know she has other pressing matters—to talk about the breadth and the depth of the opposition to this bill and the support for the President coming from local elected officials in our home State where she served, as we know, as an esteemed and extraordinary mayor of the city and county of San Francisco. I served on the board of supervisors in neighboring Marin County for 6 years and its president for a time.

I think what is important here is that authors of the bill feel very strongly in their work product, what they do and their intentions. I have never once doubted the intentions of those who have brought this to us, that their prime intent was to make sure that frivolous lawsuits were a way of the past. But it is the people who invest in securities who have looked at this from the standpoint of protecting investors, and I have never seen such a

list of county officials that I placed in the RECORD from almost every single county in California, from the county administrators to the treasurers, to tax collectors. These are the people who know that they need to have protection from those who would seek to take advantage of investors. This list is extraordinary.

The League of California Cities wrote a letter to the President dated December 5, 1995:

> As representatives of municipal Government who oversee billions of dollars in investments, we strongly urge you to oppose the Securities Litigation Reform Act.

And they say:

> Any securities litigation reform must achieve a balance between protecting the rights of defrauded investors and protecting honest companies from unwarranted litigation. Abusive practices should be deterred and sternly sanctioned. However, we believe that investors would be penalized and become victims of security fraud and that wrongdoers would be rewarded.

And they call it ''an anti-investor bill which would impose new and blatantly unfair requirements on the victims of fraud, making it very difficult for them to seek redress through the courts.''

Now, the number of California governments opposed to this is staggering—not only governments but agencies: The Alameda County Employees' Retirement Association, Amador County Treasurer/tax collector, the treasurer of the AFSCME local in Pasadena, the Calaveras County Board of Supervisors, California Association of Treasurers and Tax Collectors, California Association of County Treasurers—we have more than 50 counties in our State—California Council of Senior Citizens Clubs of San Diego and Imperial Counties, California County Administrative Officers Association—that is the association of the administrators of counties, over 50; I am just listing a few here—the California Labor Federation, the California Government Finance Officers Association, the California Municipal Treasurers Association, the California Public Interest Research Group, the California State Association of Counties, the city of Albany, the city of Arcadia, the city of Barstow, the city of Beverly Hills, the cities of Burbank, Burlingame, El Monte, Fairfield, Fremont, Glendale, Hayward, Hemet, Huntington Beach, Irvine, Long Beach, Manhattan Beach, Moreno Valley, Newport Beach, Oceanside, Ontario, Riverside, the city of San Bernardino, San Fernando, San Francisco, Mayor Frank Jordan; city and county of San Francisco board of supervisors, city of San Jose, Mayor Susan Hammer; city of Santa Ana, city of Santa Rosa, city of Santee, city of South Pasadena, city of Stockton, city of Thousand Oaks, city of Ventura.

Why am I doing this? Because I am trying to make it clear that the opposition to this legislation is broad and it is deep. I will stop mentioning the cities, and I will shift to some of the counties: Del Norte County, El Dorado County, Fresno County, Glenn County, Humboldt County, Imperial County, Inyo County, Kern County, Kings County, Lake County, Lassen County treasurer/tax collector, Los Angeles County Employees Retirement, Los Angeles County Federation of Retired Union Members, Marin County—that is where I am from—Employees Retirement Corporation, Mariposa County, Mendocino County—I am at the M's. It goes on and on: San Diego County treasurer/tax collector, Sacramento County treasurer/tax collector, San Francisco Democratic County Central Committee, San Joaquin County, San Luis Obispo County, Santa Barbara County treasurer/tax collector, Senior Meals and Activities, Service Employees International.

Then it goes to the T's and the U's and the V's, and it ends with Yuba County Supervisors, county administrator and the treasurer/tax collector. And the number of editorials has been just extraordinary from my State.

One has to wonder why this has happened, and I think it is because this is a very complicated matter.

My friend from California had several problems that she wanted to clarify, and she feels comfortable that they have been clarified. But when you are rewriting securities law, Mr. President, which has protected investors since the 1930's, it is very complicated, and as a former stockbroker I can tell you when people used to call me they trusted me. They trusted me. And the fact of the matter is I would lose sleep rather than give someone terrible advice. And that is one of the reasons I did not stay in that business. It was very, very difficult, because I worried every time the stock market went down and an elderly retiree called me the next day. I just felt it was an enormous responsibility. student. Unfortunately, in our great country, the greatest on Earth, with the greatest free market system and the greatest, frankly, laws protecting investors, there are people who would take advantage of the elderly and of people who really are not sophisticated. And it is easy to do.

What this bill does, as you look at it and its transformation, unfortunately, is give people like the Charles Keating and people who really do not care about other people an opportunity to rip off people because the legal system will not go after them.

The way the bill is written, the pleading requirements are so difficult plaintiffs would have a hard time even getting into court. And even if they get into court, you have a specter over your head that an unfriendly judge could decide, if you are an elderly, small investor, for example, that your lawsuit did not have merit and you are going to have to pay the bills of those on the other side. And that has a very chilling effect.

Therefore, when the President vetoed this bill, he said very clearly that he would love to sign a securities reform bill. He wants to sign a securities reform bill. He wants to make sure that there are fewer frivolous lawsuits. He wants to make sure, in fact, that people in the Silicon Valley, my constituents, the senior Senator from California's constituents, are not hit with strike suits. None of us wants that.

Unfortunately those with another agenda have prevented that. Instead of having a bill that goes after those lawyers that are filing frivolous lawsuits, to quote one of the newspapers, ''Instead, the bill stabs the small investor in the back.''

That is why we have so many county treasurers and county administrators and boards of supervisors and mayors and the League of California Cities opposed to the bill as it is now written—these people know they want to protect their employees and retirees investments.

Mr. President, as we enter the battle of the budget, and we fight hard—in my view, this is what the President is doing—fighting hard to protect the middle class, trying hard so that our elderly will have Medicare, and the seniors in nursing homes will have Medicaid when they need it, and we have student loans for our children, and we have the police on the beat for our middle-class and all communities—we cannot divorce this bill from that battle. Who would be hurt the most if we do the wrong thing, which the President thinks we are about to do, here?

Many of the experts in this field warn us about this bill. Who will pay the price if we do the wrong thing? Not the very wealthy because, if the very, very wealthy get bilked in one investment, they are still on their feet. They are OK. They can survive. Not the very, very poor, because the very, very poor do not have money to invest.

This bill is going to be aimed at the solid middle class, those people who saved for their retirement and suddenly find out when they are bilked that they have no recourse because the securities laws were reformed.

Mr. President, there is a difference between reform and repeal. And I think the President has laid that out. He is opposed to the pleading requirements. He is opposed to the safe harbor. Many of us believe is not a safe harbor at all, but a pirate's cove because all you have to say to be immunized is, ''This is an estimate. This is just an estimate of future activity.'' Then you can hide behind that language.

So I hope that we sustain the President's veto. It was a courageous thing for him to veto, in my opinion. It is going to be a very close vote one way or another, maybe one, two, or three votes. I just hope we will stand with the President because I think he is fighting for the middle class in this veto.

I yield the floor at this time.

Mrs. FEINSTEIN addressed the Chair.

The PRESIDING OFFICER. The Senator from California, Senator FEINSTEIN.

Mrs. FEINSTEIN. If I might briefly respond to my respected colleague.

It is interesting, I guess, in a State as big as California one can have some different constituencies. My mail is, oh, maybe over 100 to 1 for the legislation rather than opposed to it. When I read the letters from the counties, that is when I saw they were functioning under a misimpression of what the safe harbor actually did. That is why, in my colloquy with Senator DODD, I tried to clarify these concerns. As I stated earlier, first, the stockbroker who sold the derivatives to cities or counties would not gain the protection of the safe harbor because brokers are ineligible; and, second, derivatives would not be protected by the safe harbor. So I tried to straighten that part out.

I want to point out that in California we are going through an economic change. High technology and biotechnology is a big source of jobs now and in the future. It is estimated that 62 percent of the high-technology companies that went public from 1988 to 1993 have faced securities lawsuits. And 62 percent of the companies that have gone public in the last 5 years have faced securities lawsuits in the State of California. That alone indicates that there is a problem that needs to be addressed.

What has concerned me in the legislation is a desire to address the problem and not throw out the goose that laid the golden egg. I want to protect the small investor, protect the county, and yet do away with the kind of lawsuit that happens because a companies' stock drops, a suit is filed, they press discovery and they move and collect a large settlement from the company, when the suit may be baseless.

Those kinds of frivolous suits concern me. I think it is a legitimate function of government to attempt to reform that. I also think it is important that this legislation strikes a balance and protects the consumer. Based on what I have seen, I believe it does.

More fundamentally, if it is proven to have a flaw or a problem, that flaw or problem can in fact be corrected. As I understand, it this legislation has taken some 5 or 6 years now to develop. The bill has been refined and refined over time. The bill has finally passes both Houses, the veto override has been supported in the House of Representatives. It seems to me it is time to get on with it and give the kind of necessary reform that I believe this bill provides in an evenhanded manner. I thank the Chair.

Mrs. BOXER. Will my friend yield to me for just a comment? And that is, I respect her completely for coming down on the other side. Of course, there are two sides to every story. I was just pointing out that as a former stockbroker myself and having felt that responsibility on my shoulders, the people who I really do tend to listen to in these matters are people who do not have a stake in it, and that is the people who are the investors.

All they want is a safe securities market. I agree with my friend, we may be back here fixing this bill. I think that the President has given us a road map to do that. I do not want to go on except to close, and I know my friend from North Carolina has been so patient.

Money magazine has really taken this issue on. And I think they make a very good point here when they say,

> The President should not sign [the bill]. . . . Here's why: The bill helps executives get away with lying. Essentially, lying executives get two escape hatches. The bill protects them if, say, they simply call their phony earnings forecast a forward-looking statement and add some cautionary boilerplate language.

And they talk about the fact that legitimate lawsuits would not get filed. So reasonable people come down on different sides. I want reform, but I want to see it done in a way that we stop these frivolous lawsuits but we still protect the small investors. Thank you very much for your patience, I say to my friend from North Carolina. I yield the floor.

The PRESIDING OFFICER. The Senator from North Carolina is recognized.

Mr. FAIRCLOTH. I rise in strong support of the motion to override the President's veto of H.R. 1058.

Mr. President, securities litigation reform is extremely important to the future of our economy. Obviously, the President disagrees. It is unfortunate. The President pretends that he supports our high-technology industry, but his veto showed that he cares more about trial lawyers than the growth of business in this country.

The Wall Street Journal may have called it right. They said Bill Clinton could be the President of torts.

Mr. President, the irony of this is that it is not a partisan issue. The lead sponsor of this bill is my friend from Connecticut, who is chairman of the Democratic National Committee. Republicans and Democrats alike have recognized the strike suits are very serious problems.

Mr. President, America is the undisputed leader in technology. No other country comes close to our leadership in this area. But a small cadre of lawyers have found a way to make a living by launching these strike suits against companies.

This is wrong. It is hurting America, it is hurting our economic growth, it is slowing our job growth, and it has to stop. It is hurting our fastest growing high-technology business. This bill is a good start.

Mr. President, these lawsuits that have been filed against these companies have little to no merit, but they are filed for the purpose of blackmailing companies into settling rather than going to court. In other words, it is cheaper to buy them off than it is to fight it in court.

The cost of these suits to the American economy is no small matter. At the end of 1993, class action lawsuits were seeking $28 billion in damages—$28 billion—which is a staggering amount, and most of these lawsuits are totally worthless.

The committee has had example after example of how absurd the cases can be. For example, one individual has filed against 80 companies in which he held stock and, in most cases, an infinitesimal amount of stock. Another individual has filed 38 lawsuits, 14 of them with the same law firm.

Another man, a retiree since 1990, 5 years, has filed 92 lawsuits, one for every year of his age. He is 92.

One law firm files a securities suit every 5 working days, one a week. They are just churning them out, whether there is any validity or not. That is how much it takes to meet the payroll, so they churn out one a week. In many cases, these lawsuits are filed within hours of price stock drops. The National Law Journal reported that of 46 cases studied, 12 were filed within 1 day and another within a week of publication of unfavorable news about a company.

Anybody that has ever run a company knows that all the news is not always favorable, no matter how hard you work at it. Mr. President, a point to remember in this debate is that investors are not helped by these lawsuits. If the President vetoed this bill for the small investor, then he missed the point in what the bill was about, and he is wrong. He is not protecting the little investor, he is only protecting a cottage industry of trial lawyers who make a living out of these lawsuits, and they have made a very plush living.

Study after study shows that lawyers get the lion's share of the settlements. We had testimony that the average investor receives 6 or 7 cents for every dollar lost in the market because of these suits, and this is before the lawyers are paid and they get the lion's share of it.

A couple of weeks ago, Fortune magazine had a picture of two lawyers who said, ''Beware of this type of lawyers, they will destroy your company.'' That was the cover story. So this is going on and the business investment community is aware of it.

One of the significant parts of the bill allows courts to determine who the lead plaintiff is, one that is most adequate to represent the class, not a person who ran to the courthouse and got there first, and, in many cases, the way these suits have been filed, it is simply who got to the courthouse first, not who had the real vested interest.

If the President wants to protect investors, this is the bill to do it. The lead plaintiff must file a sworn statement that he or she did not buy the securities at the direction of counsel. Too often, many of these plaintiffs are straw men acting on behalf of the lawyers who instructed them to buy the stock in order that they could file the suit, and they make a profession out of filing the suits.

This provision will encourage institutional investors to be the lead plaintiff, the people who have a real vested interest. After all, they have the most at stake in these lawsuits. Institutional investors have $9.5 billion in assets. They account for 51 percent of the equity market. Further, pension funds $4.5 trillion in assets.

These funds—mutual funds and pension funds—represent the holdings of millions of Americans, many of them small savers. They have every right to have fraudulent lawsuits brought fairly and correctly, not just because a certain lawyer jumped in front of him and got to the courthouse first.

Mr. President, the conference report will punish lawyers that file frivolous lawsuits. The bill requires a mandatory review by the court of whether a lawyer filed frivolous motions and pleadings, known as rule 11 under the Federal Rules of Civil Procedure. What could be the problem with this provision—enforcing the Rules of Civil Procedure?

The veto message was concerned with the pleadings standards, but a key part of this bill is stopping lawsuits that allege no specific wrongdoing but just generally allege fraud, just blanket fraud, because the stock price dropped. We have seen some pretty sharp stock price drops lately and not because anybody committed fraud. These kinds of suits get the plaintiff into court and then they can start demanding settlement.

The bill requires that an attorney in a private action must allege facts giving rise to a strong inference that the defendant had the required state of mind to make an untrue statement. At the very least, this provision requires that lawyers have more to go on than just generally alleging fraud.

The President's veto message also objected to the discovery process. To put it plainly, once a lawyer files a frivolous lawsuit, with little or no facts, he gets the ability to engage in discovery. This allows him or her to rifle through the records of a company looking for anything with any particular spin that smacks of fraud. He does not have to have anything when he starts. He gets it after he files his suit.

Mr. President, 80 percent of the cost of litigation is in the discovery process. This bill would stop the discovery process while a motion to dismiss is being deliberated. In other words, the court has to find that the complaint has merit before the company has to spend time and money responding to voluminous document requests.

This goes to the heart of this bill: File a lawsuit and then ask for the world in discovery and hope that the company settles the suit to avoid the cost of litigation. The lawyers take home a tidy sum of money for very little work. This is what we are trying to stop, and that is the blackmailing of corporate America.

Let me just say a word about the safe harbor provision. This is critically important to the flow of information for investors. Right now, companies are literally frightened to project their earnings, or anything else for that matter, because if they do and it happens to turn out wrong, then they are going to be sued for fraud. They cannot even give an honest projection of what they might make, because if it happens to be wrong, if a change in circumstances, events, business down, up, they are subject to fraud.

Big investors and small ones alike, mutual funds, pension funds, anybody that is investing needs this kind of information projection to make wise and prudent investment decisions. It is a shame that due to the actions of a small group of parasitic lawyers that the free flow of information has been muzzled, that you simply cannot find out what a company plans to do or can do.

Mr. President, another important reform that is being made by H.R. 1058 is reform of proportionate liability rules. This bill requires that those who are responsible for causing a loss pay their fair share of the loss but no more. If they cause 1 percent of the loss, they pay 1 percent. This is the way it should be.

Too many lawyers have gone after companies looking for the deep pockets, and this can be anybody that had anything to do with the operation of the company. It can be lawyers, accounting firms—anyone that was touched. So they are simply looking for the deep pockets. In many cases, a lawyer would not even bother to file the suit but for the deep pockets of the attorney firm or accountants, whoever might be involved.

Despite this provision, there are some circumstances when individuals will pay more than they really owe. For example, we have a so-called widows and orphans provision that imposes joint and several liability on everyone to cover the losses for persons with net worth below $200,000. In other words, it is protecting those people of less than $200,000, and everyone has to pony up to pay their claim.

Further, if a defendant is insolvent, other parties have to contribute another 50 percent of their liability to make up for the insolvent defendant.

On this particular point, the conference report goes a long way toward protecting small investors financially. They will not be left out in the cold if the principal target is insolvent. Small investors will be fully protected. Those who have a net worth over $200,000 will be fairly compensated.

Finally, anyone who knowingly commits fraud will be fully liable. There is no retreat from this. If they knowingly commit fraud, they are fully liable.

Mr. President, I am a strong supporter of securities litigation reform, and I am a supporter of overall legal reform. I hope this is just the beginning. Some have suggested that the indirect cost of all this litigation is $300 billion a year.

This is a heavy price for American business and industry to pay. It is a heavy tax on the American public for the rights of a few lawyers who engage in these frivolous strike suits.

Mr. President, the SEC has sent a letter to the committee in which they state that the conference report addresses their ''principal concern.''

Mr. President, the Washington Post called it a truly useful piece of legislation.

As I said earlier, this bill is too important to our economy not to override the President's veto. I urge the Senate to vote to override this veto. I simply feel that American industry and American business—particularly the high-technology businesses—have simply fallen victim to the piranha-type lawyer who goes after them whether there is any justification to his claim or not. But because of the cost of the lawsuit, he gleans a lot of money.

With that, I yield the floor.

Mr. DODD addressed the Chair.

The PRESIDING OFFICER (Mr. GORTON). The Senator from Connecticut [Mr. DODD] is recognized.

Mr. DODD. Mr. President, this is a moment of some unease, obviously, for this particular Senator from Connecticut to be in a disagreement with my President on this issue. But I am going to be urging my colleagues to override the President's veto. I do so because I believe this bill, passed previously in this body and adopted again in a conference report, is a good bill and one that deserves support.

I appreciate the arguments raised by the President. I have had the privilege of discussing them with him and his staff over a number of months. And the President arrived at a different conclusion. I respect that.

Much has been made of the fact that I have a second hat that I wear from time to time, that is called the general chairmanship of the Democratic Party. I am very proud of that hat. As I said at the outset when I accepted that position, there would be times, I suspected, where my President, the leader of my party, and I would disagree on issues. This happens to be one of those moments. I hope there are not many, but it is one of those moments. So I regret that. Nevertheless, I feel that this is an important bill, one that I have spent a great deal of time on going back to 1991, when my colleagues—principally Senator DOMENICI of New Mexico—and others, began to work on this legislation in this body, and through a process of numerous hearings and the like, we arrived at the point we are at today.

I would like to take a few minutes, if I can, and discuss the matters of particular controversy at this moment and why I think that an override is appropriate.

First of all, I point out to my colleagues—and I think I heard my colleague from New Mexico make this point when he was addressing the Chamber earlier this morning—this is

truly a bipartisan bill, Mr. President. I realize that may not sound like much. It is certainly not a justification for supporting it. Unfortunately, there are fewer and fewer occasions when we have truly bipartisan bills like this. It is worthy of note because an awful lot of people on both sides of the aisle here have worked very hard to put this bill together. Is it a perfect bill? I suspect not. I have never seen one of those in my tenure here in Congress. Have we done everything exactly right? Probably not. Only time will tell where we have to make some corrections. But we have addressed some fundamental underlying problems that, by most people's comments, admittedly needed to be corrected. Those are the principal concerns.

I am grateful, in fact, that the President in his veto statement acknowledges that. We are no longer debating safe harbor, which was a matter of great controversy, or proportionate liability. We are no longer debating an issue my colleague from North Carolina pointed out a few moments ago, the right of the most injured plaintiffs to have at least the opportunity—it does not require it—but at least the opportunity to be the lead plaintiffs in the case, to require that in settlements or in judicial conclusions that the plaintiffs have an opportunity to get the award, and that the attorneys will take a second seat to the plaintiffs when it comes to divvying up the money that may come to them as a result of settlements, or a judicial award.

These are the principal matters in this piece of legislation. And the President, in his veto message, agrees with us on virtually all of them. In fact, in his comments—and I commend him for them—he has said this is a good bill. He has problems with two areas: pleadings and rule 11. I do not say they are unimportant, but certainly when you weigh them in the context of the overall bill, it amounts to just a handful of words—a fraction, if you will, of the overall achievement in the legislation.

So the bipartisan nature of this legislation, I think, is very, very important, and shortly I will discuss the specific concerns that I have mentioned, the pleadings area and the rule 11 area.

As I mentioned earlier, we have been debating this bill for going on more than 4 years now, into our third Congress on this legislation. Some 1,600 days have passed since the legislation was first introduced in 1991. There have been 12 public congressional hearings on this bill. That is an inordinately high number of congressional hearings on any single piece of legislation. Yet, that is how many have been held on this bill.

We have had 95 witnesses appear before congressional committees, representing all the different points of view, on securities litigation reform. We have had more than 4,000 pages of testimony, been a part of the legislative history that has led us to this bill that is now before us under these procedural circumstances.

There have been a half dozen staff and committee reports issued on the substance of the legislation, and, in fact, we have debated this piece of legislation for 7 full days over this past year here on the floor of the U.S. Senate.

Given this lengthy history, it is particularly disappointing that a veto of the bill has occurred, based on the issues that, frankly, have never previously been the subject of most of the contention and most of the debate. In fact, the President has stated his support, as I said earlier, for many of the most discussed and central issues, like the safe harbor provisions, proportionate liability provisions, the new lead plaintiff provisions, prohibitions on professional plaintiffs, and the discretionary bonding provisions. None of those issues should be the topic of our discussion today because, candidly, the President said he agrees with these issues.

What we are talking about are the issues he says he is in disagreement with. It is not an overstatement to say that his veto message indicates his support for about 95 percent of this legislation, and his veto is based on somewhere between 5 percent and 1 percent of the issues that are included in this bill.

In fact, when you boil it down, Mr. President, we are having a fight over 11 words—11 words out of over 11,000 words in the bill itself. Eleven words are the subject of the veto.

So the President vetoed this bill because of a relatively small percentage of the matters included in the legislation and apparently some wording in the statement of managers. It is somewhat rare that a veto would involve a statement of managers, but nonetheless, that was included in the veto message as well. So, Mr. President, I intend, obviously, no disrespect at all to the President, but this is the first veto I can recall where part of a veto message was based on a statement of managers.

As we discuss the issues upon which the President vetoed the conference report, it is important to remember some of the official statements that the administration has previously made, some of which directly contradict the veto message itself. Let me begin with the pleading standards, if I may.

Back in May of this year the Senate Banking Committee codified the essence of the pleading standards of the U.S. Second Circuit Court of Appeals. Then on June 23 of this year, S. 240, the bill before us moved to the floor. The administration, as administrations do, issued its statement of policy in which it praised the pleading standards ''as sensible and workable.'' That was the administration's statement of policy regarding the pleading standards in June of this year. The only difference between those pleading standards that were applauded in June and those endorsed by the administration, the ones before us today, are three words—the only difference between what was in the bill in June when the statement of policy came out and what is before you today are three words that have changed, and the words represent a technical change requested, by the way, by the Judicial Conference of the United States Federal Judiciary. These are not words we came up with. They were not words of the opponents or proponents, but they were altered at the recommendation of the Judicial Conference, in a letter from Judge Anthony Scirica to the committee staff when asked to give their comments on the pleading standards.

I know it has been included in the RECORD, but I ask unanimous consent that the letter dated October 31, 1995, be printed in the RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

U.S. COURT OF APPEALS,
THIRD CIRCUIT,
Philadelphia, PA, October 31, 1995.

MS. LAURA UNGER,
MR. ROBERT GIUFFRA,
Senate Committee on Banking, Housing and Urban Affairs, Dirksen Senate Office Building, Washington, DC.

DEAR LAURA AND BOB: I have a few suggestions for your consideration on the Rule 11 issue.

Page 24, line 11: Insert ''complaint'' before ''responsive pleading.''

Page 24, line 19: Insert ''substantial'' before ''failure.''

''Complaint'' would be added to item (i), so there is a clear provision that reaches any failure of the complaint to comply with Rule 11. A small offense would be met by mandatory attorney fees and expenses caused by the offense; if item (ii) is modified without this change, a gap is left in the statutory scheme. The result still is a big change from present Rule 11, which restricts an award of attorney fees to a sanction ''imposed on motion and warranted for effective deterrence.'' A serious offense—filing an unfounded action—would be reached under item (ii).

I also wish to confirm our prior conversation on scienter and the pleading requirement.

Page 31, line 5: Delete ''set forth all information'' and insert in its place ''state with particularity.''

Page 31, line 12: Delete ''specifically allege'' and insert in its place ''state with particularity.''

As I indicated, this would conform with the existing language in Rule 9(b) which provides that ''the circumstances constituting fraud or mistake shall be stated with particularity.''

Also, page 24, line 1: Delete ''entering'' and substitute ''making.''

Page 24, line 4: Delete ''of its finding.''

Many thanks.

Sincerely,

ANTHONY J. SCIRICA.

Mr. DODD. Mr. President, let me describe what the three words are so my colleagues know what we are talking about. The words that we had in the bill were ''specifically allege facts giving rise to a strong inference of fraud.'' That was the language we had—''specifically allege facts giving rise to a strong inference of fraud.'' What the Judicial Conference recommended was that we change that language to ''state with particularity facts giving rise to a

strong inference of fraud.'' So the change went from ''specifically allege'' to ''state with particularity.''

That is the change that occurred from the language that was applauded in June by the administration and in its statement of policy as to where it stood on the bill and what was adopted in the conference report. The change occurred without a great debate or a thunder and lightning storm or a conference in which the sides were in contentious argument. This recommendation of the Judicial Conference was accepted as something the conferees felt made sense.

So we did what the judges asked us to do, which is, I thought, how you normally proceed. You ask people who will be sitting on these matters to give us their recommendations—they are not Democrats, Republicans, named in a partisan debate—but merely their recommendations to the conference report.

Mr. SARBANES. Will the Senator yield?

Mr. DODD. If I could complete my whole comment because I want to get to the Specter amendment.

Mr. SARBANES. I was not clear what conference the Senator was referring to about thunder and lightning.

Mr. DODD. In the conference between the House and the Senate.

Mr. SARBANES. There was no legitimate conference. There were meetings of all the same-thinking types, and then a meeting of the conference committee was called to which everyone came, including people who had a different point of view, and the thing was simply railroaded through.

Obviously, there was not thunder and lightning and this so-called conference—there was no such conference.

Mr. DODD. If I may regain the floor, maybe my colleague was not at the same conference meeting I was, but I certainly recall a lot of thunder and lightning in the meeting about statements being made about what was in the bill.

Mr. SARBANES. But no discussion of substance. The true thinkers had worked all the substance out at other secret meetings before they ever came to the conference. The Senator knows that as well as I do.

Mr. DODD. If this were the decision of my colleague from Maryland to have vetoed this bill, he would have vetoed the bill, but he would not have vetoed the bill on the basis of pleadings. He would have vetoed the bill because he fundamentally disagrees with the legislation. I respect that.

But I was talking about the administration's position when it comes to the veto. The administration's position in June, when it came to the pleadings, was ''to support the pleading standards that were included in the bill'' that came out of the Banking Committee. When we went to conference there were no comments made by the administration that they disagreed at all with the change of language of ''specifically allege'' to ''state with particularity.''

That is the point in the veto message. I expect my colleagues have much more fundamental disagreements with the bill than the President, but we are talking about the Presidential veto.

The judges, I might point out, did not request out of thin air that the language be changed. The requested change in the language of the statute, we were told, was to conform with the language of rule 9(b) of the Federal Rules of Civil Procedure, which governs how attorneys should draft fraud complaints.

Mr. President, there is absolutely no substantive difference between the phrase ''specifically allege'' and the phrase ''state with particularity.'' The only difference, and the reason that the Federal judges wanted the change, is that ''particularity'' already has a meaning under law and ''specifically allege'' does not. Therefore, this change would produce a clearer, more consistent standard in the pleadings section of the legislation.

I also note, Mr. President, in April of this year the Chairman of the Securities and Exchange Commission, Arthur Levitt, urged the Banking Committee to adopt—and I quote from the testimony before the committee—''the second circuit pleading requirement that plaintiffs plead with particularity''—he said—''facts that give rise to strong inference of fraudulent intent by the defendant.''

I think it is particularly distressing, Mr. President, that the administration has reversed course on the pleading standards based on this technical change requested by the impartial Judicial Conference of the United States.

A final note, if I can, regarding this particular section, on the legislative history to which the White House has objected. The White House has endorsed the pleading standards for the same language in the Banking Committee report on S. 240. Neither bill codifies the entire case law of the second circuit, as the administration says it wishes it did, and that is one of the reasons it has expressed its objection. The White House has also raised the issue of the Specter amendment, which was added to S. 240 several days after the administration endorsed the pleading standards in the bill that came to the floor of the U.S. Senate.

Now, our good friend from Pennsylvania, I gather, has already addressed this issue on the floor of the Senate earlier today and, of course, at the time he offered the amendment and at the time we adopted the conference report. As he claimed, his amendment would codify guidance on how plaintiffs who establish the strong inference of fraud. The difference was not over the issues of ''state with particularity'' or ''specifically allege'' wording, but rather, how do you establish the strong inference of fraud?

Unfortunately, because the Specter amendment failed to include key guidance from the second circuit, it would have had the effect of totally undermining the pleading standards that we were seeking to establish and that have been supported by both the Securities and Exchange Commission and the White House in its earlier statements.

Let me go into this, if I may. First, I want to read to my colleagues, if I can, a memorandum sent to the President of the United States from Prof. Joseph Grundfest of the Stanford Law School and previously a Commissioner with the Securities and Exchange Commission, on the subject of pleadings standards and pending securities reform legislation. He is one of the most knowledgeable people in this particular area:

The pleading standard articulated by the Second Circuit Court of Appeals is intended simply to require the plaintiff to allege facts sufficient to give rise to a strong inference of *motive* to defraud. Plaintiffs must do more than make bald assertions as to motive, but are not required to develop the entire case in the pleadings. While this standard differs from the standard applied in some more lenient circuits, particularly the Ninth Circuit, it has not resulted in over-deterrence in the Second Circuit or in excessive dismissals. Indeed, the Second Circuit remains one of the most active in the country for 10b–5 claims.

As I read the securities litigation conference report, the pleading standard is faithful to the Second Circuit's test. Indeed, I concur with the decision to eliminate the Specter amendment language, which was an incomplete and inaccurate codification of case law in the circuit.

As is stated in a recent Harvard Law Review article, codification of a uniform pleading standard in 10b–5 cases would eliminate the current confusion among circuits. The Second Circuit standard is among the most thoroughly tested, and it also balances deterrence of unjustified claims with the need to retain a strong private right of action. Indeed, the Second Circuit is widely respected for its legal sophistication and acumen in matters relating to securities and business litigation. The fact that the Second Circuit evolved the strong inference standard is therefore worthy of particular deference and respect.

In short, I support the pleading provision of the conference report.

Mr. President, I ask unanimous consent the memorandum from Professor Grundfest at Standford Law School be printed in the RECORD at this point.

There being no objection, the memorandum was ordered to be printed in the RECORD, as follows:

MEMORANDUM

To: President Clinton, Through Elena Kagan, Office of the White House Counsel.

From: Professor Joseph A Grundfest, Stanford Law School, Commissioner, Securities and Exchange Commission, 1985–1990.

Subject: Pleading Standard in Pending Securities Reform Legislation.

Date: December 19, 1995.

The pleading standard articulated by the Second Circuit Court of Appeals is intended simply to require the plaintiff to allege facts sufficient to give rise to a strong inference of *motive* to defraud. Plaintiffs must do more than make bald assertions as to motive, but are not required to develop the entire case in the pleadings. While this standard differs from the standard applied in some more lenient circuits, particularly the Ninth Circuit, it has not resulted in over-deterrence in

the Second Circuit or in excessive dismissals. Indeed, the Second Circuit remains one of the most active in the country for 10b–5 claims.

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In short, I support the pleading provision of the conference report.

Mr. DODD. Mr. President, our colleague from Pennsylvania, when he offered his amendment on the floor of the Senate, said that what he wanted to do was to take the guidance from the second circuit and codify that as well.

With all due respect to my colleague from Pennsylvania, the language of his amendment did not really cover all of the guidance. His amendment stated that ''strong inference of fraudulent intent for purposes of paragraph 1, a strong inference that the defendant acted with the required state of mind, may be required, either, A, by alleging facts to show that the defendant had both motive and opportunity to commit fraud or, B, by alleging facts that constitute strong circumstantial evidence of conscious misbehavior or recklessness by the defendant.''

What is my problem with that? The problem with it is that is not the guidance. He omits what Judge Newman has included as his guidance, and the guidance that was not included in the amendment says, for part B, ''where motive is not apparent.'' Where motive is apparent, you do not have to make any allegations of a lot of circumstances. If you have a clear motive, you do not have to worry about the circumstances or the alleged strong facts. Where you do not have motive, apparently, and that can be a case where it is hard to get at that motive, then you are going to allege circumstances. There Judge Newman says, ''Where motive is not apparent, it is still possible to plead scienter by identifying circumstances indicating conscious behavior by the defendant, though the strength of the circumstantial allegations must be correspondingly greater.'' Greater. The Specter amendment did not distinguish at all between the circumstances in part A or part B of his amendment, and therefore did not really follow the guidance of the second circuit. So that is the reason that amendment was taken out.

You could have gone in, I suppose, and said why did you not include the other language here? The problem was, in a sense, by codifying guidance you get into an area where you can get some differences of opinion on this. And arguably it could have, I suppose, gone back and included all of it, but the decision was to take it out on the assumption that courts will look to the guidance.

We have established the standard clearly. We have clearly established the standard of alleging facts with particularity, showing a strong inference of motive. Then the guidance of the court would be followed.

But the suggestion that the standard and—the guidance, rather, was included in the Specter amendment, omits—omits that where a motive is not apparent, the strength of circumstantial allegations must be correspondingly greater. That was omitted. And that is the reason that, with all due respect to the administration, they are, I think, hanging their hat on the wrong issue here.

We have met the second circuit standard here, as indicated by the memorandum from Judge Grundfest, Professor Grundfest at Stanford. We have met that standard. We have left out the guidance. That does not mean you disregard it. But if you are going to follow the guidance, as Senator SPECTER suggested, then the guidance must include, in part B, that you have circumstantial allegations that are correspondingly greater than they would be if the motive was apparent.

So that is the first issue and frankly it is a marginal issue, I would say. It has some importance. I do not disregard it. But to suggest somehow this bill ought to be vetoed over that, I think is not correct.

I am not going to dwell at length on the rule 11 issues, except to make the following applications. The intent and application of the rule 11 provisions of the conference report are identical to the rule 11 provisions from S. 240 that the administration states in the veto message that it now has difficulty with. In fact, the only difference in the configuration of this provision in S. 240 is the Senate adopted a sanction for rule 11 that allowed a victim of a violation to collect the legal fees and costs incurred as a direct result of the violation. The conference report simply makes clear that it was our intent, that a substantial violation, a substantial violation in the initial complaint could trigger sanctions that included all attorney's fees and costs for the entire action.

That was our intent anyway. If you file a complaint that does not meet—that would fall under rule 11, and I will not read all four areas where a motion or a complaint would be deficient in terms of rule 11—but, if you have initiated a complaint and at the end of the action the judge goes back and says that complaint that you brought—and these have to be substantial violations—did not meet that standard, it is logical that it would have to apply to the entire proceeding.

If you brought a frivolous lawsuit, initiated a frivolous lawsuit, then all of the costs come thereafter.

You do not apply that same standard with motions, obviously, assuming the complaint does not violate rule 11. But if a defense lawyer brings a motion that is frivolous, then the costs associated with that, obviously would have to be borne by the defense lawyers as well, regarding that motion. So, logic would indicate that there is a difference here.

Mr. SARBANES. Will the Senator yield?

Mr. DODD. I will be glad to yield.

Mr. SARBANES. The defense would not be held liable for all the costs? Plaintiff would but not the defense?

Mr. DODD. Yes, they would be. My point was this: if—Let us assume for a second that the initial complaint is a frivolous complaint. The initiation of the action, what begins it, violates rule 11, is a substantial violation of rule 11, and then at the end of that case the judge finds that there was a substantial violation of that, then the costs associated with that entire case, because the initiation of the action was wrong.

Whereas, if a defense lawyer, in the process of handling the case, files a motion that violates rule 11, then the costs associated with that motion, as I understand it, would then be borne by the defense counsel incurring plaintiff's attorney's fees.

Mr. SARBANES. If the Senator will yield, I find that an absolutely staggering assertion, saying that you should have this disparity in treatment between plaintiff and the defense.

The Senate-passed bill contained a presumption that the appropriate sanction was an award of reasonable attorney's fees and other expenses incurred as a direct result of the violation, and it applied that to both plaintiff and the defendant, as the bill went out of the Senate.

The conference changed that. So they imposed a much more onerous burden upon plaintiff as compared with the defendant. There is no basis in logic or reason to do that.

Mr. DODD. Oh, absolutely there is. Absolutely there is.

The costs associated are a direct result of the complaint. If you have initiated the complaint here, and all the costs then come after, that is the action that initiated the activity, it seems to me. That is the reason. That was certainly—for those of us who were working on it, that was the intent. At any rate, that is why. And then of course thereafter there is a balance.

But there is a distinction, obviously. If you start an action and you violate rule 11 here—and for the sake of discussion you have brought an action which, to pick out in the first instance here, let us say No. 1, under rule 11, ''under circumstance that is not being presented for any improper purpose such as to harass or cause unnecessary delay or needless increased costs''—let us say ''to harass.'' You violated paragraph 1

of rule 11. The sole purpose of your lawsuit was to harass. That is what you would have to be found guilty of. So you filed a complaint for sole purpose to harass a defendant. That is the reason you brought the action. If the court finds in fact that was the reason, I think the attorney who brought the action not for good cause but solely to harass a defendant, and incurred costs thereafter that the defendant had to pay to defend an action brought solely to harass the defendant—yes, I do think that attorney should have to pay the cost of that entire case, if the sole purpose was to harass the defendant.

Mr. SARBANES. That would be the direct result of a violation under the language of the Senate-passed bill. In the conference, they changed this language.

Mr. DODD. No. I do not know.

Mr. SARBANES. They changed it in such a way that you get a disparate treatment of the plaintiff and the defendant. There is no basis to do that.

Mr. DODD. Let me finish my thought, if I can. Let me tell you what the change is.

Mr. SARBANES. I apologize to the Senator.

Mr. DODD. Nevertheless, Mr. President, we also provided some protections for plaintiffs, a presumptive sanction for initiating illegal litigation. It is not triggered unless the complaint substantially violates rule 11. So we added that part to it. There are plaintiffs who violate rule 11. Only plaintiffs file complaints, obviously, and so plaintiffs get the benefit of this heightened rule 11 threshold. Plaintiffs face sanctions only if they committed, as I said, a substantial violation.

So my point here again is that that was certainly our intent to begin with. Again, I have stated earlier, I do not like the idea—my colleagues may recall, and I see my friend from New Mexico is on the floor here—that initially you had proposals that would have said, ''Well, if you lose the case, you pay.'' That is the British rule.

I stated on this floor that I would vehemently oppose this legislation if we had a ''loser pays'' provision. A person could have a good case and lose the case. I would vehemently oppose any legislation that would have such a chilling effect. A plaintiff who thinks they have a good case—who thinks they have been harmed and injured because of a defendant's actions—and loses the case, we should make that defendant pay the cost to the plaintiff.

That is a very different situation from a violation of rule 11, where the action or the complaint is frivolous, or instances in which the plaintiff is out to harass defendants. In that case, frankly, I think the attorney should pay. I think that is the best weapon we have here to discourage these frivolous lawsuits. You had better think twice. If you are just going to file these things, make wild accusations not based on fact, and in some cases just designed to harass people, by God you ought to be asked to pay. And that is what people are angry about in this country because that is what has happened too often. Unfortunately, it is not usually the named defendants who pay. It is the people that insure—the insurance companies—the people who work in these places who end up paying. It usually is not the big guys at the top. It is other people who work in these facilities, people who invest in them, or others who end up paying the bill. When that happens, there ought to be a cost associated with it. Remember, it has to be a substantial violation in those particular matters.

Mr. President, let me also make abundantly clear that in making this change, as I said earlier, we imposed a higher burden of proof in violation of the complaint by a requirement of substantial. The entire intent of the legislation is to deter frivolous litigation from the beginning.

As I said a moment ago, why should there not be some significant sanction for initiating an action that violates the standards of the Federal Rules of Civil Procedure? Why have rule 11? Maybe we should have struck rule 11 entirely. If you are going to have rule 11 that says if you harass people or bring frivolous lawsuits, rule 11 has existed for decades. The problem is, it has only been a piece of paper. It has hardly ever been invoked at all. It has never been a threat to anybody. Maybe we should have gotten rid of it altogether. Maybe we should have done that to satisfy some people. If you are going to have it, make sure it means something. If you harass or bring a suit without any basis in fact, think twice about it. If there is no economic penalty to it, I do not know how to clean up the mess these frivolous suits have created. That is why it is included.

Those are more protections, by the way. As I said earlier, we should not forget that the conference report also gives the judge in these cases broad discretion to waive the sanction against the violating party if the judge finds that the violation was de minimis or it would be an unjust burden for the violator to pay the sanctions. Some might argue that we should not have included that. But, nevertheless, it is in there to have the judge find it is an unjust burden. We are not going to ask you to pay. You have to violate rule 11. There has to be finding that you have violated this rule of bringing frivolous lawsuits—not that you lost or won the case, but that you violated rule 11.

As I said, those are more protections for plaintiffs than currently exist in rule 11, which give no discretionary power to a judge to waive the sanctions when he or she finds a violation of rule 11. Under present law, if a judge found a violation of rule 11, then he or she has to impose the sanctions. We provide some protection here for these plaintiffs' attorneys if in fact the judge does find that they have violated—a substantial violation.

Mr. President, I am sure there will be ample opportunity to debate some of these highly technical matters. I hope we would get to a vote on this. I do not enjoy belaboring this issue. We spent days on this bill.

Let me say again that there are a number of my colleagues who fundamentally disagree with this bill. I respect that. I disagree with them, but I understand their objections. But I have to repeat: I do not understand having been through this process now.

I was asked months ago—my colleagues ought to know this—to address some concerns that the administration had with the bill, particularly with safe harbor. There were a couple of other areas the administration had problems with—aiding and abetting and the statute of limitations. I offered the amendment on the statute of limitations to give a longer period of time. I lost that in committee, and I lost it here on the floor.

In the aiding abetting provisions, we provided half a loaf here by allowing the SEC to deal with the class actions. We did not go as far as some would like, even I would like. But it was a major point of contention for the administration. In conversation after conversation after conversation, it was safe harbor—fix safe harbor, Senator. Get that safe harbor straightened out.

I cannot tell you the hours spent on the safe harbor issue because I wanted the President to sign this bill. I kept on telling them that if we did fix safe harbor, I felt confident that the bill would be signed. We worked for days on this, and ended up with language that was supported by the Securities and Exchange Commission. It met their concerns. In fact, the President in his veto message applauded us for having done it. He supports the safe harbor provision. And then I find out after the conference report is voted on that all of a sudden there are a couple of issues—not issues that are not of concern to my colleagues on the floor who object to the bill. I understand that. But I must say to my colleagues, the issue of pleadings and rule 11 was never a major issue, not to the administration. I was never asked by the administration to address the pleadings or the rule 11 issue. The only thing I was asked to address was safe harbor, aiding, abetting, and the statute of limitations. And on those two, there was an appreciation that we had done the best we could. But you do not veto a bill for what is not in the legislation.

I do not disagree that my colleagues here have difficulty with the pleadings in rule 11, but we are talking about a veto here today and the veto message. The veto message was on pleadings and rule 11 and some language in the statement of managers. That is a very small percentage of this bill. It is 11 words out of 11,800 words in this bill—11 words. After 4 years, 12 congressional hearings, 100 witnesses, 5,000 pages of testimony, we are down here about to lose that kind of an effort over 11 words.

Mr. President, we did not write the Ten Commandants here. This is not

etched in marble. I said this to my colleagues elsewhere. I have been mystified. Nobody would stand up with a bill and say that we have offered you the perfect piece of legislation. I cannot say that. I think we have done a good job here in both Chambers of the Congress, the House and the Senate, with Democrats and Republicans, and with 4 years of effort. We have put together a good bill, and in my view we have done it the way a bill ought to be adopted. Do we know it is perfect? No, we do not. If something comes up a year or two from now where there is a problem, you fix it.

We have had this problem of frivolous law suits for years, and we are trying to fix it. We may lose the opportunity to do that because of some people's concerns about things that I think, frankly, should not be matters of concern, but if they turn out to be, we can correct them. But you do not squander the opportunity to change a situation so fundamentally awry it screams out for solution.

Today, with great regret, with great regret, I urge my colleagues to override this veto and to adopt this legislation by that action, and let us get on with the business of other matters that are before this body.

With that, Mr. President, I yield the floor.

Mr. SARBANES addressed the Chair.

The PRESIDING OFFICER. The Senator from Maryland.

Mr. SARBANES. Mr. President, I observe for my colleague from Connecticut that the two words ''I do''—it is only two words—but they have tremendous, far-reaching significance. So the fact that there are only 11 words, you know, if they are critical 11 words they can make a tremendous difference, and in the lives of people there are the two words ''I do.'' They can make an enormous difference in our lives.

Mr. DODD. If my colleague will yield, I will not disagree on that, having said ''I do'' on occasion. Some of our colleagues have said ''I do'' on many occasions. But I appreciate the significance of what he is saying. I am merely trying to put it into balance.

Mr. SARBANES. If there are only 11 words, why do you not take this bill and rewrite it and meet the objections?

It is interesting. I find it very interesting that this is being treated as though Congress were about to end. The fact of the matter is that there is an opportunity to address these problems, eliminate them. Actually, I am not going to go at great length here because I understand the distinguished Senator from Minnesota wishes to speak.

I can address this problem later, but I am going to quote from some of these leading law professors in the country about the problems they see in this legislation. Now, I just want to make a couple of points here though because we were trying to have an exchange and I wish to register them at this point in the RECORD.

It is interesting; there is a lot in this legislation that those of us who have opposed its support. We do not disagree with trying to fashion legislation to deal with the problem of frivolous lawsuits, and there is much in this legislation that we would support. There are other things that are not in it that we think ought to be in it, which we have debated, and there are things in it which we think ought not to be in it, which is the focus obviously of the current attention.

Mr. DOMENICI. Could I ask the Senator one question?

Mr. SARBANES. I yield to the Senator for a question.

Mr. DOMENICI. I listened to the Senator's remarks to my friend, Senator DODD, when we talked about 11 words.

Why does the Senator not draft a bill with those 11 words. It ought to be easy to pass an 11-word bill.

Mr. SARBANES. I am not sure it will be because—first of all, I do not know that it is only 11 words that are at issue, and I do not think that is correct. But, in any event, those provisions were not included in this legislation and were resisted very strongly by those, whoever brought the measure to the floor, and yet they have a significant impact on what the effect of this legislation will be.

Mr. DOMENICI. I mean, would it not be a pretty good debate on 11 words? The Senator could get that to our committee, and we could debate the 11 words instead of killing the bill.

Mr. SARBANES. Well, the President sent the veto here, and the issue is whether to sustain the veto. I think we should sustain the veto.

Mr. DOMENICI. I thank the Senator.

Mr. SARBANES. Yes, indeed.

Now, let me address a couple of other things. The Senator from Connecticut spoke about the thunder and lightning at the conference on this legislation. And I say to the Senator, I was a member of the conference committee. I only remember it meeting once. Am I erroneous in that remembrance?

Mr. DODD. Far be it for the Senator from Connecticut to challenge the Senator's remembrances. I do not know if the Senator is erroneous or not in his remembrance. I do not know how many actual meetings occurred. There were a lot of conferences.

Mr. SARBANES. Of the conference committee.

Mr. DODD. I would suggest this is not a unique event. It is common to have back and forth, and so forth, at meetings. Rather than having Members sit, staff does this. I know the Senator from Maryland, having chaired committees and conferences, knows it is not uncommon in these meetings to have staffs work back and forth to try to resolve matters without Members sitting there. It is not unique. Is that a unique occurrence?

Mr. SARBANES. I say to my colleague from Connecticut, the procedure here that was unusual and somewhat unique, although it is becoming more frequent—I regret to say in the workings of this Congress, it is becoming more frequent—was that all the true believers gathered together to try to work out the House and Senate differences but did not include in those discussions the people who were on the other side.

Now, that is not a good way to legislate, in my opinion, because sometimes by having the people on the other side, you have a dialog and a discussion, and you are able to work out measures and improve them.

Now, what happened here, that never took place. What finally took place that encompassed everybody including those who were critical of this legislation was the final meeting where they simply railroaded through what the conference agreement was, and it is the conference agreement that has provoked the President's veto in this instance. The President, in fact, has indicated that if he had been given a bill as it had passed the Senate, he would have signed it, as I understand it. So it is conference action that did it, and the conference action was taken by all, any meaningful action on the substance was taken simply by those on one side of issue.

Mr. DODD. If my colleague will yield further——

Mr. SARBANES. Certainly.

Mr. DODD. The bill that is before us, except for a couple of provisions, some of which we would argue improve the bill, is virtually what the Senate adopted. This is not a bill that even remotely looks like the House-passed bill. In fact, it is the Senate-passed bill. I know my colleague from Maryland was opposed to even the Senate-passed bill. But in terms of from the administration's standpoint, again I point out that in June on the pleading standards and the statement of policy from the administration, they endorsed what came out of the Senate bill. And regarding the rule 11——

Mr. SARBANES. If the Senator will yield on that very point, it was changed then in the conference. The fact that the administration——

Mr. DODD. The only thing that was changed, the only thing that was changed was at the recommendation of the Judicial Conference, and it was regarding the words ''effectively allege'' or ''state with particularity.'' Those words were recommended by the Judicial Conference.

Mr. SARBANES. No, two other things were done. In the conference, they removed the Specter amendment that had been adopted in the Senate that carried with it further elaborations, carried with it further elaborations by the second circuit with respect to the pleading standard, and second—and this is something the President focused on in his veto message—the statement of managers about the pleading standard in effect sought to put a legislative interpretation spin on it which raised the standard even higher, and some of the law school deans

who have written in about this matter have focused on that very fact.

In other words, what you did is you changed the standard as it passed the Senate to make it more difficult and then the statement of managers put a further spin on it.

Mr. DODD. If my colleague will yield, let me go back. I tried to do this earlier. The Specter amendment said he was codifying the guidance in the second circuit, and that is not the case. That is where the problem occurred here.

Mr. SARBANES. I listened to the Senator's comments on that subject, and the distinguished Senator from Pennsylvania will have to speak for himself, but even assuming the accuracy of what the Senator stated—and I am not in a position to do that. The Senator from Pennsylvania, I am sure, will be able to do so. Assuming the accuracy, then the way to have corrected it would have embraced all the guidance, not to eliminate that guidance, which was designed to provide some additional protection for the investors as the second circuit elaborated their standard.

Mr. DODD. If my colleague will yield further—I appreciate him yielding—you can make that case.

Mr. SARBANES. Yes, you can.

Mr. DODD. I understand that. But the suggestion that somehow the courts are going to disregard the guidance because it is no longer in the bill itself, it has not been codified, I think overstates the case, when you come down to vetoing this whole bill on that particular question. My point simply has been that I do not think the Specter amendment was—I think it was an effort to get recklessness in, which would have changed the standard from the second circuit. Nonetheless, putting that aside, the guidance is still going to be there. The guidance would still be there. And you do not veto the whole bill over the issue of guidance.

Mr. SARBANES. If the Senator will yield, you not only took the guidance out of the statute from the second circuit but you sought to give the courts a different guidance contained in the statement of managers in the conference report. So you committed, as it were, a double violation. You took out the guidance of the second circuit. Then you say, well, if it is not there, the courts will look to the guidance in any event. Ah, but what you did is you then interjected in as guidance with respect to this provision a statement of managers.

Mr. DODD. First of all, Mr. President, I say to my colleague, it was the guidance of the second circuit, No. 1. And by taking it out, the statement of managers is—again, one I have never heard. Maybe my colleague can cite examples where there is some confusion over what was intended there, but you do not veto a whole bill over the statement of managers.

Mr. SARBANES. Well, this bill with respect to the statement of managers is obviously an effort to in part rewrite the bill at that level of consideration.

Now, Mr. President, let me make one other point while my colleague is still here. My colleague made a lot about the number of hearings that were held, but I have to submit to you that those hearings were in a sense ignored.

My distinguished friend from Connecticut earlier stated that with respect to one provision—I think it was on safe harbor. He quoted Arthur Levitt, the Chairman of the Securities and Exchange Commission. But let me just show you how these hearings are ignored. And so the fact that you have a lot of hearings may make no difference at all.

On May 12, 1994, the Securities Subcommittee held a hearing, which the distinguished Senator from Connecticut chaired.

The Senator himself stated at that hearing:

> Aiding and abetting liability has been critically important in deterring individuals from assisting possible fraudulent acts by others.

That is my colleague from Connecticut speaking at this hearing. Testifying at that hearing, Chairman Levitt, whom he cited earlier for another provision in terms of supporting it, stressed the importance of restoring aiding and abetting liability for private investors.

> Persons who knowingly or recklessly assist in the perpetration of a fraud may be insulated from liability to private parties if they act behind the scenes and do not themselves make statements directly or indirectly that are relied upon by investors. Because this is conduct that should be deterred, Congress should enact legislation to restore aiding and abetting liability in private actions.

And the North American Securities Administrators Association, the Association of the Bar of the City of New York, also endorse restoration of aiding and abetting liability in private actions.

So what good does the hearing do us? We have the hearing. This is what the testimony is. The distinguished Senator himself, in a sense, led off that hearing by underscoring the importance of aiding and abetting liability. And it ends up not being in the legislation.

So you can have all the hearings you want. It does not necessarily demonstrate that an appropriate and reasonable piece of legislation has been crafted.

Mr. DODD. If my colleague would yield on that, as I said earlier, he may have missed my statement. He may want to bring up the statute of limitations issues as well. It is not in the bill. I offered the amendment on that particular instance to include the legislation, as my colleague well knows.

Mr. SARBANES. That is accurate. And I commend the Senator for doing that.

Mr. DODD. As the saying goes, you make the perfect the enemy of the good. We are a body of 100 Members here. There is not the political will to do what the Senator from Maryland and I would like to do on aiding and abetting. But let us consider what happens if the President prevails today and the veto is sustained.

What happens to the statute of limitations and aiding and abetting? Obviously the statute of limitation does not change. The Supreme Court has ruled on it, so there is no difference. It is not affected by this. But on aiding and abetting we have made a substantial gain in aiding and abetting by restoring to the Securities and Exchange Commission the right to bring class actions. Without this legislation you even lose that aiding and abetting.

So I regret deeply we do not have aiding and abetting here. The majority of our colleagues have rejected that. But the suggestion that I ought to lose everything else I have achieved because I was not able to get a statute like the statute of limitations or aiding and abetting is not a reason to be against the bill.

I hope we can convince a number of people in the next couple months, in a separate bill, to expand the aiding and abetting and the statute of limitations. But I cannot see why I should be opposed to the whole bill here, when on portion of liability, on safe harbor, on lead plaintiffs and on aiding and abetting, where we do get half a loaf at least, that the SEC wanted, and I am confident my colleague from Maryland wanted, and I wanted, that we would not have been able to get that without this piece of legislation. I thank my colleague for yielding.

Mr. SARBANES addressed the Chair.

The PRESIDING OFFICER. The Senator from Maryland has the floor.

Mr. SARBANES. Mr. President, let me just close out by including in the RECORD a letter from the ABA, from the President of the American Bar Association, to President Clinton opposing key provisions of the legislation, H.R. 1058, and urging the President to veto the legislation.

Let me just quote it very briefly:

> The ABA continues to believe that this proposed legislation can and should be corrected by the Congress to correct the significant difficulties that it would cause in its current state. We agree that underlying problems in the area of securities litigation must be addressed, but that must happen without unduly barring access to the courts to parties who are defrauded.

And then they enumerate the most objectionable parts of H.R. 1058, including the rule 11 changes about which my colleague from Connecticut has discussed, and particularly underscoring the fact that the provision now lacks balance in that it treats plaintiffs more harshly than defendants.

They also discuss the pleadings rules about which he has spoken, and in effect point out the difficulty it would present to people in having their cases heard, in other words, the danger that meritorious cases will be dismissed at the pleadings stage. It goes on to make other criticisms as well.

Mr. President, later I intend to address these comments that we have received from some of our Nation's leading legal scholars——

The PRESIDING OFFICER. Is the Senator from Maryland going to make a unanimous-consent request?

Mr. SARBANES. Mr. President, I ask unanimous consent that the letter be printed in the RECORD at the end of my remarks that have been made with respect to the provisions that are before us, letters to the President urging the veto of the bill, which the President made.

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

(See exhibit 1.)

EXHIBIT 1

AMERICAN BAR ASSOCIATION,
Albuquerque, NM, December 17, 1995.

President WILLIAM JEFFERSON CLINTON,
The White House,
Washington, DC.

DEAR MR. PRESIDENT: I write on behalf of the American Bar Association. The ABA opposes key provisions of legislation presently before you entitled Reform of Private Securities Litigation, H.R. 1058. I strongly urge you to veto the legislation.

The ABA continues to believe that this proposed legislation can and should be corrected by the Congress to correct the significant difficulties that it would cause in its current state. We agree that underlying problems in the area of securities litigation must be addressed, but that must happen without unduly barring access to the courts to parties who are defrauded. The most objectionable parts of H.R. 1058 include the following:

1. ''Loser Pays'' or Rule 11 Changes.—The ABA opposes any requirement that would impose responsibility on a non-prevailing party for the legal fees of the prevailing party in securities actions. H.R. 1058 contains such a ''loser pays'' provision and would materially change Federal Rule 11, it is called a mandatory sanctions rule. That provision's call for mandatory sanctions in the form of attorneys fees and its lack of balance, treating plaintiffs more harshly than defendants, are unacceptable.

2. Other Mandated Changes in Federal Rules for Securities Cases.—H.R. 1058 significantly amends Rule 9(b) on pleadings and Rule 23 on class actions. These because for the first time under the Federal Rules, they would establish special requirements for a particular class of cases.

Moreover, the proposals contradict the present Rule 9(b) of the Federal Rules of Civil Procedure. In light of the evidence that courts today already enforce heightened pleading requirements. Federal laws should not endorse the dismissal of meritorious cases at the pleading stage. The pleading standards in H.R. 1058 require a plaintiff to plead the ''state of mind'' of each defendant, something utterly impossible to do prior to discovery.

The ABA further opposes the proposed limitations on the ability of plaintiffs to amend their pleadings and to pursue discovery. Such limitations while undoubtedly preventing frivolous claims from going forward, would also bar claims with substantial merit. Only through significant discovery and repleading do these important claims get adjudicated; H.R. 1058 would subvert that process.

The ABA supports the process called for in the Rules Enabling Act. No amendments to the federal rules should ever occur except after the deliberative process of the Rules Enabling Act has been followed. H.R. 1058 wreaks havoc with that principle and violates the important principle that the Federal Rules of Civil Procedure apply uniformly to all causes of action.

3. Immunization of Intentional and Reckless Conduct.—The ABA House of Delegates adopted policy at its last meeting in February that opposed any legislation that eliminates the concept of recklessness from that which is required to be pled or proved in private actions under Rule 10 b-5. H.R. 1058 will compromise the principle that those who engage in reckless conduct, to say nothing of intentional conduct, should be held responsible under the federal securities acts. The ABA opposes this legislation's grant of a safe harbor to both intentional and recklessly issued misleading and false statements.

4. Choice of Class Plaintiff and Joint and Several Liability.—H.R. 1058 specifies that a wealth qualification directs both the choice of class plaintiff provision and the operation of the joint and several liability section. In one case, you have to be rich enough to be named the class representative and, in the other case, you have to be poor enough to receive the benefits of joint and several liability for reckless conduct. The ABA believes this provision of H.R. 1058 would bar access to the courts to shareholders with small holdings.

On behalf of the American Bar Association, I urge you to veto H.R. 1058. A veto would motivate Congress to make changes needed so that the many laudable provisions of the legislation may quickly become law.

Respectfully,

ROBERTA COOPER RAMO.

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

Mr. CHAFEE addressed the Chair.

The PRESIDING OFFICER. The Senator from Rhode Island.

Mr. CHAFEE. Mr. President, I know the Senator from Minnesota is next. And my question to the Chair is, whether—I ask unanimous consent that I might follow the Senator from Minnesota when he has completed, and speak as in morning business for 10 minutes.

Mr. REID addressed the Chair.

The PRESIDING OFFICER. Is there objection?

Mr. REID. Mr. President, I reserve the right to object. If I can enter a colloquy through the Chair to my friend from Rhode Island, there are a number of us that have been wandering around here for several hours this afternoon. I am wondering if we might find out how long people want to speak before we go into this situation where we give the floor——

Mr. CHAFEE. I did not know the Senator was——

Mr. REID. Senator PELL is here.

Mr. PELL. I would like 2 minutes.

Mr. CHAFEE. How long might people be?

Mr. REID. It would be 2 minutes for the senior Senator from Rhode Island. And the junior Senator from Nevada——

Mr. CHAFEE. I will follow the Senator from Nevada.

Mr. REID. How long is the Senator going to be?

Mr. CHAFEE. Senator BREAUX and I were going to have a little colloquy for 10, 15 minutes, so we would just as soon follow the Senator from Nevada.

Mr. REID. Then if we could—so people know that are watching—if the Senator from Minnesota would speak, the senior Senator from Rhode Island, and then the Senator from Nevada.

Mr. President, I ask that the unanimous-consent request be amended, that following that there be the time allotted to the Senator from Rhode Island and the Senator from Louisiana.

The PRESIDING OFFICER. Is that request in the form of a unanimous-consent?

Mr. REID. It is.

Mr. SARBANES. Reserving the right to object, how long does the Senator from Minnesota intend to speak?

Mr. GRAMS. About 10 minutes. I would defer to the Senator from Rhode Island making a statement dealing with this pending business ahead of my statement.

Mr. PELL. I thank my colleague.

Mr. CHAFEE. Which Senator from Rhode Island?

Mr. GRAMS. The senior Senator.

Mr. REID. I ask unanimous consent the request be amended as reflected by the Senator from Minnesota.

The PRESIDING OFFICER. Is there objection?

Mr. CHAFEE. Could I ask a question?

The Senator from Nevada, how long does he think he might be?

Mr. REID. About 20 minutes.

Mr. CHAFEE. I thank the Senator.

The PRESIDING OFFICER. Without objection, it is so ordered. Under the unanimous-consent agreement, the senior Senator from Rhode Island is recognized.

Mr. PELL. I thank the Chair.

Mr. President, today the Senate is considering overriding President Clinton's veto of the securities litigation reform bill. After careful reflection, I have decided to continue my long history of support for this legislation.

In doing so, I wish to point out that I do not do so lightly. I admire and honor our President immensely and have always respected the prerogative of our President in his use of the veto power and especially so when this power is responsibly and sparingly used, as has been the case with President Clinton. I do believe the President has acted upon personal principle with regard to this bill and that his decision was arrived at in a thoughtful and deliberate manner. Nevertheless, I respectfully disagree and believe that this particular bill should become law.

I have been a longtime supporter of legal reform, especially measures which seek to reduce the excess and frivolous litigation so prevalent in our society. On this measure, I was one of the first Democrats to join as a cosponsor some 4 years ago and have been active in promoting it ever since. As with any piece of legislation, the final product is one of compromise and, indeed, does not contain every provision that I would like. Nevertheless, it is a good, carefully considered, bipartisan effort

at addressing the very real and growing problems associated with excessive and frivolous lawsuits besieging publicly held companies. As such, this bill deserves to be implemented into law.

I do regret being in the opposition in this matter but as a longtime advocate for this legislation, I believe that this bill is both responsible and necessary to address the need for litigation reform with regard to our securities industry.

I yield the floor.

The PRESIDING OFFICER. Under the previous order, the Chair now recognizes the Senator from Minnesota.

Mr. GRAMS. Mr. President, I want to thank the Chair very much, and I ask unanimous consent that I be allowed to speak as in morning business for up to 10 minutes.

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

A WONDERFUL LIFE . . . OR JUST ANOTHER NIGHTMARE?

Mr. GRAMS. Mr. President, I know this is a very important debate that is going on dealing with securities litigation, but there is also an important debate going on today and has been going on for months, and that is dealing with the budget.

The string of budgets that have been coming out of the White House lately reminds me of those movies called ''Nightmare on Elm Street.'' They have a few good scares, mixed with a lot of unintentional comedy. The emphasis clearly is on quantity, not quality, and they offer few, if any, redeeming values. There have been so many of them that after a while, you just start losing count.

Just to recap: We are talking budgets. We have had Clinton I. That failed in the Senate 99 to 0;

Clinton II that did not get a single vote in the Senate as well, Republican or Democrat;

Clinton III, that one was pulled before we could even vote on it;

And just last Friday, Clinton IV. The Senate did not waste our time on it after the House late Wednesday dealt a resounding blow by defeating it on a bipartisan vote of 412 to 0.

Four budgets submitted by President Clinton, four major disappointments, and not one vote from a single Member of this Congress to support any of them.

What is it about the President's vision of a balanced budget that is so different from everyone else's? By refusing to use honest budget numbers certified by the Congressional Budget Office, the President's budgets have failed the first true test of a balanced budget: They never come close to being balanced.

Yet, there are encouraging signs that the White House is shifting its ever-shifting budget policy and now wants to cooperate with Congress to produce the kind of budget plan that the American people are demanding: A balanced budget attainable by the year 2002 that reaches balance by cutting the growth of Federal spending and does not raise taxes, that, in fact, cuts taxes.

Following his meeting Tuesday afternoon with Senator DOLE and Speaker GINGRICH, I welcome the news that President Clinton has finally agreed to work with us, using the economic projections of the CBO, to craft a plan that will bring the Federal budget into balance within 7 years.

It was his refusal to commit to such a basic promise 6 days ago that, once again, led to a Government shutdown, this time idling a quarter of a million Federal employees. They, and the American people who are forced to pay the salaries of workers who are not allowed to work when the Government shuts down, ought to be furious that the President would let this happen, especially so close to the holidays.

I hope that by opening the door to now legitimate budget negotiations, the President will sign an agreement reopening the Government and sending these people back to work immediately. As for the balanced budget plan itself, President Clinton was quoted this week as saying, ''I hope we can resolve this situation and give the American people their Government back by Christmas. We also should give them a balanced budget that reflects our values of opportunity, respecting our duty to our parents and our children, building strong communities and a strong America.''

I could not agree more with the President, but it seems he is doing his Christmas shopping just a little late this year. By so far denying the American people the benefits of a balanced budget, he is making the goals that we share, those expanded opportunities, strong communities and a strong America, a lot more difficult to reach. Both the businesses lining Main Street and the Americans who spend their dollars in them are nervous, wondering if Washington is, once again, going to let them down.

Monday's drop of more than 100 points in the stock market—and that is the worst drop in the market in 4 years—and yesterday's 50-point dive is a clear sign that a skittish business community is having real doubts that Washington is serious about ever balancing the Federal budget.

That lack of a balanced budget is causing real economic hardship for American families, and individuals as well, because for the residents of my home State of Minnesota, the benefits that they would reap from our balanced budget legislation would be deep and it would be lasting.

The statistics tell it all. In fact, if President Clinton had signed the Balanced Budget Act that we originally sent him last month, the average Minnesotan would be saving right now $2,600 a year from lower mortgage payments; over $1,000 over the life of a 4-year loan of a car worth $15,000; nearly $1,900 on the life of a 10-year student loan of about $11,000; and over $300 every year from lower State taxes due to lower State and local interest payments; and also, Mr. President, nearly $600 a year from lower interest payments on a student loan.

If President Clinton had signed the Balanced Budget Act, Minnesota families would have received a tax credit as well, a tax credit that would have helped over 529,000 Minnesota taxpayers with over 1 million dependents. That is more than $477 million of their own money every year these working families would have been allowed to keep.

The tax credit would have completely eliminated the Federal income tax bill for over 45,000 Minnesotans, and that is another $38 million every year that would stay with these working families.

The tax credit would have paid for nearly 4 years of tuition at the University of Minnesota Twin Cities campus if the parents were able to bank the $500 per child tax credit for 18 years. Or the tax credit could have saved average Minnesota families enough to buy 3 months of groceries or make 1½ mortgage payments, or pay electric bills for 11 months.

Mr. President, the people are calling on this Congress, this President, to balance the budget because they have heard those same old statistics and it sounds pretty good to them. Of course, the other component of our budget plan is our $245 billion package of tax relief, and there are real concerns outside Washington that it, the centerpiece of our budget, may be negotiated away.

I would like to show on the chart where we stand on tax relief compared to spending and how much has already been negotiated away over these last couple of months.

We started out spending $11.2 trillion. That has grown to the latest Clinton budget of over $12.4 trillion. So spending has continued to increase under these budget plans.

But at the same time, they continue to whittle away at the tax relief for Americans. It started out at $354 billion of tax relief over 7 years in the House plan to $245 billion under the Senate plan and now the Clinton budget wants to cut this back to $78 billion, or even less.

So we can see over months of negotiations which way they are headed. It is the same old scenario: More spending, but take it away from taxpayers, and less tax relief.

I urge the budget negotiators to stand firm in their commitment to the taxpayers of this Nation to let them keep more of the dollars that we are routinely snatching out of their pockets. We need to stop Washington's nasty habit of taking money out of the checkbooks of taxpayers and putting them into the checkbooks of politicians.

I remind my colleagues that $245 billion is a lot of money to the taxpayers

who finance this Government, who pick up the tab for wasteful and often extravagant schemes that Congress is too often eager to throw dollars at. Mr. President, $245 billion means a tax credit of $500 per child for 55 million American families.

It means cutting the capital gains tax so that farmers and other family businesses are not so badly penalized when it comes time to pass along their assets to another generation. It means eliminating the marriage penalty and ending the discrimination against those who take on the awesome responsibility of coming together as a family.

It means creating an adoption credit that will, hopefully, bring more children into loving and nurturing homes.

It means promoting savings by expanding individual retirement accounts.

While $245 billion is a huge sum of money, it is just a small, 1.5 percent, speck of the more than $12 trillion that Congress will spend over the next 7 years. Congress is not happy with 98.5 percent. They want 100 percent. They do not want the taxpayers to have even that small amount.

Mr. President, if the Government is so addicted to spending that it will not survive without that 1.5 percent, well, that is a pretty strong commentary on the sorry state of things in Washington.

Despite the protests of the President and some of my colleagues who will not give up a penny of the people's dollars without a fight, the Government will survive under our balanced budget plan. It will survive and the taxpayers will thrive. To be successful, this Congress, however, cannot give in.

Mr. President, there is a movie that has become very popular during the holiday season. I believe it is so beloved because it shares a simple, moving message about the power that each of us has to profoundly influence our world.

''It's a Wonderful Life'' is the name of this film. It was played on television just last weekend, in fact, and I am certain that most all of my colleagues have watched it and take its message to heart.

It is about a good man, George Bailey, who reaches a difficult point in his life and begins to question his very existence.

With the help of his guardian angel, Clarence, George Bailey is given the opportunity to see the difference he would have been able to make in the lives of family, friends, and his neighbors in Bedford Falls, and it was a revelation, because he did not realize how much he had changed their lives forever.

Mr. President, we have an opportunity in 1995 to forever change the lives of each and every American by passing a balanced budget.

And we will not need a guardian angel to show us what we have accomplished, because 10 years from now, we will be able to see for ourselves, everywhere we look, the result of our dedication to this dream: more jobs, higher salaries, cheaper loans that make homes, schooling, and transportation more affordable. A better, stronger America for the future.

The next 2 weeks will tell the story.

Is 1995 going to mark the beginning of ''A Wonderful Life'' for America's children and grandchildren? Or just another ''Nightmare on Elm Street'' sequel?

Congress and the President have the power to decide, and I urge them to put that power to work on behalf of all Americans and enact a balanced budget.

I yield the floor.

ORDER OF PROCEDURE

The PRESIDING OFFICER. Under the previous order, the Senator from Nevada is recognized.

Mr. REID. Mr. President, I have spoken to my friend, the Senator from Rhode Island, and my friend from Louisiana. We would like to reverse the order. They will go now, and I will follow them.

I ask unanimous consent that that be the case.

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

The Senator from Rhode Island is recognized.

ICC TERMINATION ACT OF 1995—CONFERENCE REPORT

Mr. CHAFEE. Mr. President, I submit a report of the committee of conference on H.R. 2539 and ask for its immediate consideration.

The PRESIDING OFFICER. The report will be stated.

The bill clerk read as follows:

The committee on conference on the disagreeing votes of the two Houses on the amendment of the Senate to the bill (H.R. 2539) to abolish the Interstate Commerce Commission, to amend subtitle IV of title 49, United States Code, to reform economic regulation of transportation, and for other purposes, having met, after full and free conference, have agreed to recommend and do recommend to their respective Houses this report, signed by a majority of the conferees.

The PRESIDING OFFICER. Without objection, the Senate will proceed to the consideration of the conference report.

(The conference report is printed in the House proceedings of the RECORD of December 18, 1995.)

Mr. HOLLINGS. Mr. President, I urge my colleagues to pass, S. 1396, the Interstate Commerce Commission Sunset Act of 1995. This bill, reported out of the Commerce Committee by a unanimous vote, eliminates the Interstate Commerce Commission [ICC], terminates numerous existing ICC functions, and establishes an Intermodal Surface Transportation Board to carry out the remaining rail and motor carrier regulatory functions.

With this bipartisan bill, the Congress will have completed the work begun with the Motor Carrier Act of 1980, to free the surface transportation industry from unnecessary and outmoded regulation, while continuing to protect shippers of all commodities and household goods from possible abuse by carriers. In addition, this bill sunsets the Federal Maritime Commission by January 1, 1997, and will move that agency's necessary functions to the new Board. Thus, the bill will eliminate two Federal agencies, combining their remaining functions into one Intermodal Board that is smaller than either of the former agencies.

The passage of this bill is of some urgency. The ICC will run out of money within a few weeks, and its elimination without an orderly transition of its key functions is likely to disrupt affected industries. The rail industry and household goods carriers, in particular, want to ensure the continuity of the current regulatory scheme.

For the most part S. 1396 accomplishes the goal of orderly transition. I note that a very similar bill, H.R. 2539, passed the House of Representatives by a vote of 417 to 8 late last week. I expect that the differences between the two bills can be resolved quickly. S. 1396 is a good bill. It is, as reflected in the committee vote, a bipartisan effort to develop a transportation oversight program that is appropriate to the 21st century. I urge, and hope my colleagues will support, its consideration and passage.

Mr. EXON. Mr. President, I rise to support this landmark conference report to eliminate the Interstate Commerce Commission [ICC], and to reduce regulation on the transportation sector, and to transfer the responsibilities of the Commission to a new independent Intermodal Surface Transportation Board [ITSB], and the U.S. Department of Transportation.

I am pleased to lend my enthusiastic support to this legislative package of two bills to reform the Nation's transportation laws and to embrace the labor protection reforms endorsed by the House in the Whitfield amendment. If both are enacted, I expect this legislation to win Presidential approval.

I support this conference report with only two reservations. To reach agreement, difficult, painful and significant compromises had to be made. Two areas which continue to concern me are Carmack amendment review and the transfer of the Federal Maritime Commission responsibilities to the new board. While the conference report embraces solutions to perceived problems in these issue areas. which are different from both S. 1140 which I introduced earlier this year and the Senate-passed bill; given the need to bargain, I believe that fair, defensible compromises have been made.

Regarding the Carmack amendment, while I would have preferred the Senate provision to study the Carmack cargo liability system prior to enacting changes to current law, our House counterparts were firmly fixed in their

position for dramatic and immediate reform. The compromise reached is one which very closely follows the Carmack procedures in force when tariffs were filed with the ICC.

My second reservation concerns the decision of the conference to delay consideration of transferring the responsibilities of the Federal Maritime Commission to the new board. The Senate bill embraced my vision of an intermodal agency which provided one-stop shopping for all surface transportation. This action is, however, a vision delayed, not denied. When the Senate debates reforms in the Ocean Shipping Act next year, I will continue my push to transfer the responsibilities of the FMC to the new board. Notwithstanding these reservations and necessary compromises, I do endorse and urge my colleagues to support this conference report.

This legislation builds on a bill I introduced earlier this year known as the Transportation Streamlining Act. Following the introduction of that act, Senator PRESSLER and I and our staff worked long and hard to find broad areas of agreement and compromise. The work product of that negotiation is S. 1396. This conference report represents the latest chapter in a thoughtful and deliberate effort to reform and deregulate America's great transportation sector.

As one of the few Members of Congress with regular contact with America's oldest independent regulatory agency, I again acknowledge the commitment and hard work of the Commission and all of its employees. A grateful Nation owes a debt of gratitude to these dedicated public servants for over a century of hard work. Their vigilance has made the current transition to a more market-oriented transportation system possible.

One might ask, why there is a need for a successor agency to the ICC? Simply put, if there were no forum to resolve disputes, oversee standard contract terms, establish national standards and assure fair treatment for shippers and communities; the great, efficient and productive transportation sector will spin into chaos. The failure to enact this legislation will produce just such chaos. Efficiency would be replaced with litigation. Certainty would be replaced with buyer beware. The result would be great harm to the notion of interstate commerce.

The new ISTB within the Department of Transportation will continue to be the fair referee between shippers, carriers, and communities. It will provide interested parties with one-stop shopping and administer a significantly streamlined body of law which assures that the public interest is protected in transportation policy.

This transfer of responsibility and streamlining of authority will reduce costs both to taxpayers and the private sector and assure that key transportation safety responsibilities do not fall between the cracks.

Mr. President, our Nation takes for granted the blessings of America's great transportation system. Every part of the Nation has accessible transportation service. As the Congress continues its efforts to keep regulation to the minimum necessary to protect the public interest, let us not forget what a valuable asset we have and how critically important it is that the Congress carefully choose the correct course.

I urge my colleagues to vote today to modernize America's transportation policy and enact the pending conference report.

Mr. President, I yield the floor.

Mr. PRESSLER. Mr. President, the Senate will now consider the conference report to H.R. 2539, the ICC Termination Act. The Senate-passed version of this legislation is S. 1396, the Interstate Commerce Commission Sunset Act of 1995, which I introduced on November 3, 1995. My bill was adopted by unanimous consent in the Senate on November 28th. Swift passage of this conference report is necessary to provide for an orderly closure of our Nation's oldest regulatory agency.

As my colleagues know, this legislation was crafted in response to the fiscal year 1996 budget resolution which assumes the elimination of the Interstate Commerce Commission [ICC] and the fiscal year 1996 DOT appropriations bill, H.R. 2002, which provides no funding for the ICC after December 31, 1995. This means that just over 1 week from now, the ICC will close its doors forever. This conference agreement ensures the agency's sunset will be accomplished in a reasoned fashion and that certain core and vital functions will continue.

The conference report authorizes the sunset of the ICC effective January 1, 1996. It also eliminates scores of obsolete ICC regulatory functions. Finally, it transfers residual functions partly to a newly established independent Surface Transportation Board within the Department of Transportation and partly to the Secretary of Transportation.

Mr. President, this is historic legislation. The ICC is America's oldest independent regulatory agency. It was established in 1887—108 years ago. The ICC originally was created to protect shippers from the monopoly power of the railroad industry. Throughout subsequent years, the ICC's regulatory responsibilities were broadened and strengthened, and expanded to other modes. Today, the ICC has jurisdiction over the rail industry, certain pipelines, barge operators, bus lines, freight forwarders, household goods movers and some 60,000 ''for-hire'' motor carriers.

During the past decade, a series of regulatory reform bills significantly deregulated the surface transportation industries, reducing the ICC's authority. Even with this considerable deregulation, however, the ICC continues to maintain a formidable regulatory presence. It determines policy through its rulemaking and adjudicative proceedings to ensure the effective administration of the Interstate Commerce Act, related statutes, and regulations. Clearly, the positive and necessary adjudicatory role of the ICC should not simply cease at the end of the year. This legislation will ensure such limited core functions continue.

Mr. President, this conference report identifies which ICC functions can and should continue to be performed by a successor. While that premise is the report's central theme, the agreement also takes into account the fact that the new successor—a 3-member Surface Transportation Board—will have a very limited budget. Overall, it provides a reasoned approach designed to ensure continued protections for shippers against industry abuse—protections vitally important to shippers in places like my home State of South Dakota—while at the same time, assure continued economic efficiencies in our Nation's surface transportation system.

As with any conference report, this is the result of compromise on the part of both the House and Senate. Throughout this process, however, I have been guided by the need to retain sufficient protections for shippers while reducing unnecessary regulatory burdens on our Nation's rail and trucking industries. This legislation meets that objective.

Mr. President, Senator DOLE received a communication yesterday afternoon from Secretary of Transportation Federico Pena and Secretary of Labor Robert Reich stating the President would veto this legislation if we did not adopt a provision supported by rail labor imposing mandatory labor protection on small railroad mergers. In my view, the Clinton administration acted in an irresponsible fashion by threatening significant regulatory reform and protections for our shippers, farmers and ranchers.

A veto would create a regulatory black hole on January 1. Statutory and regulatory requirements would remain on the books, but no Government agency or official would be in place to administer them. This legislation would maintain critical functions affecting the rail and trucking industries that protect small shippers and others from market abuse. A veto would be in complete disregard of the needs of farmers and small agricultural shippers who rely on adequate transportation service provided by these surface transportation industries.

Therefore, with extreme reluctance we agreed to the administration's demand to modify the legislation to meet the completely unfounded concerns of rail labor. Thus, the conference report to H.R. 2539 is accompanied by a concurrent resolution which strips the class II/class III railroad merger provision agreed to in conference that created an option to merge such railroads under current law. The administration insisted we use language from the House-passed bill requiring that class

II/III mergers proceed only under a special new rule which lowers labor protection from 6 years to 1 year, but which states collective bargaining agreements may not be avoided by allowing a shifting of work from a union carrier to a nonunion carrier.

In my view, the language in the House-passed bill is drafted in such a way as to potentially create serious questions. Therefore, I can assure my colleagues we will be revisiting this issue in the next session of Congress. The language is designed to prevent a carrier from shifting work from unionized workers to nonunionized workers to avoid contracts as a part of a merger implementation.

My point is the Board established in this legislation must use the preemption provisions of the legislation to review how laws should be accommodated to enable these mergers to occur in a timely fashion and in a way that best serves the public interest in continued and effective rail transportation. This revised section is not intended to create a special rule of law that allows labor unions to delay or veto mergers between class II and class III railroads. After all, they do not have such power in any other segment of American industry.

The provisions of this bill must be read in totality. Again, Mr. President, I want my colleagues and the new Board to understand this change to the conference report is not intended to give rail labor a veto over the transportation needs of communities and shippers who would benefit by a merger between class II and class III railroads.

Mr. President, on balance this conference report is the result of nearly a year's worth of bipartisan study, discussion and work. It represents a reasonable compromise. I want to thank the conferees, their staffs and the staff of the Commerce Committee for all their dedicated work and long hours in producing this final legislative package. The legislation before us will eliminate a host of outdated and unnecessary laws while ensuring continued protection for America's shippers. I urge its adoption.

Mr. CHAFEE. Mr. President, I ask unanimous consent that the conference report be agreed to and that the motion to reconsider be laid upon the table.

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

So the conference report was agreed to.

DIRECTING THE CLERK OF THE HOUSE TO MAKE TECHNICAL CHANGES IN ENROLLMENT OF H.R. 2539

Mr. CHAFEE. I ask unanimous consent that the Senate proceed to the consideration of Senate Concurrent Resolution. 37, submitted earlier today by Senator EXON.

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

The clerk will state the concurrent resolution by title.

The bill clerk read a follows:

A concurrent resolution (S. Con. Res. 37) directing the Clerk of the House of Representatives to make technical changes in the enrollment of the bill (H.R. 2539) entitled ''An Act to abolish the Interstate Commerce Commission, to amend subtitle IV of title 49, United States Code, to reform economic regulation of transportation, and for other purposes.

The PRESIDING OFFICER. Is there objection to the immediate consideration of the concurrent resolution?

There being no objection, the Senate proceeded to consider the concurrent resolution.

Mr. WELLSTONE. Mr. President, I have been involved in intense negotiations over the course of the last few days to try to resolve a major problem with the conference report on HR 2539, the Interstate Commerce Termination Act of 1995. We have now resolved that problem, through an agreement to make a key change in the conference report which is designed to protect the collective bargaining agreements of railroad employees. With that change, I have agreed to allow the conference report to go through without extended debate that could slow it down and put at risk its final enactment. Since we are in the final days of this session, and I know it is urgent that ICC legislation be enacted to ensure continued consumer protections for all Americans, I am delighted that this change has now been agreed to, and I am grateful for the help and support of Senators EXON, KENNEDY, HARKIN, KERRY, SIMON and others in this effort.

The change will be made through adoption of Senate Concurrent Resolution 37, submitted earlier today by Senator EXON and myself, which is to be taken up and agreed to concurrently with the conference report by unanimous consent. I am hopeful that both will also be taken up and agreed to by the House later tonight or tomorrow. I understand there are preliminary indications from the House Republican leadership, after fierce and sustained resistance that has lasted for months, that they are finally willing to make this change in order to help avoid a Presidential veto.

The concurrent resolution would restore labor protections provided for in the Senate bill that were dropped in the House-Senate conference. Without this change, the conference report would be strongly opposed by representatives of railroad employees nationwide because it would significantly reduce existing rights of workers employed by small- and medium-sized railroads. In fact, that is also one key reason why the administration has indicated its intent to veto this measure. I hope that if this change is made by the House, the administration would take another look at this legislation, and its decision to veto the bill announced yesterday.

Let me briefly describe how we came to this point. At various points in this legislative process, employees were forced to give up labor protections on line sales to noncarriers, give up mandatory labor protections on line sales to class III carriers, agree to reduced labor protections on line sales to class II carriers, give up mandatory labor protections on mergers between class III carriers, and agree to reduced labor protections on mergers between class II and class III carriers.

All these concessions were made by employees in return for the right that every other American worker has—to bargain collectively with their employers and have those collectively bargained agreements enforced in court. Employees asked for just one exception to the current ''cram-down'' practice of the ICC, which allows abrogation of collective bargaining agreements under certain circumstances.

This may seem somewhat technical, but it is profoundly important to the lives and livelihoods of thousands of rail workers in my State and throughout the Nation. For mergers between class II and class III railroads, likely to become increasingly common over the next decade, railroad employees requested a provision contained in the so-called ''Whitfield Amendment'' adopted on the House floor by a vote of 241–184, to require that a merger could not be used to avoid a collective bargaining agreement, or to shift work from a union to a nonunion carrier.

But unlike the House and Senate-passed bills, the conference agreement does not provide such protection. Instead, it gives the carrier applying for the merger a choice of whether to preserve collective bargaining agreements or to abrogate them unilaterally through the successor to the ICC. The concurrent resolution will fix this problem by effectively restoring the language of the Whitfield Amendment, which prohibits abrogation of such agreements. I am pleased we reached agreement on this key change.

At the same time, I understand why the administration has reservations about the conference report. Although I support much of it, which streamlines the Federal Government while maintaining a fair and responsible Federal regulatory structure, this final version is not perfect, and there are parts which I oppose. For example, I am concerned about a provision that changes the regulation of household goods shipping. I supported the Senate version which would have ensured no Federal preemption of State laws relating to the shipment of household goods. Unfortunately, conferees chose to include the House language that would allow Federal preemption of State laws relating to shipping these goods.

I am concerned about this Federal preemption of State laws, because consumers deserve continued State protections when shipping their belongings to a new home. I intend to monitor the implementation of this provision carefully, and if it poses serious problems, as I expect it will, to try again to address these problems next year.

But my overriding concern has been the fate of thousands of railroad employees across the Nation who could have been harmed under its provisions, and that is why we wanted to try to address this problem before it passed the Senate. I am delighted that this has now been done, and I am hopeful that the House will act on it immediately to ensure abroad, comprehensive labor protections for railroad workers. I want to go again thank Senator EXON for his help with this problem.

Mr. CHAFEE. I ask unanimous consent that the concurrent resolution be agreed to, the motion to reconsider be laid upon the table, that any statements relating to the conference report or the concurrent resolution appear at the appropriate place in the RECORD.

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

So the concurrent resolution (S. Con. Res. 37) was agreed to, as follows:

S. CON. RES. 37

Resolved by the Senate (the House of Representatives concurring), That the Clerk of the House of Representatives, in the enrollment of the bill (H.R. 2539) to amend subtitle IV of title 49, United States Code, to reform economic regulation of transportation, and for other purposes, shall make the following corrections:

In section 11326(b) proposed to be inserted in title 49, United States Code, by section 102, strike ''unless the applicant elects to provide the alternative arrangement specified in this subsection. Such alternative'' and insert ''except that such'';

In section 13902(b)(5) proposed to be inserted in title 49, United States Code, by section 103, strike ''Any'' and insert ''Subject to section 14501(a), any''.

A BIPARTISAN GROUP UNVEILS A PLAN TO BALANCE THE BUDGET

Mr. CHAFEE. First of all, I thank the Senator from Nevada for permitting us to go ahead of him. That was very gracious.

This morning, a bipartisan group of Senators—19 in all—unveiled a plan to balance the budget by the year 2002, using CBO, Congressional Budget Office, numbers. The group, which Senator BREAUX and I had convened several weeks ago—actually, we had our first meeting in October—includes, as I say, so far, 19 Senators. That is without going out and seeking new Members. It is just those who have come to us and want to join in this effort.

We are all united in this belief, Mr. President: It is absolutely essential that this Nation have a balanced budget by the year 2002, and that it will be impossible to achieve that budget unless those on both sides of the aisle are prepared to compromise. This is the essence of the effort of this group of Republicans and Democrats who are getting together for a common objective.

The Senate bipartisan balanced budget plan is a huge step forward on the path to this budget agreement. It represents, I might say, Mr. President, the first truly bipartisan proposal to balance the budget. There are other groups in the House that are working, but they do not include Members of both sides. It was made possible, this agreement, only because both sides were willing to compromise on some very strongly held beliefs. We did this for the good of this country of ours. This is especially true with the compromising aspects with respect to the issues of Medicare and tax cuts. I am grateful to the Democrats in our group for their willingness to go with the CBO numbers. They agreed to that before it became accepted by the White House. This was a big step for the Democratic Members of our group.

Now, undoubtedly, this plan will cause consternation on the Democratic side with number, and on the Republican side with some. But we are committed to reaching this balanced budget, free of gimmickry, and we are doing it for the welfare of future generations, for our children and our grandchildren.

To those who disagree with our numbers, let me say this, Mr. President, and to those who think they can do a better job: Go to it. We welcome their efforts. All I ask is they do it with a bipartisan group, not just one group from one side and one group from the other. Sure, we can come out on the Republican side with a massive tax cut and tremendous slashes in Medicare, for example. But try that on the Democratic side and see how it goes. So the essence of this was that we had Members from both sides.

Mr. President, this plan is intended to demonstrate to the negotiators on both sides that, one, it is essential to compromise and, two, that it can be done. It is a doable task. No one should throw up their hands in despair and say the sides are too far apart.

What did we do? There were significant steps taken to control the growth of Medicare and other entitlements. Our plan calls for Medicare savings of $154 billion, with a strong commitment from everybody in the group that the part B premiums stay at 31.5 percent, with affluence testing for those above the regular brackets, and also means testing for those who are in the lower-income areas—and they might well qualify for paying less than 31.5 percent.

We have agreed to conform the retirement age for Medicare with that of Social Security—namely, age 67. This is something that is going to take place in the future and will not contribute any dollars to the 7-year plan. But we feel it is critical to include this needed long-term entitlement reform.

On Medicaid, we have savings of $67 billion. Underlying this number is a view that we should preserve the Federal entitlement for our most vulnerable citizens, while, at the same time, we provided the States with broad flexibility to administer the program. This is, again, not going to make everybody happy, but it was something that we all agreed to.

We have agreed to $130 billion in tax cuts. We did not delineate how the tax cuts would be. We left that to the negotiators. We did not say X amount for capital gains cuts or Y amount for a child tax credit. We have chosen to reduce the CPI, Consumer Price Index, by .5 percent, which gives us $110 billion in additional savings.

Frankly, we did this because we have had all kinds of testimony before the Finance Committee, which stated that the present CPI is a flawed measurement and should be adjusted actually beyond the .5 percent. It should be as high as .7 percent, or indeed some economists say as high as 2 percent. We also included $58 billion in savings under welfare, which assumes the Senate-passed welfare reform bill. On discretionary reductions, we came in slightly below the so-called hard freeze—namely, no increase for inflation over the 7-year period.

Finally, Mr. President, we support the immediate adoption of a clean continuing resolution, on a short-term basis, until sometime next week, to get people back to work and get these budget negotiations back on track.

Mr. President, this is not a perfect plan, and it is not offered in the sense that we are budget negotiators. It is an illustration that a responsible balanced budget agreement using CBO numbers is doable. I hope it will help our negotiators as they go about the difficult task of securing a final budget accord.

Mr. President, I am delighted to be joined here on the floor with the distinguished Senator from Louisiana, who was absolutely crucial in all these negotiations that we had.

I yield the floor to him.

Mr. BREAUX. Mr. President, at a time when most Americans believe that many Members of Congress ruined this Christmas season, and are probably on the verge of killing each other because we have not been able to agree on the principles and even how to keep the Government open, I want to say what a great privilege and pleasure it is to be able to work with the senior Senator from the State of Rhode Island. His wisdom, his experience, his knowledge, his compassion for people, and yet his dedication to making Government work really is a pleasure to me, as a Democratic Member on this side of the aisle, to be able to work with a person of great common sense and great compassion and just common sense that understands that in order to make Government work there is such a thing as the art of compromise. That makes sense.

I think we have gotten to a point in this Congress where the word compromise is almost a dirty word that you should never utter for fear of moving away from the party principles. All of us who have been here longer than 12 months have to understand the way to get things done is to put forth the best ideas from both sides of the aisle and recognize that on difficult issues that those principles that we stand for need not be compromised, but how to get to those goals in fact does necessitate

compromise if we are ever going to make Government work.

Unfortunately, there are some who do not want to make Government work who have been elected to the Congress who are more concerned with shutting it down in order to make a point than in being willing to negotiate and talk with the other side and compromise with the other side in an effort to reach a legitimate compromise.

I think there is enough blame to go around. This is not a partisan statement at all. In fact, it is the opposite. I think both sides have had various Members at various times stake out lines in the sand and say we will not go any further than this, but there is a consequence to those type of speeches. The consequence is that the American people are shouting. They are not whispering any longer. They are shouting, ''Enough is enough. We have sent all of you here, Democrats and Republicans, to make Government work, not to shut it down, not to close the doors on the services that people need, not to make political points.''

That is what elections are about. After you are here, it is about service, and after you are here it is about making Government work for the people that elected us. We are at a point now where we are, both sides, losing the faith of the American people to do exactly what we are supposed to be doing.

That is why the press conference that we had this morning, Senator CHAFEE and myself, accompanied by about 19 Members, 18, 19, 20—half and half; half Democrats and half Republicans—who stood up and said, we have heard the pleas of the American people to get the job done. We have heard the pleas of our constituents who have said ''Stop the madness. Make Government work again. Trust us to accept your judgment when you reach a compromise,'' and we presented that plan. It is a blueprint. It is an outline. It has specific numbers on how to reach a balanced budget in 7 years, scored by the CBO in a way that is not everything that both sides would want, but I think reflects a fair middle ground.

We have called for a continuing resolution. This is a bipartisan group that says we should continue the Government so we can have the negotiators work without the pressure of having the Government shut down. This is Republicans and Democrats saying, at the same time, and in the same forum, we need a simple continuing resolution, uncluttered, give us until January 15th so the negotiators can work in peace and do the job that they are supposed to do. A very important point, the first time that a bipartisan group has said that.

Second, this group has called for tax cuts. These tax cuts are smaller than many Republicans would like but at the same time these tax cuts are larger than many Democrats would like. But it is a tax cut, a significant tax cut, which is designed to increase growth and productivity and savings in this country.

The second thing we do is we say there will have to be more cuts in entitlement programs—propose less cuts than Republicans would like and certainly more cuts than Democrats would like. But we are recommending that there be entitlement cuts to these programs to restore their solvency, to assure they will be around for the next generation, recognizing that to do that we have to have some significant reforms.

Mr. President, what we have offered is a blueprint. Part of that blueprint is something that some people think is so horribly controversial that we cannot even utter the word except in closeted surroundings, and that is an adjustment in the Consumer Price Index. Every economic expert, the people that read numbers every day and wear the green eyeshades and look at how much it costs to buy a typical basket of groceries, have told the Congress that we overestimate the Consumer Price Index, and taxes are indexed to that. Entitlement increases are indexed to that. But the index needs to be adjusted.

You would think that that is not too difficult a thing to do. But our side does not want to go first because people will say it is a tax increase or a cut in entitlement programs. Republicans do not want to go first because of the same reason. So as a result, nothing gets done. Our side stood up today in a public forum and said yes, we think it ought to be fixed. It is broken. The suggestion is that there be a .5 percent adjustment in the Consumer Price Index, which will generate about $110 billion over the next 7 years that we can use for programs that need greater funding, that will meet the needs of the people of this country.

I will conclude by saying this: Mr. CHAFEE has offered some real leadership here, and the other Republicans who have joined him have said, yes, it is time to recognize that compromise is all the way out. So we call for a truce today. We called for a ''stop the shouting and stop the blame game'' today. It was a significant statement. The product that we have put on the table, I think, is one that makes sense. It may not be the final answer, but it certainly offers a blueprint for us to get out of the mess that we are in.

We would hope that our colleagues will take a look at the product. I hope the negotiators will consider it as we present it to them this afternoon. I think the negotiations are going well. And hopefully, with a continuing resolution, they will have adequate time to get the job done. I yield the floor.

Mr. CHAFEE. Mr. President, I want to thank the distinguished Senator from Louisiana for the kind comments. It was a joint leadership. He was kind enough to say it was my leadership. No, no, it was the joint leadership in which we shared the responsibilities and the effort together, Senator BREAUX and I, and we certainly had wonderful support from everybody involved.

Mr. President, the agreement that we submitted today in the press conference and have outlined here on the floor was remarkable for this fact: Everybody agreed on every point. Now, that does not mean we started that way, but when we finished people did not say, ''Well, I am for points 1 through 4 but include me out on points 5, 6 and 7. But I am there for points 8, 9, and 10.'' Everybody signed on for all of the points. That was tough. It was tough for the Democrats to go to the $140,000 tax cut; it was tough for the Republicans to agree on the Medicare cut. We think we could have done better on the Medicare cut. We do not use the word ''cut''; ''reduction in the rate of increase.''

In order to reach an agreement we all compromised. I think it was a wonderful effort, and along with the Senator from Louisiana, I commend it to our colleagues and hope they take a good look at it.

The PRESIDING OFFICER. Under the previous order the Senator from Nevada is now recognized.

Mr. CONRAD. Will the Senator from Nevada yield to me for just 2 minutes?

Mr. REID. As soon as I yield to the Senator from West Virginia for whatever time he may consume, as long as I do not lose my right to the floor.

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

The PRESIDING OFFICER. Senator from West Virginia.

RECOGNIZING SENATOR DOLE'S SERVICE AS REPUBLICAN FLOOR LEADER

Mr. BYRD. Mr. President, I thank the Senator for his characteristic courtesy. I will be brief.

Mr. President, today Senator ROBERT DOLE equals the record set by Charles McNary, of Oregon, as the longest serving Republican floor leader. Senator McNary served as floor leader for 10 years, 11 months, and 18 days, until his death on February 25, 1944.

Senator DOLE, who began his service as leader on January 3, 1985, will have served 10 years, 11 months, and 18 days, as of the close of business today. That is quite a record. Tomorrow, the Lord willing, Senator DOLE will break the all-time record for the longest serving Republican floor leader.

I have been majority leader, minority leader, and majority leader again. I know something about the burdens that a leader carries. It is a thankless task. All of his colleagues think that they can do a better job than he can do as leader, or at least I kind of had that feeling when I was leader. And it is a heavy responsibility.

Senator DOLE has served his country on the far-flung battlefields, he has sacrificed for his country on foreign battlefields, and he has served his country on the legislative battlefield. I salute him and commend him.

He broke Everett Dirksen's record as second longest serving Republican floor

leader on September 4 of this year. I served here when the late Everett Dirksen graced this Chamber, serving at that desk where Senator DOLE now serves as majority leader. And I also served with Howard Baker, who was Everett Dirksen's son-in-law. Dirksen served 10 years and 8 months, extending from January 7, 1959, to September 7, 1969.

So, I salute BOB DOLE and I wish him many, many happy returns on this day. It is not his birthday, but he equals the record of the longest serving Republican leader. I look forward to tomorrow, when he will break that record.

Mr. President, I ask unanimous consent that a list of all the Republican floor leaders with their dates and length of service be printed in the RECORD at this point.

There being no objection, the list was ordered to be printed in the RECORD, as follows:

REPUBLICAN FLOOR LEADERS

Length of service	Name	Service as leader
10 years, 11 mos., 18 days.	Charles L. McNary (OR)	Mar. 7, 1933–Feb. 25, 1944
10 years, 8 mos.	Everett M. Dirksen (IL)	Jan. 7, 1959–Sept. 7, 1969
10 years. 5 mos. [to June 1995].	Bob Dole (KS)	Jan. 3, 1985–present
8 years	Howard H. Baker, Jr. (TN).	Jan. 4, 1977–Jan. 3, 1985
7 years, 4 mos.	Hugh D. Scott, Jr. (PA)	Sept. 24, 1969–Jan. 3, 1977
5 years, 5 mos.	William F. Knowland (CA).	Aug. 4, 1953–Jan. 3, 1959
4 years, 4 mos.	Charles Curtis (KS)	Nov. 28, 1924–Mar. 3, 1929
4 years	James E. Watson (IN)	Mar. 5, 1929–Mar. 3, 1933
4 years	Wallace H. White, Jr. (ME).	Jan. 4, 1945–Jan. 3, 1949
2 years, 11 mos.	Kenneth S. Wherry (NE)	Jan. 3, 1947–Nov. 29, 1951
1 year	Styles Bridges (NH)	Jan. 8, 1952–Jan. 2, 1953
7 mos.	Robert A. Taft (OH)	Jan. 2, 1953–July 31, 1953

Mr. BYRD. I thank my friend from Nevada, Senator REID, for his kindness and courtesy in yielding.

Mr. REID. Mr. President, before my friend, the distinguished senior Senator from West Virginia leaves the floor, I join in commending the majority leader for his service.

But I was thinking, as the distinguished Senator was speaking, that ROBERT DOLE has been Republican floor leader longer than I have been in the Senate, a year longer than I have been in the Senate. If there were ever an illustration of why the term limit argument is so worthless, we need only look at the distinguished services rendered by Senator ROBERT DOLE.

Those people who are still beating the drums—the unconstitutional drums, I might add—of term limits are people who do not recognize that being a great leader does not come overnight. Even though I do not always agree with the majority leader I have always found him to be fair, deliberate, and really statesmanlike in the things that he does in the Senate. That did not come by accident. He, as has been outlined by the Senator from West Virginia, has served not only in the military but in this body for many years. And the only thing term limits would do is increase the power of bureaucrats, those nameless, faceless people that do not answer phones, who we continually hear complaints about. It would also greatly increase the power of the lobbyists who fill these hallways of the U.S. Senate, and, of course, it would also increase the power of congressional staff and weaken the ability of the American public to be served well.

So, I commend and applaud the Senator from West Virginia for recognizing the great services of the Senator from Kansas, service that will go down in the history books. And also my editorial comment, that term limits are a bad idea today, tomorrow, and any other time.

Mr. DORGAN. Will the Senator yield for just a moment?

Mr. REID. I am happy to yield.

Mr. DORGAN. Mr. President, if I might just make an observation, I was struck by the comments offered by the Senator from West Virginia and by the Senator from Nevada. I have had exactly the same thoughts, especially in recent days when we have seen, sometimes, behavior that seems intemperate and behavior that does not always do this institution proud, to recall there are people who have served many, many years in this institution, whose knowledge, whose understanding, and whose wisdom serves this country well.

With respect to Senator DOLE, I have said before on the Senate floor and I will say again today, while I do not always agree with him—in fact, sometimes we have very vigorous debate about policy—I have enormous respect for his capabilities, and I have enormous respect for his service to this country as a U.S. Senator.

It seems to me that this country has been well served for many, many decades by service from people with names like Webster and Calhoun and Clay, and so many others, and in this century, Goldwater and Humphrey, and so many others, including Senator ROBERT C. BYRD. And it especially includes Senator ROBERT DOLE.

I think almost all of us in this Chamber, no matter where we come from or what our political philosophy is, respect the leadership and the service offered this country by the distinguished majority leader.

I appreciate very much hearing the comments, the generous and appropriate comments offered today about Senator DOLE, by the Senator from West Virginia. And I appreciate the Senator from Nevada yielding to me.

Mr. DASCHLE. Will the Senator from Nevada yield as well?

Mr. REID. I am happy to yield to the Democratic leader.

Mr. DASCHLE. Mr. President, I appreciate, again, the Senator yielding the time. I know the Senator from Nevada did not come to the floor to talk specifically about this issue, but I want to commend the distinguished Senator from West Virginia for calling to the attention of the Senate this important day. I think it is obvious, from many of the comments made by Members on this side of the aisle, the respect and the extraordinary degree of real friendship that we have for the majority leader. As many have also indicated, there are many, many occasions when we find ourselves in disagreement, but never, hopefully, to be disagreeable.

Our view is that we have been led well by this majority leader and, obviously, in the tradition of the majority leadership of the Senator from West Virginia, Senator DOLE has served us very ably. He is a person who wants to get things done. He is a person who recognizes the philosophical differences, the partisan differences that we hold. But he is also a person I have found to be immensely helpful and supportive in my new role as the Democratic leader.

I have had the good fortune to work with many people on both sides of the aisle since coming to the Senate, but I know of no one on the Republican side of the aisle with whom I have enjoyed working more and for whom I have greater respect. So it is important that on this special day we call attention to his service and to the great affection in which he is held by so many Members on this side of the aisle.

I share my congratulations with the Senator from West Virginia, the Senator from North Dakota, and the Senator from Nevada, in expressing our best wishes to him as we mark this special occasion.

I yield the floor, and I thank the Senator for yielding.

The PRESIDING OFFICER. Under the previous order, the Senator from North Dakota is recognized.

Mr. REID. Mr. President, I believe that order should be that the Senator from Nevada had the floor.

The PRESIDING OFFICER. The Senator yielded 2 minutes under a previous order.

So I recognize the Senator from Nevada.

Mr. REID. My understanding is that the Senator from North Dakota wished the floor. I would be happy to yield the floor for whatever time the Senator may take and I still maintain my right to the floor.

Mr. CONRAD. Mr. President, I thank my colleague from Nevada for his very generous willingness to give me some time.

First, on the matter of the majority leader, I want to join my colleagues in recognizing his service as a leader in the U.S. Senate. His period of time as leader, I understand, has extended over 10 years. That is longer than I have served in the U.S. Senate. I, too, admire the Senator from Kansas. I have found that he is somebody who commands respect. He does his homework. He leads his side of the aisle in a very vigorous and determined way. While there are many times that we disagree on a policy issue, I have never thought that he is someone who commands anything other than full respect. And I want to add my voice to the voices of others.

Frankly, I think we could use a good bit more of that around here, recognizing the worth of people on both sides, because I have found that colleagues on both sides of the aisle in this Chamber are some of the finest people I have ever known. Just because we have differences and we debate vigorously does not diminish the value nor the humanity of anyone on either side. Maybe that is a word that needs to go out from this Chamber more; that people who serve here are worthy, and they are good people.

In fact, I think my constituents sometimes are surprised when I tell them that I find, on both sides of the aisle, the people that I serve with are some of the finest people I have ever known, the people who are in the U.S. Senate.

THE LEADERSHIP OF SENATOR CHAFEE AND SENATOR BREAUX

Mr. CONRAD. Mr. President, I would like for just a moment to single out two of my colleagues who, I think, are showing real leadership at a time of gridlock in Washington. I want to single out Senator CHAFEE, the Senator from Rhode Island, and Senator BREAUX, the Senator from Louisiana, who have led our bipartisan effort to put together a budget plan that would merge the differences, that would find common ground, that would break the gridlock, and that demonstrates that the two sides can work together here to achieve a result that is important for the country.

Mr. President, earlier today we were able to hold a news conference and indicate that last night we reached agreement between 19 Senators—10 Republicans and 9 Democrats—on the outlines of a plan to balance the budget on a unified basis over 7 years using CBO scoring, and that we were able to do it in a way that is fair and balanced.

Mr. President, I must say I have been very proud to participate in this effort because we did it without raised voices, we did it without hurling brick bats across the barricades, we did it by sitting together, by reasoning together, and by working together to achieve a result that is important to the country.

I think the leadership of Senator CHAFEE and Senator BREAUX should serve as an example to others who are negotiating on this budget matter because I think our group has blazed the trail showing others how we could achieve a result that will get the Government back to working and break the gridlock.

Mr. President, every day in this town there is a news conference that puts a spotlight on the differences between the two parties. This was the first news conference in many days in this city in which we were not talking about differences but we were talking about the ability of people of good will on both sides to get together, to reason together, and to achieve a breakthrough.

Mr. President, we just had an opportunity to make a presentation on that plan to the negotiators from both sides. I was pleased by the reaction.

I am just hopeful now that in the hours ahead cooler heads will prevail and that both sides will understand that to achieve an agreement neither side can get precisely what it wants but that we can have a principled compromise and one that advances the interests of this Nation.

Mr. President, I want to end as I began by saluting the leadership of Senator CHAFEE and Senator BREAUX. It takes courage to compromise.

Mr. President, as in the words of the ''Liberty Song'' by John Dickenson, ''By uniting we stand, by dividing we fall.''

This is an example of Senators working together to unite, of Senators reasoning together to unite, and I hope our colleagues will begin to focus on the need for uniting. That is what has made America strong—pulling together, working together, and uniting in order to achieve a result.

I thank the Chair. I yield the floor.

Several Senators addressed the Chair.

The PRESIDING OFFICER. The Senator from Nevada has the floor.

Mr. MOYNIHAN. Mr. President, will the Senator allow me 30 seconds on the subject of BOB DOLE?

Mr. REID. I am happy to yield without losing my right to the floor.

SENATOR BOB DOLE

Mr. MOYNIHAN. With great precision and with equal interest, Mr. President, it has been a quarter of a century since I first knew BOB DOLE and worked with him. He would find it interesting that we began working in an effort with a Republican President to establish a guaranteed income as a way of getting us out of our welfare problems. We are still in them. We will be in them much of the evening.

But in 25 years I have not known a man I have respected more. I have not worked with anyone with greater consequence. He is an ornament to this institution and to this Nation. We are proud of him.

I thank the Senator from Nevada.

Mr. REID addressed the Chair.

The PRESIDING OFFICER. The Senator from Nevada.

THE BALANCED BUDGET

Mr. REID. Mr. President, we have heard some talk on the floor today about we should have a balanced budget within 7 years. I would certainly acknowledge that. But I think the thing we should be concerned about today is getting Government back to work.

There have been statements made by the Republican leadership that those 250,000 Federal employees who are on furlough will be paid. Well, if they are going to be paid, it seems logical to me that the taxpayers would be getting a much better deal if they were doing something for their pay, like maybe doing their job.

I would suggest that just sheer logic tells me that, if the Republican leadership said that the furloughed employees are going to be paid their wages for not working, that we should go the next step and allow them to work so that the taxpayers are getting their money's worth. This way they are getting a real bad deal. The taxpayers are told that the parks are going to be closed. There are various Federal agencies where 250,000 people work and are not going to be operable but the people are going to be paid anyway. If I were a taxpayer, I would say that does not sound like a real good deal for me.

So I say for the third time here in the last few minutes, if the Republican leadership has said they will pay the furloughed workers, it seems to me logical that we should get them all back to work.

Mr. DORGAN. Will the Senator yield on that point?

Mr. REID. I am happy to yield for a question.

Mr. DORGAN. Mr. President, I would like to ask the Senator a question about that because I feel much as he does—that somehow, sometime today, or immediately, if possible, we ought to have the Federal workers come back to work and end the shutdown and still continue to negotiate on a balanced budget agreement.

It does not make any sense to see a circumstance where Federal workers—some 300,000—will not be allowed to come to work but will still be paid for work they did not do. And the bill is going to be paid by the American taxpayer.

I ask the Senator from Nevada, is not this a period several days before Christmas where it is for most a magic time, a time of family, reflection, lights, music, worship, and now we have a circumstance where we have 1 million checks that have been written sitting in a warehouse here in Washington, DC, that are supposed to go out to the veterans and are supposed to be in their mailboxes on January 1 for veterans and survivors? Unless a continuing resolution is passed immediately, that is not going to happen. We have 4 million children whose AFDC payments for their daily needs relates to the question of whether the continuing resolution will be passed so the money and the resources will be available for them.

You can imagine what will happen if on January 2 or 3 a veteran's survivor expecting a check needing to pay the rent or to buy food or to provide for their children's needs discovers the check is not there because of this shutdown. That is why I hope somehow this evening all of this gets unlocked and we can pass a CR. Does the Senator from Nevada see any reason that it provides any leverage for anyone to continue to have a Government shutdown in which people are sent home,

some 300,000, but yet we pay them for work they did not do? Is there anybody that gets penalized other than the American taxpayer with this kind of strategy?

Mr. REID. I would say to my friend from North Dakota, they are being penalized, the taxpayers that is, to the tune of $40 million a day. That is my understanding of the wages that are going to be paid for not doing the work. So you multiply just a little bit the time they have already been out of work—this is counted on Saturdays and Sundays. They get paid no matter what day it is—2 days, 80, 120, 160. It gets up pretty quickly.

That is where we are now. And the American taxpayer gets nothing in the way of services. We have here in Washington now one of the finest art exhibits to have been here in decades, the greatest still lifes probably ever painted, but it is only going to be here a short time and people have come from all over the United States to see that. They cannot see it. But yet those people who should be working are not working but are being paid, and the taxpayer gets a real bad deal on that.

Mr. BUMPERS. Will the Senator yield for an observation?

Mr. REID. I would be happy to yield to my friend without losing my right to the floor.

Mr. BUMPERS. It has been mentioned once or twice, but I do not think the full impact of the shutdown of the Government has really been accurately described. If you were one of the 260,000 people sitting home and being paid for nothing, first of all, that is demeaning, to ordinary people. They would much rather be working, despite the fact they are sitting home and being paid to sit home. But the dimension that I am going to mention is here is the most joyous season of the year, Christmas, that everybody looks forward to and among the 260,000 workers at home, I promise you, a lot of them live from paycheck to paycheck, and a lot of them were depending on spending money for gifts for their children for Christmas. And you know, sometimes I think the Congress ought to be charged with child abuse because a lot of children are not going to have the Christmas they otherwise would have.

I am not saying this is going to be massive, but obviously a lot of people are affected by the fact that they do not have a paycheck and therefore cannot spend any money unless they have a credit card that has a little bit left on the limit. But it is one of the most unfathomable things—I have been here 21 years. This is the most irresponsible, unfathomable, irrational things I have ever seen in my 21 years here. What on Earth are we doing?

Mr. REID. I would say to my friend from Arkansas, I repeat, especially when the Republican leadership has said these 250,000 or 260,000 people are going to be paid anyway. So would not the next step be to say, OK, you are going to get paid; go to work?

Mr. BUMPERS. It is an interesting thing about how we are cutting everybody under the shining Sun in the interest of a balanced budget but willing in the interest of some kind of unfathomable, absolutely incomprehensible to me ideology that says you cannot keep the Government going and talk about balancing the budget at the same time. It is a nondebate about whether we are going to balance the budget or not. That is a no-brainer. Everybody agrees on that point.

What we are arguing about mostly is the tax cut. If the Republicans would forgo all or just a significant portion of the tax cut, this is a done deal. Everybody knows that we have to cut Medicare. Everybody knows that we are going to have to slow the escalation of Medicaid costs. But I am not for slowing the environment and I am not for slowing education, an observation that has been made on this floor time and time again and just seems so patently clear and obvious, and yet I pick up the paper and it never points it out except ''Congress Bogged Again,'' ''Congress Can't Gets Its Act Together,'' blah, blah, blah. And all you have to do is sit down and say let us crank the Government up, pass a continuing resolution. After all, a continuing resolution funds these agencies at a dramatic discount from what they have been getting.

Mr. REID. Twenty-five percent.

Mr. BUMPERS. I thank the Senator for yielding. We can sit here I guess and engage in this colloquy all evening. I thank the Senator very much for allowing me to interject this.

Mr. REID. As always, I appreciate the statement of my friend from Arkansas.

Mr. President, I see the majority leader in the Chamber. I have yielded to everybody else and certainly I am happy to yield to him.

I am told, Mr. President, that the leaders want to have a unanimous-consent request entered. I am happy to yield to them without my losing the right to the floor.

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

The majority leader is recognized.

Mr. DOLE. Mr. President, I thank the Senator from Nevada, Senator REID.

UNANIMOUS-CONSENT AGREEMENT—CONFERENCE REPORT ON H.R. 4 AND VETO MESSAGE ON H.R. 1058

Mr. DOLE. Mr. President, I ask unanimous consent that following Senator REID's remarks, the veto message be laid aside, and the Senate turn to the conference report to accompany H.R. 4, the welfare bill, that it be considered under the following time restraints: 3 hours to be equally divided in the usual form.

Mr. President, I further ask unanimous consent that at 10:15 a.m., on Friday, there be 30 minutes for closing remarks on securities, to be equally divided in the usual form, and that at 10:45 a.m., there be 30 minutes for closing remarks on welfare, to be equally divided in the usual form.

Finally, Mr. President, I ask unanimous consent that at 11:15 a.m., the Senate proceed to vote on the question shall H.R. 1058 pass, the objections of the President to the contrary notwithstanding, to be followed immediately by a vote on adoption of the Welfare conference report.

The PRESIDING OFFICER. Is there any objection?

Mr. KENNEDY addressed the Chair.

The PRESIDING OFFICER. The Senator from Massachusetts.

Mr. KENNEDY. Reserving the right to object. If the result of this unanimous-consent request is made, we will vote on the two matters that are referred to, but we will not have an opportunity, given what the House of Representatives has just done—and that is, effectively they are recessing tomorrow without a continuing resolution, which will mean that millions of children will be unattended to, millions of the disabled will be unattended to. Effectively, do I understand the majority leader is making a request for those votes tomorrow on those two without giving any indication as to what the majority's intention is going to be, particularly without a continuing resolution, the impact that it is going to have on children and the disabled in this country?

Mr. DOLE. Mr. President, I say to the Senator from Massachusetts, there is a meeting with the President tomorrow morning with the leadership in the Senate and the House. It is my hope that after the meeting is concluded we may be in a position to do something under the CR. I can only speak for myself. I am prepared to do that now, but the House has not sent us one.

I think there will be an effort by the Democratic leader to call up and amend the bill that is now pending, which I would be constrained to object to. But there are others that will be affected in addition to veterans. I think there are four or five groups. It seems to me, if nothing else is successful, we ought to amend the one that the House sent over dealing with veterans and put all the other groups on so they will not be deprived of any benefits or delay in their checks, if everything else fails, as far as the CR is concerned.

Mr. KENNEDY. I will just take another moment.

Mr. President, I appreciate the willingness and the commitment of the majority leader to do that. As the Senator knows, the House has passed now their resolution just a few moments ago which effectively puts them in recess for 3 days, with the possibility of extending 3 more days, the possibility of extending 3 more days, with a 12-hour call-back, and without any continuing resolution, which will be in effect as of 2:30 tomorrow afternoon.

We are being asked to consent to this agreement, where the final votes of which will be some time in the midday;

and the House of Representatives, according to the House rules and the Senate rules, then will be permitted to effectively recess without corresponding necessary action by the Senate. And the particular groups that the majority leader has addressed, their needs will be left unattended.

I just want to know what the intention of the majority is going to be with regard to those individuals, particularly since the majority leader has indicated to the minority leader that he has every indication that he is going to object to a clean continuing resolution.

This appears to be the only avenue that is left open to us. I just learned a few moments ago that this was the action that was taken in the House. And this is the inevitable action that will result if the House takes off and we pass this. Those individuals which the majority leader has identified, they will be left unattended while the House of Representatives recesses and while evidently we will be unable to take any action. We will be foreclosed from taking any action too. And I find that that is a troublesome response.

I want to say at this point, I know that the majority leader has been very positive and constructive in trying to move the larger issue about the reconciliation on the budget forward. I think all of us understand that he has tried to be and is a positive force toward moving in that direction. So I am not at this time trying to interrupt that continued kind of effort.

But that really is independent from the groups that the majority leader has mentioned, from their needs being served. I fail to see how we are going to be able to reach any conclusion with regard to those individuals because it will require both bodies taking action.

Is that the understanding of the majority leader?

Mr. DOLE. It is my understanding—I would have to check—but what happened in the House was simply to give the Speaker authority to recess for 3-day periods in accordance with their rules. I do not believe the recess takes effect at 2:30 tomorrow. It is my understanding our meeting at the White House should end about 11:15, 11:30.

If we can accomplish something tomorrow morning, which I believe we can, then it would be my hope that the House would then—either we amend the bill that is over here with a CR or they send us a CR. I am not an advocate of shutting down the Government. I never have been.

We have indicated in a letter to Senator WARNER and others that we would support on this side and the House side paying all those who were furloughed. But I think we have a larger problem, as pointed out by the Senator from Massachusetts. If everything else fails, I think the least we should do is take up the bill that is now here concerning veterans and add to it the other categories that might be affected.

Mr. KENNEDY. I appreciate that. So that would be the intention of the majority leader.

I will not object to the request. I want to commend the majority leader for that responsible action. I hope that during the time between now and tomorrow that he would use his persuasive powers, which he uses so frequently around here, to encourage that action be taken in a similar way by the House of Representatives.

Mr. DOLE. I thank my colleague from Massachusetts. I certainly will make every effort. I am not certain I will be successful, but I share many of the views he has expressed.

The PRESIDING OFFICER. Is there objection?

Mr. MOYNIHAN addressed the Chair.

The PRESIDING OFFICER. The Senator from New York.

Mr. MOYNIHAN. Mr. President, reserving the right to object, and I shall not object, it would be the right of any Senator to ask at this time that the conference report to accompany H.R. 4, the Personal Responsibility Act, be read in its entirety by the clerk. Such a reading would provide the first indication to most Senators of what is in this conference report. It has been 3 full months since the bill passed the Senate, but the conference committee met only once, 2 months ago, October 24, and conducted no business at the meeting other than opening statements. The entire conference process was conducted behind closed doors and without participation by the minority, which is one reason why there is not a single Democratic signature on this conference report.

I was able to obtain a copy of the conference report only a few hours ago, as the House completed its consideration. We are woefully uninformed as to the details, but may I say that all any Senator needs to know about this legislation is that it would repeal title IV–A of the Social Security Act, Aid to Families with Dependent Children, and that it will be vetoed by President Clinton. Mr. President, I do not object.

I simply want to make the point that this partisan mode is not the way great social-political issues are addressed successfully in our country, and I hope this will pass with the coming of Christmas.

The PRESIDING OFFICER. Is there objection? Without objection, it is so ordered.

UNANIMOUS-CONSENT AGREEMENT—START II TREATY

Mr. DOLE. Mr. President, I further ask unanimous consent that immediately following the two votes, the Senate proceed to executive session to begin consideration of the START II Treaty.

Let me indicate with reference to that, there has been ongoing work that I have been indirectly involved in, in the past several days, to reach some agreement on START II. As I understand, there were seven or eight different issues that have been resolved. They are very close to getting agreement. If that happens, it should not take too long to dispose of the START II treaty.

The PRESIDING OFFICER. Is there objection? Without objection, it is so ordered.

Mr. DASCHLE addressed the Chair.

The PRESIDING OFFICER. The minority leader.

UNANIMOUS-CONSENT REQUEST—HOUSE JOINT RESOLUTION 134

Mr. DASCHLE. Mr. President, I associate myself with the remarks made by the distinguished Senator from Massachusetts. Many of us have watched with some dismay as the House continues to refuse to offer a resolution which funds the Government. They have now provided for a resolution which only funds that part of the continuing resolution dealing with veterans. We have no objection at all to the veterans resolution coming to the floor and passing it.

We would like to offer an amendment which does that for everything else, including the children and many others who are adversely affected by this Government shutdown.

It is our hope that at some point, certainly before the end of the week, that can be done and would like to see if it could be done tonight.

So, Mr. President, I ask unanimous consent that the Senate now proceed to House Joint Resolution 134, the veterans' continuing appropriations resolution; that the bill be read a third time and passed, as amended, with an amendment that will reopen the Government and keep it open until January 5, 1995; and that the motion to reconsider be laid upon the table.

The PRESIDING OFFICER. Is there objection?

Mr. DOLE. Mr. President, I do reserve the right to object and I shall object, because it does not seem to me this will serve any constructive purpose at this time.

We are going back tomorrow. The principals are going to meet on a balanced budget in 7 years. I am not certain what action the House will take on this this evening, in any event.

As I indicated to the Senator from Massachusetts, and I will again state to the Democratic leader, it is my hope we can make enough progress tomorrow that we can do precisely what he recommends. Maybe the date will not be January 5. I do not know about that date. It does seem to me we have made progress today. If we make some in the morning, perhaps we cannot only do some other legislative business, but also pass a continuing resolution. Therefore, I object.

The PRESIDING OFFICER. Objection is heard.

Mr. DASCHLE. Mr. President, let me just say, I hope as a result of the meeting tomorrow at the White House we can move forward with some form of a continuing resolution tomorrow. I would like it to be a complete continuing resolution, obviously, dealing with

veterans and children and the whole range of those who are adversely affected by this shutdown.

It must not go on. We simply cannot leave with this matter left unresolved. And so it is important that regardless of what happens at the meeting tomorrow, the Senate be on record in support of a continuing resolution which completely funds the Government for a period of time. I am hopeful the majority leader and I can work together to make that happen at some point tomorrow under any set of circumstances.

I yield the floor.

Mr. DORGAN addressed the Chair.

The PRESIDING OFFICER. The Senator from Nevada has the floor and yielded to the two leaders for the purpose of the unanimous-consent request. Does the Senator from Nevada yield or reclaim the floor?

Mr. DOLE. What is the pending business now?

The PRESIDING OFFICER. Completing the statement of the Senator from Nevada, the pending business will be the conference report.

Mr. DORGAN. Mr. President, I simply want to make an inquiry of the majority leader. I wonder if the Senator from Nevada will allow me to do that.

Mr. REID. I will, without losing my right to the floor. We talked about records. Senator DOLE talked about his record. I think I have broken a record. I have been here and yielded 12 times. I will be happy to make it for the 13th.

[Laughter.]

Mr. DORGAN. Make mine the 14th.

Mr. REID. This is the 13th.

THE FARM BILL

Mr. DORGAN. Mr. President, I appreciate the Senator yielding to me. I would like to inquire of the majority leader on the subject of the farm bill. Senator DOLE comes from farm country, as many of us do in the Chamber, and we face an unusual circumstance toward the end of this year. This is the year we normally would have written a 5-year farm plan. A plan has not been written. One was in the original legislation that was passed by the Senate that was vetoed by the President, the reconciliation bill.

Many of us are concerned, as are farmers from across the country, about what will be the decision of Congress, what kind of circumstance might exist for them and their lenders to anticipate with respect to planting next year, what kind of support prices and so on.

I just rise to inquire of the majority leader what his thinking is about the movement of a farm bill or the extension of the current farm program for a year. What is the current thinking of the majority leader on that subject?

Mr. DOLE. Obviously, I share the concern expressed by the Senator from North Dakota.

Let me first indicate, there will be no more votes today, because I have had inquiries.

It is my understanding that at 3:30 or 4 o'clock this afternoon, there was a discussion of the so-called farm bill with different representatives from the White House and others who were there. I would like to see it part of this package that I hope we can agree on that will give us a balanced budget but still include the agriculture legislation. It is important not only to the Midwest where we are from, but very important to consumers in America and other farmers across this country.

A 1-year extension, if everything else fails, might be an option. As the Senator knows, if that does not happen, we go back to, what is it, 1948, 1949, which would not be very productive, in my view. It would be very high price supports. So I am hopeful that we can work—we are working in a bipartisan way. I say to the Democratic leader, talking about when we get to agriculture, it must be one of the areas we must agree on if we are going to come together and pass a package.

Mr. DORGAN. I appreciate the answer. I point out, as the Senator knows, the urgency with which many farmers view this process, whether it is in or out of a reconciliation bill. I think farmers and their lenders need some understanding of what will be the circumstances for their planting next year, what might or might not be the price support system.

I am not suggesting there is blame here. I am suggesting somehow we need to get to a decision and it might be the extension of the current farm bill or it might be a different plan put in the reconciliation bill. If a reconciliation bill does not occur, then would there be a contingency and does the Senator share the urgency many of us feel on this floor about the need to resolve this issue?

Mr. DOLE. I have been on the Ag Committee—I think I have the record of more service on the Ag Committee than any other member on that committee. We have gone through this a number of times. Certainly, it is very important, very significant for America's farmers. I feel, I hope, as deeply as the Senator from North Dakota and others in the Chamber, when we have large numbers of farmers and ranchers in our States. I hope we can reach some conclusion. If not, we may have to look at an extension for a year.

Mr. DORGAN. Thank you.

Mr. DOLE. Mr. President, if I can ask the Senator from Nevada to yield just one more time.

SENATOR BYRD'S COMMENTS

Mr. DOLE. Mr. President, I learned in my absence my colleague from West Virginia, Senator BYRD, revealed that I had tied the record for service as the Republican leader. I had no idea that was a fact. If Senator BYRD says it, I know it is a fact because I know he checked it very carefully. I want to thank him for his gracious comments and thank all of my colleagues who have tolerated me during that—what is it—10 years.

SECURITIES LITIGATION REFORM ACT—VETO

The Senate continued with the reconsideration of the bill.

Mr. REID. Mr. President, I am here to speak on the securities litigation veto override. I want everyone in Nevada to know that this is the same issue that a few weeks ago Senator BRYAN and I disagreed on. It is not a new issue. You see, in Nevada, Mr. President, it is news when Senator BRYAN and Senator REID disagree on an issue, so I repeat for the people of Nevada this is the same issue; it is not a new issue, because we vary so little in our outlook on what is good Government.

Mr. President, there are a lot of issues today that perhaps I would rather be debating, but the parliamentary measure now before us is the securities litigation. A balanced budget or welfare reform would certainly be more timely. There are a number of other issues we should perhaps be dealing with. But the matter that is now before this body is a bipartisan piece of legislation designed to curtail the filing of frivolous security strike suits.

Yesterday, in the House of Representatives, 83 Democrats voted to override, joining the Republicans to obtain, of course, over 300 House votes, significantly more than enough to override the President's veto.

I am distressed that the President has decided to veto this moderate, centrist approach to litigation reform. I am concerned that he has vetoed this legislation for the wrong reasons.

I have reviewed closely his veto message. It does not take very long to read. It would appear he has found very few substantive reasons for vetoing the measure. I believe that the President of the United States received very bad staff advice. One need only look at a number of editorials written this morning in the papers around the country. One in the Washington Times today says, among other things ''According to administration aides, the crucial moment came when New York University Law School Professor John Sexton visited the White House to personally argue that the legislation should be vetoed.''

I do not know who John Sexton met with, whether it was staff in the White House or whether it was the President, but if it were staff and the message was carried to the President, it was pretty bad information because had the staff properly advised the President, they would have found that this man is not really a law professor in the true sense of the word but, rather, he is the dean of a law school. In fact, if this advice was delivered from a professor, as has been stated, without clear vested interests on either side of the hotly contested issue, then the staff gave the President some pretty bad advice, because according to The Wall Street

Journal that is what decided things for Mr. Clinton, because he received advice without clear vested interests on either side of the hotly contested issue.

I believe the staff gave the President some very bad advice. Why? Because Mr. Sexton is not just a professor at New York University school of law, but rather he is the dean of the school of law.

One of the prime functions of the dean of a law school is to raise money for the law school. It is interesting to note—and I think the President should have known this—and it is too bad that the staff did not tell him, that one of the first major donations to New York University School of Law during Mr. Sexton's tenure as dean of the law school was in 1990 when Mr. and Mrs. Melvin Weiss donated $1 million to the school, and then led a campaign to raise another $5 million.

It is interesting to note, Mr. President, that this Mr. Weiss is the Weiss in Milberg, Weiss, Bershad, Haynes & Lerach.

So it seems to me that the staff and the advisors that gave this information to the President failed to tell him that this man and his law school received $1 million from Mr. Lerach's law firm. Then the same partner in the law firm went ahead and helped raise $5 million. So, I think it goes without saying that he received some biased advice.

None of the objections were raised by the White House prior to the vote on the conference report. I understand it is a large bill and that there may be parts the White House disagrees with, but the veto message was pretty skimpy, Mr. President. It makes little sense to reject this measure and all the bipartisan efforts that went into drafting it.

The current system encourages plaintiffs to file strike suits at will.

Mr. President, I think the President got some bad advice. I think what he should have done and what his staff should have shown to him is a memorandum that is dated December 19, directed to the President of the United States, to the Office of White House Counsel. In this, there would have been a clear statement as to answering the main problem the President said in his very brief veto statement.

This memorandum was written by Prof. Joseph A. Grundfest, of Stanford School of Law. Professor Grundfest is a man who can speak with some authority. He is not only a professor at Stanford, one of the foremost law schools in the entire world, but he joined Stanford's faculty 5 years ago after having served as Commissioner of the United States Securities and Exchange Commission. I will not go through his entire resume, but he knows something about securities.

What he said to the President is that the pleading standard is faithful to the second circuit's test.

> Indeed, I concur with the decision to eliminate the Specter amendment language, which was an incomplete and inaccurate codification of case law in the circuit.

> As is stated in a recent Harvard Law Review article, codification of a uniform pleading standard in 10b–5 cases would eliminate the current confusion among circuits. The Second circuit standard is among the most thoroughly tested, and it also balances deterrence of unjustified claims with need to retain a strong private right of action. Indeed, the second circuit is widely respected for its legal sophistication . . . .

This is the type of scholarly counsel the President should have been provided by the staff. In fact, they were directed to one of the law partners' donatees, someone who had given the law school large sums of money.

Mr. President, the current system encourages plaintiffs to file strike suits at will. The system almost operates like a pyramid scheme where investors are encouraged to get in early but ultimately lose out to the operators of the scam—in this case, these attorneys. How quick are these suits filed? We heard statements this morning that they have been filed within minutes of the stock dropping. I heard a statement today of 90 minutes.

In dismissing the Philip Morris securities litigation, the court in the Southern District of New York, noted that 10 lawsuits were filed within 2 business days of a drop in earnings being announced. In one case, a suit was filed within 5 hours of the announcement. They were slow. They have beaten that by at least 3½ hours. In that case, the court states:

> . . . in the few hours counsel devoted to getting the initial complaints to the courthouse, overlooked was the fact that two of them contained identical allegations, apparently lodged in counsel's computer memory of ''fraud'' form complaints, that the defendants here engaged in conduct to prolong the illusion of success . . . .

The judge, in that case, found it hard to believe that the shareholders could have contacted their lawyers to file suit so quickly. The speed with which they file these suits suggests that these attorneys are constantly on a hunt for any drop in a stock price. This is really a form of Wall Street ambulance chasing. The Philip Morris case is, unfortunately, not the unusual. It is a competitive business among a very small group of lawyers. Each attempts to get in on the bottom floor of each action. They follow the old Chicago corollary on elections: file early and file often. Why? Because the lawyer that is designated the lead counsel by the court is in the best position to collect attorney's fees.

Mr. President, in a single 44-month period, one plaintiff's law firm alone filed 229 separate 10b–5 suits around the country, the equivalent of filing one 10b–5 every 4.2 business days. Almost 70 percent of the 10b–5 class actions filed by Milberg Weis, the leading securities litigation plaintiffs firm, over a 3-year period were filed within 10 days of when the stock price dropped.

Now, if you look at the editorial today from the Wall Street Journal, you find it quite interesting. They ask rhetorically, why did President Clinton veto this? They say, among other things:

> So what is the big show-stopper? Mr. Clinton singles out several minor clauses, especially the language on ''pleading requirements.''

I already addressed that:

> This is the part of the bill designed to ensure that lawyers state a specific cause of action . . . before being allowed to paw through a company's files. Mr. Clinton says he is prepared to accept a higher pleading standard, just not as high as the one called for here.

They go on to say:

> This is why he vetoed the entire bill? Give us a break. Even Sen. Dodd doesn't buy it. In a statement, he said, [Senator Dodd] ''While I respect the President's decision, frankly I'm surprised at the reasons, raised at the 11th hour, which are relatively minor given the real scope and degree of the strike-suit problem. In fact, they have been resolved over the course of the more than four years it took to carefully craft this compromise, bipartisan legislation.''

That is a statement from Senator CHRIS DODD.

The Wall Street article goes on to say:

> If the Democrats are to put together a forward-looking, next-century agenda that can attract widespread support, they've got to get off their bended knee before groups like the trial lawyers.

Defrauded investors are not adequately compensated because attorneys, not investors, control these class actions. The average class action settlement gives investors only 14 cents for every dollar lost, while one-third of each settlement and more goes to the attorneys.

The legitimacy of the plaintiffs must be examined. Some are clearly professional plaintiffs who lend their names to any class action suit. One study of 229 cases showed 81 people were plaintiffs more than once. These are not aggrieved, injured parties, but professional plaintiffs, and the lawyers know it.

If you do not believe me, Mr. President, listen to the words of one of the plaintiff's attorneys who benefit from the status quo. An attorney by the name of William Barrett told Forbes Magazine, ''I have the best practice in the world because I have no clients.'' This might be funny if it were not so true and so costly.

Just how expensive is maintaining the status quo? One report stated that it cost companies an average of $8.6 million in settlement fees, $700,000 in attorney's fees, and about 1,000 hours of management time to settle the typical frivolous securities suit.

Status quo means companies will have to pay these costs rather than create new products and, I submit, new jobs.

Mr. President, who pays for these costs? These costs are passed on to investors in the form of stock price devaluation and lower dividends. This undermines the confidence of all investors in our capital markets.

Let us look at specific costs one company faced because of the current pro-

trial lawyer's laws. After one company, called Adapt Technology, went public, it was advised to carry $5 million in director and officer liability insurance. This cost them $450,000 each year for premiums. Prior to going public they paid a few thousand dollars per year. To be exact, less than $29,000. The additional insurance is needed because of the virtual certainty that the company will be sued for securities fraud within a short time after going public, and then they have to be concerned about the different margins where the stock falls. If Adapt did not have to pay this additional liability insurance they say they could hire at least five new engineers.

I know there have been mayors and other officials around the country who have been given information, mostly from these lawyers, that this is bad for them. They write to me and others, still talking about the original House version of the bill which certainly is not anything we have before us now, saying this is not what they want.

I would like to refer to some people who support this legislation because there is lots of support of our people at home who want this legislation approved. They want this veto overridden.

Bill Owens, State treasurer of the State of Colorado, in a letter states, ''The plaintiffs typically recover only a small percentage of their claims and the lawyers extract large fees for bringing the suit. A system that was intended to protect investors now seems to benefit the lawyers.''

We also have a letter, part of a letter from the State treasurer of Delaware. Certainly Delaware—that is where most corporations are formed—I think we should give some credence to the treasurer of the State of Delaware, where she says, ''Investors are also being harmed by the current system as it shortchanges people who are being victimized by real fraud. The plaintiff's lawyers who specialize in these cases profit from bringing as many cases as possible and quickly settling them, regardless of the merits. Valid claims are being undercompensated in the current system because lawyers have less incentive to vigorously pursue them.''

Another State treasurer, Judy Topinka, from the State of Illinois, in a letter to Senator MOSELEY-BRAUN writes, ''Because shareholders are on both sides of this litigation it merely transfers wealth from one group of shareholders to another. However it wastes millions of dollars in company resources for legal expenses and other transaction costs that otherwise could be invested to yield higher returns for company investors.''

''The concern about and reaction to meritless lawsuits has caused accountants, lawyers and insurance companies to insure their directors with price tags ultimately paid by the consumer and investing public including a large part of our retirees and pension holders.'' So says Joe Malone, Treasurer of the Commonwealth of Massachusetts.

The treasurer of North Carolina: ''I agree,'' he says, ''that the current securities fraud litigation system is not protecting investors and needs reform.''

The treasurer of the State of Ohio and the treasurer of the State of Oregon say similar things. The treasurer of the State of South Carolina, the treasurer of the State of Wisconsin, the treasurer of the State of California state similar things.

So, if we look to our States for guidance we should follow what our treasurers say.

But there are others who support this securities litigation reform and there would be many more that would support the securities litigation reform had they not been given such bad information early on that scared them to death. The information was given to them by these lawyers who make a fortune with these security litigation lawsuits. Supporters of the securities litigation reform, I will read off a few of the names: American Business Conference, American Electronics Association, American Financial Services Association, American Institute of Certified Public Accountants, Association for Investment Management and Research, Association of Private Pension and Welfare Plans, Association of Publicly-traded Companies, BIOCOM—formerly Biomedical Industry Council—Biotechnology Industry Association, Business Round Table, Commissioner of Corporations of the State of California, Champion International Pension Plan—one of the largest in the United States—Director of Revenues of the city of Chicago, Coalition to Eliminate Abusive Security Suits, Connecticut Retirement and Trust Fund, Eastman Kodak Retirement Plan, Electronics Industries Association, chief administrative officer of the State of Florida, Information Technology Association of America, Massachusetts Bay Transportation Association, National Association of Investors Corp., National Association of Manufacturers, National Investor Relations Institute, National Venture Capital Association, Governor of the State of New Mexico, Comptroller of the City of New York, New York City Pension Funds, Oregon Public Employees Retirement System, Public Securities Association, Securities Industries Association, Semiconductor Industry Association, Silicon Valley Chief Executives Association, Software Publishers Association, Teachers Retirement System of Texas, Washington State Investment Board—just to name a few of those that want something to happen, namely that this veto be overridden.

There are a lot of good reasons to support this measure. Frivolous strike suits are not simply windfalls to unscrupulous attorneys, but they are costing our Nation jobs. They are inhibiting the development of high technology in every State in the Union. It is almost a certainty that start-up companies will get, with the formation of the company—a strong chance that soon thereafter there will be a securities class action lawsuit after they have gone public. The information provided to the Senate Banking Committee indicates that 19 of the largest 30 companies in Silicon Valley have been sued since 1988.

According to another study, 62 percent of all entrepreneurial companies that went public since 1986 have been sued. This was by 1993, when the records were made available to us. In the last year and a half, I will bet we are nearing 80 or 90 percent. They file them almost as fast as they can. This is just in Silicon Valley.

So, as one of the Senators from Nevada, I find this disappointing. There are other reasons for supporting this legislation. By discouraging frivolous security suits, companies can use their capital to increase shareholder returns. They could expand research and development. They could create new jobs. The conference report also ensures that victims of securities fraud and not their lawyers are winners.

I think that one reason we are hearing the screaming from these lawyers is that under this conference report, under this legislation, the people who will benefit if they have been cheated will be the people who have been cheated, not the lawyers and the professional plaintiffs. Too often these attorneys collect millions of dollars while their clients collect only pennies.

What about investors? Investors are harmed by the status quo because companies are reluctant to provide estimates about future performance for fear they will be sued. The conference report remedied this by providing for the safe harbor, while the Chairman of the SEC said he approved this.

Let us also talk about the work done on this legislation by the senior Senator from the State of Connecticut. I remind my colleagues, my Democratic colleagues who voted for this measure originally, that this issue is not about supporting the President. This issue is about supporting the chairman of the Democratic National Committee, who has spent countless hours working on this legislation, drafting this legislation, debating this legislation, and who worked with the White House up to the very end to get their approval on what was done. So this is not a question about supporting the President. It is a question of those who originally supported this bill yanking the rug out from somebody who has worked very hard on this legislation. He has done so in consultation with the White House. The White House has been included from the very beginning. That is a tribute to the senior Senator from Connecticut.

He was instrumental in including the White House in developing this legislation. There have been good-faith efforts to consult with the administration every step of the way. And when this legislation left the Senate, the senior Senator from Connecticut said, ''I will

support this legislation when it comes back from conference only if it matches what we have done here in the Senate.'' That is, that it follows what we have done here in the Senate.

Certainly that is what it did. The Senate position was what was adopted. The President's weak ideas for vetoing this, we have gone over.

There are people who do not like this legislation, and I respect them for that. I respect them for that. But those people who supported this legislation initially should understand that one of our leaders, Senator DODD, has spent a great deal of time and effort on this legislation and he does not deserve any of the 18 Democratic Senators who voted for this to have jerked the rug out from under him. He deserves more than that. He works on a daily basis for all Democratic Senators. But certainly let us not do this to him. As chairman of the DNC, he is probably more in sync with the desires of the body politic than the rest of us. He knows what direction our party should be headed, and he realizes that the centrist commonsense proposals, such as we are now asking of the majority of this Senate should be given our support.

I ask my Democratic colleagues to consider this when voting on the override. Consider the work that has gone into this by the senior Senator from Connecticut.

This is needed legislation that will do much good. This will put some lawyers out of the kind of work they have been doing making fortunes. They may have to get another practice, or another type of law, or maybe start doing work in which they get paid on an hourly basis. But in the long run, it will also create many new jobs and benefit small investors. It represents the moderate centrist approach to legislating that we ought to be engaged in here.

I respect the opposition to this legislation. There are some people who simply did not like it to begin with. It is a very small minority. But I respect them for that. But those that supported this legislation on this side of the aisle should stick with our leader on this issue, that is, Senator DODD who has spent so much time on this legislation.

This legislation does not represent the ideology of the liberal left or the radical right. It represents a commonsense, bipartisan consensus, and I believe that is what the voters sent us here to do.

There is speculation as to why it was vetoed. I am not going to engage in that other than to say that the President got some real bad advice. The absence of persuasion in the veto message does little to quell any speculation.

I must say, however, that the death of this legislation only benefits a very small group of lawyers who have ruthlessly exploited current laws. They do so to the detriment of small investors and those who have legitimate claims. Their access to money has endowed them with tremendous influence in this debate, and I believe that is regrettable.

I believe, Mr. President, that this legislation is fair. I think it is directly going to help clear up an area of law that needs clearing up.

To those people who are talking about investors not being protected, I repeat that Senator DODD went to great lengths to work with the vast majority of people on the other side of the aisle, with the White House, and a number of Senators on this side, making sure that investors would still be protected. Investors will be protected, but the lawyers who have been getting these exorbitant fees will not be protected if this veto is overridden, which I hope it is.

PERSONAL RESPONSIBILITY AND WORK ACT OF 1995—CONFERENCE REPORT

The PRESIDING OFFICER. Under the previous order, the clerk will report the conference report.

The legislative clerk read as follows:

The committee on conference on the disagreeing votes of the two Houses on the amendments of the Senate to the bill (H.R. 4) to restore the American family, reduce illegitimacy, control welfare spending and reduce welfare dependence, having met, after full and free conference, have agreed to recommend and do recommend to their respective Houses this report, signed by a majority of the conferees.

The PRESIDING OFFICER. Without objection, the Senate will proceed to the consideration of the conference report.

(The conference report is printed in the House proceedings of the RECORD of December 20, 1995.)

Mr. MOYNIHAN. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

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

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

Mr. ROTH. Mr. President, sometime ago the American people reached a turning point concerning welfare reform. They understand that despite having spent over $5 trillion over the past 30 years, the welfare system is a catastrophic failure.

In 1965, 15.6 percent of all families with children under the age of 18 had incomes below the poverty level. And in 1993, 18.5 percent of families with children under the age of 18 were under the Federal poverty level. The system created to end poverty has helped to bring more poverty. By destroying the work ethic and undermining the formation of family, the welfare system has lured more Americans into a cruel cycle of dependency. The size and cost of the welfare programs are at historically high levels and are out of control. Federal, State, and local governments now spend over $350 billion on means-tested programs.

Between 1965 and 1992, the number of children receiving AFDC has grown by nearly 200 percent. Yet, the entire population of children under the age of 18 has declined—declined by 5.5 percent over this same period. More than 1.5 million children have been added to the AFDC caseload since 1990. And if we do nothing, if we do nothing to reform it, the number of children receiving AFDC is expected to grow from 9.6 million today to 12 million within 10 years.

That is what the future holds if the current system is allowed to continue. A welfare system run by Washington simply costs too much and produces too little in terms of results.

Twenty years ago, 4.3 million people received food stamp benefits. In 1994, that number had grown to 27.5 million people, an increase of more than 500 percent. And between 1990 and 1994 alone, the number of people receiving food stamps grew by nearly 7.5 million people.

In 1974, the Supplemental Security Income Program was established to replace former programs serving low-income elderly and disabled persons. SSI was considered to be a type of retirement program for people who had not been able to contribute enough for Social Security benefits. Of the 3.9 million recipients in 1974, 2.3 million were elderly adults. The number of elderly adults has actually declined by 36 percent.

But consider this: In 1982, noncitizens constituted 3 percent of all SSI recipients. By 1993, noncitizens constituted nearly 12 percent of the entire SSI caseload. Today, almost 1 out of every four elderly SSI recipients is a noncitizen.

Before 1990, the growth in the number of disabled children receiving SSI was moderate, averaging 3 percent annually since 1984. Then, in the beginning of 1990, and through 1994, the growth averaged 25 percent annually and the number trimmed to nearly 900,000 children. The number of disabled children receiving cash assistance under the Supplemental Security Income Program has increased by 166 percent since 1990 alone. The maximum SSI benefit is greater than the maximum AFDC benefit for a family of three in 40 States.

Welfare reform is necessary today because while the rest of the Nation has gone through a series of social transformations, the Federal bureaucracy has been left behind, still searching in vain for the solution to the problems of poverty. It simply will not be found in Washington.

Our colleague, Senator MOYNIHAN, has reminded us on a number of occasions that the AFDC Program began 60 years ago as a sort of widow's pension. Consider that the AFDC Program cost $697 million in 1947 measured in constant 1995 dollars. In 1995, the Federal Government spent $18 billion on the AFDC population, an increase of 2,500 percent measured in constant dollars.

Now, the AFDC Program was originally intended to be a modest means to keep a family together in dignity. But much has changed since then and the system has become a cruel hoax on our young people. It has torn families apart and left them without the dignity of work.

Washington does not know how to build strong families because it has forgotten what makes families strong. It has failed to understand the consequences of idleness and illegitimacy.

Last March, the House of Representatives charted an ambitious course for welfare reform in the 104th Congress. H.R. 4, the Personal Responsibility Act of 1995, was a bold challenge to all of us. It was a creative and comprehensive response to the many problems we currently face in the complex welfare system.

Since then, the Senate has continued the national debate and built on the blueprint provided by the House. Just 3 months ago, the Senate demonstrated that it recognized dramatic and sweeping reforms are necessary. The Work Opportunity Act passed the Senate with an overwhelming and bipartisan vote of 87 to 12.

Today, I am here to present to the Senate and to the American people H.R. 4, the Personal Responsibility and Work Opportunity Act of 1995. H.R. 4 ends the individual entitlement to Federal cash assistance under the current AFDC Program. It also caps the total amount of Federal funding over the next 7 years. These are the critical pieces of welfare reform which will institute dramatic changes the American people want.

These two provisions are the key to everything else which will transpire in the States. They make all other reforms possible. They guarantee the national debate about work and family will be repeated in every statehouse. Fiscal discipline will force the State to set priorities. Block grants will provide them with the flexibility needed to design their own system to break the cycle of dependency. And most importantly, this legislation restores the work ethic and reinforces the value of the family as the fundamental cell of our society.

Mr. President, after decades of research and rhetoric, it is indeed time to end welfare as we know it. This welfare reform initiative is built on three basic platforms and contains all the necessary requirements of authentic welfare reform.

First, individuals must take responsibility for their lives and actions. The present welfare system has sapped the spirit of so many Americans because it rewards dependency. It has also allowed absent parents to flee their moral and legal obligations to their children. This legislation ends the individual entitlement to public assistance and provides for a stronger child support enforcement mechanism.

Second, it restores the expectation that people who can help themselves must help themselves. For far too long, welfare has been more attractive than work. This legislation corrects the mistakes of the past which allowed people to avoid work. We provide additional funding for child care and incorporate educational and training activities to help individuals make the transition from welfare to work. Under this legislation, welfare recipients will know that welfare will truly be only a temporary means of support and must prepare themselves accordingly.

Finally, this legislation transfers power from Washington back to the States where it belongs. This will yield great dividends to recipients and taxpayers alike. As the power is drained from Washington, Americans should eagerly anticipate the reciprocal actions that take place in the States. States will find more innovative ways to use this money to help families than Washington ever imagined.

Freed from the current adversarial system, the States will be able to design their own unique methods to help families overcome adversity. The current system insults the dignity of individuals by demanding a person prove and maintain destitution. States will reverse this disordered thinking and raise expectations by shifting the emphasis from what a person cannot do to what a person can do.

On balance, you will find that the conference reflects the work of the Senate on the major issues within the Finance Committee jurisdiction. And as you examine the individual parts and the bill as a whole, I believe you will find we have been responsive to the concerns of the Senate.

The conference report provides the right mixture of flexibility to the States but still retains appropriate accountability. And I think the States will find this transfer of power to be a reasonable challenge.

Here are the major specific items included in title I which creates the new block grants to States for temporary assistance for needy families with minor children.

Each State is entitled to receive its allocation of a national cash welfare block grant which is set at $16.3 billion each year, and in return the States are required to spend at least 75 percent of the amount they spent on cash welfare programs in 1994 over the next 5 years.

In terms of funding, the States will be allowed to choose the greater of their average for the years 1992 to 1994 or their 1994 level of funding or their 1995 level of funding. By allowing the States to use their 1995 funding level, we have increased Federal spending for the block grant by $3.5 billion over the Senate-passed bill. We have maintained the $1 billion contingency fund.

The States will be required to meet tough but reasonable work requirements. In 1997, the work participation rate will be 20 percent. This percentage will increase by 5 percentage points each year. By the year 2002, half of the State total welfare caseload must be engaged in work activities. As provided by the Senate bill, States will be required to enforce ''pay for performance.'' If a recipient refuses to work, a pro rata reduction in benefits will be made.

We provide the resources to make this possible with $11 billion in mandatory child care funds for welfare families. Let me repeat. The conference report includes $1 billion more for child care than the Senate welfare bill.

Another $7 billion in discretionary funds are provided to assist low-income working families. There will be a single block grant administered through the child care and development block grant, but guaranteed funding for the welfare population.

The House has agreed to accept the Senate definition of work activities to include vocational training.

The House has agreed to drop its mandatory prohibition on cash assistance to teenage mothers. As under the Senate bill, this will be an option for the States to determine. The House has accepted the Senate authorization for the creation of second chance homes for unmarried young mothers.

The family cap provision has been modified from both positions. Under the new proposal, States will not be permitted to increase Federal benefits for additional children born while a family is on welfare. However, each State will be allowed to opt out of this Federal prohibition by passing State legislation.

The sweeping reforms in child support enforcement has unfortunately been overlooked in the public debate. This has been an important area of bipartisan action and an important method of assisting families to avoid and escape from poverty.

We are strengthening the enforcement mechanism in several ways. In general, the conference report more closely reflects the Senate bill. We reconciled several of the differences between the House and Senate on items such as the Director of New Hires and the expansion of the Federal Parent Locator Service simply by choosing a midpoint. We have increased funding over the Senate bill for the continued development costs of automation from $260 to $400 million.

One particular child support enforcement issue which may be of interest to you is the distribution of child support arrears. Beginning October 1, 1997, all post-assistance arrears will be distributed to the family before the State. As of October 1, 2000, all preassistance arrears will go to the family before the State will be allowed to recoup its costs.

We believe that improving child support collection will greatly assist families in avoiding and escaping poverty.

The American Bar Association strongly supports our child support enforcement changes. The ABA recently wrote that, ''if these child support reforms are enacted, it will be an historic

stride forward for children in our nation.'' Mr. President, we cannot afford to miss this historic opportunity.

SSI is now the largest cash assistance program for the poor and one of the fastest growing entitlement programs. Program costs have grown 20 percent annually in the past 4 years. Last year, over 6 million SSI recipients received nearly $22 billion in Federal benefits and over $3 billion in State benefits. The maximum SSI benefit is greater than the maximum AFDC benefit for a family of 3 in 40 States.

The conference agreement contains the bipartisan changes in the definition of childhood disability contained in the Senate-passed welfare reform bill. I am pleased we have addressed this problem on common ground.

The conference rejected the House block grant approach. All eligible children will continue to receive cash assistance. We retain our commitment to serving the disabled while linking assistance to need.

For children who become eligible in the future, there will be a two-tier system of benefits. All children will receive cash benefits. Those disabled children requiring special personal assistance to remain at home will receive a full cash benefit. For families where the need is not as great, such children will receive 75 percent of the full benefit.

No changes in children's benefits for SSI will take place before January 1, 1997. This will allow for an orderly implementation and protect the interests of current recipients.

These changes will restore the public's confidence in this program and maintain our national commitment to children with disabilities.

Current resident noncitizens receiving benefits on the date of enactment may continue to receive SSI, food stamps, AFDC, Medicaid, or title XX services until January 1, 1997. After January 1, 1997, current resident noncitizens may not receive food stamps or SSI unless they have worked long enough to qualify for Social Security. States will have the option of restricting AFDC, Medicaid, and title XX benefits.

Legal noncitizens arriving after the date of enactment are barred from receiving most Federal means-tested benefits during their first 5 years in the United States. SSI and food stamps will remain restricted until citizenship or until the person has worked long enough to qualify for Social Security. The States have the option to restrict AFDC, Medicaid, and title XX benefits after 5 years.

Mr. President, it is time to correct the fundamental mistakes made by the welfare system over the past three decades. All too often, the system simply assumes that if a person lacks money, he or she also lacks any means of earning it. The present welfare system locks families into permanent dependency when they only needed a temporary hand up. It creates poverty and dependence by destroying families and initiative. To end welfare as we know it, we must put an end to the system which has done so much to trap families into dependence. The Personal Responsibility and Work Opportunity Act of 1995 will accomplish precisely these goals.

From the early days of his administration, President Clinton promised welfare reform to the American people. H.R. 4 meets all principles he has outlined for welfare reform. If the President vetoes H.R. 4, he will be preserving a system which costs and wastes billions of taxpayers' dollars. More importantly, however, if the President vetoes H.R. 4, he will be accepting the status quo in which another 2½ million children will fall into the welfare system.

On January 24, 1995, President Clinton declared at a joint session of Congress, ''Nothing has done more to undermine our sense of common responsibility than our failed welfare system.''

Mr. President, vetoing welfare reform will seriously undermine the American people's confidence in our political system. The American people know the present welfare system is a failure. They are also tired of empty rhetoric from politicians. Words without deeds are meaningless. The time to enact welfare reform is now.

Mr. President, I yield back the floor.

Mr. MOYNIHAN addressed the Chair.

The PRESIDING OFFICER. The Senator from New York.

Mr. MOYNIHAN. Mr. President, just as a point of inquiry, we have 3 hours this evening, and I assume it will be equally divided? Is that agreeable to my friend, the distinguished chairman?

Mr. ROTH. That is correct. That is my understanding.

The PRESIDING OFFICER. That is correct.

Mr. MOYNIHAN. Mr. President, first, may I express my appreciation for the thoughtfulness and sincerity with which the Senator from Delaware has addressed this troubled issue. It is not necessarily the mode of address in these times with regard to this subject. And if I do not agree with him, it is not for lack of respect for his views. He knows that.

He mentioned the subject of a presidential veto, sir. And I must say that there will be such. The President this morning issued a statement saying that, ''If Congress sends me this conference report, I will veto it and insist that they try again.'' And I hope we will try again.

He spoke to the idea that, as he says as he concludes, ''My administration remains ready at any moment to sit down in good faith with Democrats and Republicans in Congress to work out a real welfare reform plan.''

May I say in that regard, first of all, that it is disappointing considering the degree of bipartisan efforts we have made with respect to the Social Security Act. As the Senator from Delaware stated, this bill would repeal the individual entitlement under title IV-A of the Social Security Act, the Aid to Families with Dependent Children program.

The conference report before us states:

> The committee on conference on the disagreeing votes of the two Houses on the amendments of the Senate to the bill (H.R. 4), to restore the American family, reduce illegitimacy, control welfare spending and reduce welfare dependence, having met, after full and free conference, have agreed to recommend—

Full and free conference? No, Mr. President. There was one meeting of the conferees on October 24, 2 months ago. We took the occasion to make opening statements, and the conference, as such, has never met since. We received a copy of this report late this afternoon. This is no way to address a matter of this consequence. Let me, if I may, state to you what consequence I refer to.

It is possible to think of the problem of welfare dependency, an enormous problem, as somehow confined to parts of our society and geography, the inner-city, most quintessentially. It is certainly concentrated there but by no means confined there.

The supplemental security income provision, established in 1974, is what is left of President Nixon's proposal for the Family Assistance Plan that would have created a guaranteed level of income. I remarked earlier, a quarter century ago I found myself working with our masterful majority leader in this purpose—the children were left out. But we established a guaranteed income for the aged, the blind and disabled and later expanded it greatly for children. But, basically, the provision to replace AFDC with a negative income tax was dropped.

In the course of the 1960's we developed a new set of initiatives, in particular the Economic Opportunity Act of 1965. We had learned, as a matter of social inquiry, that there is just so much you can do with a one-time survey of the population to understand the condition of that population. You can extrapolate, you can use your mathematical skills as much as possible, sampling and surveying periodically. But we said, if you are going to learn more, you are going to have to follow events over time. Longitudinal studies, as against vertical. The distinguished Presiding Officer knows those words from his experience as an applied economist in the world of business. In 1968, we established the panel study of income dynamics at the University of Michigan at the Survey Research Center, and they have been following a panel of actual persons, with names and addresses, for almost 30 years. We now know something about how people's incomes go up and down, and such.

A distinguished social scientist, Greg J. Duncan, at Northwestern University and Wei-Jun Jean Yeung of the University of Michigan have calculated the

incidence of welfare dependency in our population for the cohort, by which we mean people born, between 1973 and 1975. These people will be just going into their twenties and out of age of eligibility.

Mr. President, of the American children born from 1973 to 1975, now just turning 20, 24 percent had received AFDC benefits at some point before turning 18. That includes 19 percent of the white population and 66 percent of the black population. Do not ever forget the racial component in what we are dealing with.

If you include AFDC, supplemental security income, and food stamps, you find that 39 percent of your children, 81 percent of African-Americans and 33 percent of whites—received benefits at some point in their youth.

Problems of this magnitude deserve careful analysis and careful response. That is why persons whose voices have been most persuasive in this debate, those asking, ''What are you doing?'' have been conservative social analysts, social scientists. James Q. Wilson at the University of California, Los Angeles, for example; Lawrence Mead on leave at Princeton. His chair is at New York University. And George Will, a thoughtful conservative, who had a column when we began this discussion last September called ''Women and Children First?'' He said:

As the welfare reform debate begins to boil, the place to begin is with an elemental fact: No child in America asked to be here.

No child in America asked to be here.

Each was summoned into existence by the acts of adults. And no child is going to be spiritually improved by being collateral damage in a bombardment of severities targeted at adults who may or may not deserve more severe treatment from the welfare system.

We are talking about these children.

I ask unanimous consent that this column be printed in the RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

[From the Washington Post, Sept. 14, 1995]

WOMEN AND CHILDREN FIRST?

(By George F. Will)

As the welfare reform debate begins to boil, the place to begin is with an elemental fact: No child in America asked to be here.

Each was summoned into existence by the acts of adults. And no child is going to be spiritually improved by being collateral damage in a bombardment of severities targeted at adults who may or may not deserve more severe treatment from the welfare system.

Phil Gramm says welfare recipients are people ''in the wagon'' who ought to get out and ''help the rest of us pull.'' Well. Of the 14 million people receiving Aid to Families with Dependent Children, 9 million are children. Even if we get all these free riders into wee harnesses, the wagon will not move much faster.

Furthermore, there is hardly an individual or industry in America that is not in some sense ''in the wagon,'' receiving some federal subvention. If everyone gets out, the wagon may rocket along. But no one is proposing that. Instead, welfare reform may give a whole new meaning to the phrase ''women and children first.''

Marx said that history's great events appear twice, first as tragedy, then as farce. Pat Moynihan worries that a tragedy visited upon a vulnerable population three decades ago may now recur, not as farce but again as tragedy.

Moynihan was there on Oct. 31, 1963, when President Kennedy, in his last signing ceremony, signed legislation to further the ''deinstitutionalization'' of the mentally ill. Advances in psychotropic drugs, combined with ''community-based programs,'' supposedly would make possible substantial reductions of the populations of mental institutions.

But the drugs were not as effective as had been hoped, and community-based programs never materialized in sufficient numbers and sophistication. What materialized instead were mentally ill homeless people. Moynihan warns that welfare reform could produce a similar unanticipated increase in children sleeping on, and freezing to death on, grates.

Actually, cities will have to build more grates. Here are the percentages of children on AFDC at some point during 1993 in five cities: Detroit (67), Philadelphia (57), Chicago (46), New York (39), Los Angeles (38). ''There are,'' says Moynihan, ''not enough social workers, not enough nuns, not enough Salvation Army workers'' to care for children who would be purged from the welfare rolls were Congress to decree (as candidate Bill Clinton proposed) a two-year limit for welfare eligibility.

Don't worry, say the designers of a brave new world, welfare recipients will soon be working. However, 60 percent of welfare families—usually families without fathers—have children under 6 years old. Who will care for those children in the year 2000 if Congress decrees that 50 percent of welfare recipients must by then be in work programs? And whence springs this conservative Congress's faith in work programs?

Much of the welfare population has no family memory of regular work, and little of the social capital of habits and disciplines that come with work. Life in, say, Chicago's Robert Taylor housing project produces what sociologist Emil Durkheim called ''a dust of individuals,'' not an employable population. A 1994 Columbia University study concluded that most welfare mothers are negligibly educated and emotionally disturbed, and 40 percent are serious drug abusers. Small wonder a Congressional budget Office study estimated an annual cost of $3,000 just for monitoring each worldfare enrollee—in addition to the bill for training to give such people elemental skills.

Moynihan says that a two-year limit for welfare eligibility, and work requirements, might have worked 30 years ago, when the nation's illegitimacy rate was 5 percent, but today it is 33 percent. Don't worry, say reformers, we'll take care of that by tinkering with the incentives: there will be no payments for additional children born while the mother is on welfare.

But Nicholas Eberstadt of Harvard and the American enterprise Institute says: Suppose today's welfare policy incentives to illegitimacy were transported back in time to Salem, Mass., in 1660. How many additional illegitimate births would have occurred in Puritan Salem? Few, because the people of Salem in 1660 believed in hell and believed that what today are called ''disorganized lifestyles'' led to hell. Congress cannot legislate useful attitudes.

Moynihan, who spent August writing his annual book at his farm in Delaware County, N.Y., notes that in 1963 that county's illegitimacy rate was 3.8 percent and today is 32 percent—almost exactly the national average. And no one knows why the county (which is rural and 98.8 percent white) or the nation has so changed.

Hence no one really knows what to do about it. Conservatives say, well, nothing could be worse than the current system. They are underestimating their ingenuity.

Mr. MOYNIHAN. I thank the Chair.

Mr. President, in our family, we have had the great privilege and joy since the years of the Kennedy administration to have a home, an old farmhouse on a dairy farm in up-State New York, Delaware County, where the Delaware River rises. Mormonism had some of its origins on the banks of the Susquehanna in our county.

The population of Delaware County is largely Scots, the one main group that you can identify. This was sheep raising country in the 19th century. Presbyterian churches are everywhere. It is not so very prosperous, but more so now than when we moved there. In 1963, 3.5 percent of live births in Delaware County were out of wedlock; in 1973, 5.1; 1983, 16.6; 1993, 32.6. We are, in fact, above the national average in this rural traditional society.

We talk so much about how the welfare system has failed. Mr. President, the welfare system reflects a much larger failure in American society, not pervasive, but widespread, which we had evidence of, paid too little attention to, but still do not truly understand. It will be the defining issue of this coming generation in American social policy and politics.

There is nothing more dangerous to writer Daniel Boorstin, that most eminent historian, former Librarian of Congress, who said that it is not ignorance that is the great danger in society, it is ''the illusion of knowledge.'' The illusion exists where none exists. I have spent much of my lifetime on this subject and have only grown more perplexed.

In the Department of Labor under Presidents Kennedy and Johnson, we began the policy planning staff and picked up the earthquake that shuttered through the American family. We picked up the first trembles. If you told me the damage would be as extensive as it is today, 30 years ago if I was told what would be the case, I would have said no, no, it would never get that way. It has.

Now, we did make an effort. We did, indeed, do something very considerable, and in 1988, by a vote of 96–1, we passed out of this Chamber the Family Support Act, which President Reagan signed in a wonderful ceremony. Governor Clinton was there, Governor Castle for the Governors' Association, in a Rose Garden ceremony, October 13. He said:

I am pleased to sign into law today a major reform of our Nation's welfare system, the Family Support Act. This bill represents the culmination of more than 2 years of effort and responds to the call in my 1986 State of the Union message for real welfare reform—reform that will lead to lasting emancipation from welfare dependency.

The act says of parents:

We expect of you what we expect of ourselves and our own loved ones: that you will

do your share in taking responsibility for your life and the lives of the children you bring into the world.

First, the legislation improves our system of securing support from absent parents. Secondly, it creates a new emphasis on the importance of work for individuals in the welfare system.

All we are saying all this year has been what President Reagan said. We put that legislation into place.

I offered on the floor a bill to bring it up to date, the Family Support Act of 1995. It got 41 votes, all, I am afraid, on this side, because both the present and previous administration, to be candid, have somehow not been willing to assert what has been going on under the existing statute.

I stood on the floor when we were debating the welfare bill and Senator after Senator on our side talked about the extraordinary things going on in his or her State by way of welfare changes, and none acknowledging that they are going on under the existing law.

On Wednesday, Senator James T. Fleming, a Republican, the majority leader of the Connecticut Senate, had an op-ed article, as we say, in the New York Times, called ''Welfare in the Real World.'' He talked about Connecticut's new welfare legislation, which is tough. ''It imposes the Nation's shortest time limit on benefits, 21 months, and reduces payments under the Aid to Families with Dependent Children program by an average of 7 percent.''

Then he goes on to complain that to do this, the State had to get a waiver from Washington, which it did, particularly objecting to the fact that the administration has also refused to permit a two-tier payment system which discourages welfare migration by paying newcomers a lower cash benefit. He says the administration desperately clings to the discredited theory that Washington knows best.

Mr. President, I have spoken to our extraordinarily able, concerned, Secretary of Health and Human Services about this proposition. Why did you refuse the two-tier system? And she said, because it was unconstitutional, that is why. We have a Constitution which provides that an American citizen has equal rights with any other citizen of any State he or she happens to live in. That is what it means to be an American citizen—and that Connecticut cannot say you came from New York and therefore you get half of what somebody who was born here gets. We do not do that. That is all they did.

In point of fact, under the Clinton administration, 50 welfare demonstration projects have been approved in 35 States; 22 States have time-limited assistance in their demonstrations. This kind of experimentation is going on around the country. Governors have finally come to terms with the reality here. A new generation of public welfare officials is learning that they are no longer dealing with the old system. Frances Perkins, who I had the privilege to know years ago, was Secretary of Labor when the Social Security Act was passed, which created the Aid to Families with Dependent Children program. It was simply a bridge program until old age assistance matured, as there was old age assistance. She described a typical recipient as a West Virginia coal mine widow. The widow was not going to go into the coal mines and was not going to get into the work force.

A wholly new population has come on to the rolls. We know it is extraordinary. We have had intense efforts. Douglas Besharov describes them in an article in the current issue of Public Interest, which I ask unanimous consent to have printed in the RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

[From the Public Interest, Winter, 1995]

PATERNALISM AND WELFARE REFORM

(By Douglas J. Besharov and Karen N. Gardiner)

After years of collective denial, most politicians (and welfare policy makers) have finally acknowledged the link between unwed parenthood and long-term welfare dependency, as well as a host of other social problems. But it is one thing to recognize the nature of the problem and quite another to develop a realistic response to it. For, truth be told, there has been a fair amount of wishful thinking about what it takes to help these most disadvantaged parents become self-sufficient.

Young, unwed parents are extremely difficult to help. Besides living in deeply impoverished neighborhoods with few social (or familial) supports, many suffer severe educational deficits and are beset by multiple personal problems, from high levels of clinical depression to alcohol and drug abuse. As a result, even richly funded programs have had little success with these mothers; and they rarely, if ever, try to reach the fathers.

The best remedy, of course, would be to prevent unwed parenthood in the first place. But, even if the number of out-of-wedlock births were somehow reduced by half, there would still be over 600,000 such births each year. Thus social programs must do a much better job of improving the life prospects of unwed mothers and their children (without, of course, creating more incentives for them to become unwed mothers). This will require de-emphasizing the voluntary approaches of the past that have proven unsuccessful, and, in their place, pursuing promising new policies that are more paternalistic.

UNWED MOTHERS ON WELFARE

In the last four decades, the proportion of American children born out of wedlock has increased more than sevenfold, from 4 percent in 1950 to 31 percent in 1993. In that year, 1.2 million children were born outside of marriage. These children, and their mothers, comprise the bulk of long-term welfare dependents.

Images of Murphy Brown notwithstanding, the vast majority of out-of-wedlock births are to lower-income women: nearly half are to women with annual family incomes below $10,000; more than 70 percent are to women in families earning less than $20,000. In Addition, most unmarried mothers are young (66 percent of all out-of-wedlock births were to 15- to 24-year-olds in 1988), poorly educated (only 57 percent have a high-school diploma), and unlikely to have work experience (only 28 percent worked full time and an additional 8 percent part time in 1990).

Consequently, most unwed mothers go on welfare. In Illinois, for example, over 70 percent of all unwed mothers go on welfare within five years of giving birth to a child. Nation-wide, an unmarried woman who has a baby in her early twenties is more than twice as likely to go on welfare within five years than is a married teen mother (63 percent versus 26 percent). And, once on welfare, unwed mothers tend to stay there. According to Harvard's David Ellwood, who served as one of President Clinton's chief welfare advisors, the average never-married mother spends almost a decade on welfare, twice as long as divorced mothers, the other major group on welfare.

Unwed parenthood among teenagers is a particularly serious problem. Between 1960 and 1993, the proportion of out-of-wedlock births among teenagers rose from 15 percent to 71 percent, with the absolute number of out-of-wedlock births rising from 89,000 to 369,000.

Teen mothers are now responsible for about 30 percent of all out-of-wedlock births, but even this understates the impact of unwed teen parenthood on the nation's illegitimacy problem. Sixty percent of all out-of-wedlock births involve mothers who had their first babies as teenagers.

Because so many unwed teen mothers have dropped out of school and have poor earnings prospects in general, they are even more likely to become long-term welfare recipients. Families begun by teenagers (married or unmarried) account for the majority of welfare expenditures in this country. According to Kristin Moore, executive director of Child Trends, Inc., 59 percent of women currently receiving Aid to Families with Dependent Children (AFDC) were 19 years old or younger when they had their first child.

These realities have changed the face of welfare. In 1940, shortly after AFDC was established as part of the Social Security Act of 1935, about one-third of the children entering the program were eligible because of a deceased parent, about one-third because of an incapacitated parent, and about one-third because of another reason for absence (including divorce, separation, or no marriage tie). By 1961, the children of widows accounted for only 7 percent of the caseload, while those of divorced or separated and never-married mothers had climbed to 39 percent and 20 percent, respectively. In 1993, the children of never-married mothers made up the largest proportion of the caseload, 55 percent, compared to children of widows (1 percent) and divorced or separated parents (29 percent).

The face of welfare dependency has changed for many and infinitely complex reasons. But there should be no denying that the inability of most unwed mothers to earn as much as their welfare package is a major reason why they go on welfare—and stay there for so long. (A common route off welfare is marriage, but that is a subject for another article.) Hence, since the 1960s, most attempts to reduce welfare dependency have focused on raising the earnings capacity of young mothers through a combination of educational and job-training efforts. Given the faith Americans have in education as the great social equalizer, this emphasis has been entirely understandable. However, the evaluations of three major demonstration projects serve as an unambiguous warning that a new approach is needed.

THREE DEMONSTRATIONS

Beginning in the late 1980s, three large-scale demonstration projects designed to reduce welfare dependency were launched. Although the projects had somewhat different

approaches, they all sought to foster self-sufficiency through a roughly similar combination of education, training, various health-related services, counseling, and, in two of the three, family planning.

New Chance tried to avert long-term welfare recipiency by enhancing the ''human capital'' of young, welfare-dependent mothers. Designed and evaluated by Manpower Demonstration Research Corporation (MDRC), the program targeted those at especially high risk of long-term dependency: young welfare recipients (ages 16 to 22) who had their first child as a teenager and were also high-school dropouts. Its two-stage program attempted to remedy the mothers' severe educational deficits—primarily through the provision of a Graduate Equivalency Degree (GED) and building specific job-related skills.

The Teen Parent Demonstration attempted to use education and training services to increase the earnings potential of teen mothers before patterns of dependency took root. Evaluated by Mathematical Policy Research, the program required all first-time teen mothers in Camden and Newark, New Jersey, and the south side of Chicago, Illinois, to enroll when they first applied for welfare. The program enforced its mandate by punishing a mother's truancy through a reduction in her welfare grant.

The Comprehensive Child Development Program (CCDP), which is still operating, seeks to break patterns of intergenerational poverty by providing an enriched developmental experience for children and educational services to their parents. A planned five-year intervention is designed to enhance the intellectual, social, and physical development of children from age one until they enter school. Although not a requirement for participation, the majority of families are headed by single parents. The program, evaluated by Abt Associates, also provides classes on parenting, reading, and basic skills (including GED preparation), as well as other activities to promote self-sufficiency.

These three projects represent a major effort to break the cycle of poverty and to reduce welfare dependency. New Chance involved 1,500 families at 16 sites and cost about $5,100 per participant for the first stage, $1,300 for the second, and $2,500 for child care (for an 18-month total of about $9,000 per participant). The Teen Parent Demonstration, involving 2,700 families at three sites, was the least expensive at $1,400 per participant per year. The most expensive is the CCDP, which serves 2,200 families at 24 sites for $10,000 per family per year. Since it is intended to follow families for five years, the total cost is planned to be about $50,000 per family. These costs are in addition to the standard welfare package, which averages about $8,300 per year for AFDC, food stamps, and so forth.

All three projects served populations predominantly comprised of teen mothers and those who had been teens when they first gave birth. The average age at first birth was 17 for New Chance and Teen Parent Demonstration clients, while half of the CCDP clients were in their teens when they first gave birth. As the project evaluators soon found, this is an extremely disadvantaged—and difficult to reach—population. Over 60 percent of Teen Parent Demonstration and New Chance clients grew up in families that had received AFDC at some point in the past. If anything, early parenthood worsened their financial situations. All Teen Parent Demonstration clients, of course, were on welfare, as were 95 percent of those in New Chance. The average annual income for CCDP families was $5,000.

The mothers also suffered from substantial educational deficiencies. Although most were in their late teens or early twenties, few had high-school diplomas or GEDs. Many of those still in school (in the Teen Parent Demonstration) were behind by a grade. In New Chance and the Teen Parent Demonstration, the average mother was reading at the eighth-grade level. Their connections to the labor market were tenuous at best. Almost two-thirds of the New Chance participants had not worked in the year prior to enrollment, and 60 percent had never held a job for more than six months. Only half of Teen Parent Demonstration mothers had ever had a job. These young mothers also had a variety of emotional or personal problems. About half of New Chance clients and about 40 percent of those in CCDP were diagnosed as suffering clinical depression. The mothers also reported problems with drinking and drug abuse. Many were physically abused by boyfriends.

DISAPPOINTING RESULTS

Besides the intensity of the intervention, what set these three demonstrations apart from past efforts is that they were rigorously evaluated using random assignment to treatment and control groups. Random-assignment evaluations are especially important in this area because, at first glance, projects like these often look successful. For example, one demonstration site announced that it was successful because half of its clients had left welfare, and their earnings and rate of employment had both doubled. These results sound impressive, but the relevant policy question is: What would have happened in the absence of the project? This is called the ''counterfactual,'' and it is the essence of judging the worth of a particular intervention.

Unfortunately, despite the effort expended, none of these demonstrations came anywhere near achieving its goals. After the intervention, the families in the control groups (which received no special services, but often did receive services outside of the demonstrations) were doing about as well, and sometimes better, than those in the demonstrations. In other words, the evaluations were unable to document any substantial differences in the lives of the families served. Here is a sample of their disappointing findings:

WELFARE RECIPIENCY

All three evaluations were unanimous: Participants were as likely to remain on welfare as those in the control groups. Robert Granger, senior vice president of MDRC, summed up the interim evaluation of New Chance: ''This program at this particular point has not made people better off economically.'' At the end of 18 months, 82 percent of New Chance clients were on welfare compared to 81 percent of the control group. The Teen Parent Demonstration mothers did not fare any better. After two years, 71 percent were receiving AFDC, only slightly fewer than the control group (72.5 percent). CCDP participants were actually 5 percent more likely to have received welfare in the past year than were those in the control group (66 percent versus 63 percent).

EARNINGS AND WORK

Only the Teen Parent Demonstration program saw any gains in employment. Its mothers were 12 percent more likely to be employed sometime during the two years after the program began (48 percent of the treatment group versus 43 percent of the control group) and, as a result, averaged $23 per month more in income. In most cases, however, employment did not permanently end their welfare dependency. Nearly one in three of those who left AFDC for work returned within six months, 44 percent within a year, and 65 percent within three years.

The other programs did not show even this small gain. Fewer New Chance clients were employed during the evaluation period than controls (43 percent versus 45 percent), in part because they were in classes during some of the period. Those who did work tended to work for a short time, usually less than three months. Given the lower level of work, New Chance clients had earned 25 percent less than the control group at the time of the evaluation ($1,366 versus $1,708 a year). Only 29 percent of the CCDP mothers were working at the time of the two-year evaluation, the same proportion as the control group; there was no difference in the number of hours worked per week, the wages earned per week, or the number of months spent working.

EDUCATION AND TRAINING

All three demonstrations were relatively successful in enrolling mothers in education programs. Teen Parent Demonstration mothers were over 40 percent more likely to be in school (41 percent versus 29 percent), and about one-third of the CCDP clients were working towards a degree, 78 percent more than the control group.

About three-quarters more New Chance participants received their GED than their control-group counterparts (37 percent versus 21 percent). But the mothers' receiving a GED did not seem to raise their employability—or functional literacy. The average reading level of the New Chance Mothers remained unchanged (eighth grade) and was identical to that of the control group. This finding echoes those from evaluations of other programs with similar goals, including the Department of Education's Even Start program. Jean Layzer, senior associate at Abt Associates, concluded that, rather than honing reading, writing, and math skills, GED classes tended to focus on test-taking: ''What people did was memorize what they needed to know for the GED. They think that their goal is the GED because they think it will get them a job. But it won't—it won't give them the skills to read an ad in the newspaper.''

In this light, it is especially troubling that, while increasing the number of GED recipients, New Chance seems to have reduced the number of young mothers who actually finished high school (6 percent versus 9 percent). According to one evaluator, the projects may have legitimated a young mother's opting for a GED rather than returning to high school.

SUBSEQUENT BIRTHS

Although the young mothers in New Chance and the Teen Parent Demonstration said they wanted to delay or forego future childbearing, the majority experienced a repeat pregnancy within the evaluation period, and most opted to give birth. Mothers in one project spent only 1.5 hours on family planning, while they spent 54 hours in another, with no discernible difference in impact.

All New Chance sites offered family-planning classes and life skills courses that sought to empower women to take control of their fertility. Many also dispensed contraceptives. In the Teen Parent Demonstration, the family planning workshop was mandatory. Despite these efforts, over 7 percent more New Chance mothers experienced a pregnancy (57 percent versus 53 percent). One-fourth of both Teen Parent Demonstration clients and the control group experienced a pregnancy within one year; half of each group did so by the two-year follow-up. Two-thirds of all pregnancies resulted in births. Although it was hoped that the CCDP intervention would reduced subsequent births, this was not an explicit goal of the demonstration; nor was family planning a core service provided by the sites. But,

again, there was no real difference between experimental and control groups: 30 percent of mothers in both had had another birth by the two-year follow-up.

MATERNAL DEPRESSION

Two of the projects, New Chance and CCDP, attempted to lessen the high rates of clinical depression among the mothers. All New Chance sites provided mental-health services, most often through referrals to other agencies (although the quality of such services differed by site). Yet program participants were as likely as those in the control group to be clinically depressed (44 percent). CCDP clients likewise received mental-health services as needed. But, again, there was no discernible impact. Two years into the program, 42 percent of the mothers in both the program and control groups were determined to be at risk of clinical depression. Measures of self-esteem and the use of social supports also showed no differences.

CHILD DEVELOPMENT AND CHILD REARING

The CCDP sought to prevent later educational failure by providing five years of developmental, psychological, medical, and social services to a group of children who entered the program as infants. Developmental screening and assessments were compulsory for all the children; those at risk of being developmentally delayed were referred to intervention programs.

A major CCDP goal was to improve the ability of the parents to nurture and educate their children. But, at the end of the first two years, the evaluation found only scattered short-term effects on measures of good parenting, such as time spent with the child, the parent's teaching skills, expectations for the child's success, attitudes about child rearing, and nurturing parent-child interactions. More disheartening, especially given the success of other early intervention programs, CCDP had small or no effect on the development of the children in the program. Participating children scored slightly higher on a test of cognitive development but about the same in terms of social withdrawal, depression, aggression, or destructiveness. They were only slightly more likely to have their immunizations up to date (88 percent versus 83 percent). CCDP's lack of success may be explained by its approach to child development (delivering about one hour per week of early childhood education through in-home visits by case managers or, sometimes, early-childhood-development specialists), which did not focus large amounts of resources squarely on children.

All in all, it's a sad story. But what is most discouraging about these results is that the projects, particularly New Chance and CCDP, enjoyed high levels of funding, yet still seemed unable to improve the lives of disadvantaged families. There are several explanations for their poor performance: Many of the project sites had no prior experience providing such a complex set of services; some were poorly managed; and almost all were plagued with the problems that typically characterize demonstration projects, such as slow start-ups, inexperienced personnel, and high staff turnover. In addition, the projects often chose the wrong objectives and tactics. For example, most focused on helping the mothers obtain GEDs, even in the face of accumulating evidence that the GED does not increase employability. As for the two programs that attempted to reduce subsequent births, program staff tried to walk a fine line between promoting the postponement of births and not devaluing the women's role as mothers. Their sessions on family planning seemed to have emphasized that the mothers should decide whether or not to have additional children—rather than that they should avoid having another child until they are self-sufficient.

But even such major weaknesses do not explain the dearth of positive impacts across so many goals—and so many sites. One would expect some signs of improvement in the treatment group if the projects had at least been on the right track. Hence, one is impelled to another explanation: The underlying strategy may be wrong. Voluntary education and job-training programs may simply be unable to help enough unwed mothers escape long-term dependency.

FROM CARROT TO STICK

Young mothers volunteered for both New Chance and the CCDP; no one required that they participate. That level of motivation should have given both projects an advantage in helping them break patterns of dependency. As social workers joke, you only need one social worker to change a light bulb, but it helps to have a bulb that really wants to be changed.

In both New Chance and the CCDP, however, initial motivation was not enough to overcome decades of personal, family, and neighborhood dysfunction. In relatively short order, there was serious attrition. New Chance, for example, was designed as a five-days-a-week, six-hours-a-day program. Yet, over the first 18 months, the young mothers averaged only 298 hours of participation, a mere 13 percent of the time available to them. CCDP experienced similar attrition. Although clients were asked to make a five-year commitment to the program, 35 percent quit after the end of the second year and 45 percent after the end of the fourth.

These dropout rates make all the more significant the Teen Parent Demonstration's success at enrolling non-volunteers. Participation was mandatory for all first-time mothers and was enforced through the threat of a reduction in welfare benefits equal to the mother's portion of the grant, about $160 per month. When teen mothers first applied for welfare, they received a notice telling them that they had to register for the program and that nonparticipation would result in a financial sanction. Registration involved a meeting with program staff and a basic-skills test. Over 30 percent came to the program after receiving this initial notice. Another 52 percent came in after receiving a letter warning of a possible reduction of their welfare grant.

The 18 percent who failed to respond to the second notice saw their welfare checks cut. Of these, about one-third (6 percent of the total sample) eventually participated. As one mother recounted, ''The first time they sent me a letter, I looked at it and threw it away. The second time, I looked at it and threw it away again. And then they cut my check, and I said 'Uh, oh, I'd better go.' '' Thus sanctions brought in an entire cohort of teen mothers—from the most motivated to the least motivated and most troubled. For example, no exceptions were made for alcoholic and drug-addicted mothers.

Moreover, the Teen Parent Demonstration was able to keep this population of non-volunteers participating at levels similar to the volunteers in New Chance and the CCDP. After registration, the mothers were required to attend workshops, high-school classes, and other education and training programs. In any given month, participation averaged about 50 percent, reaching a high of about 65 percent during the period when the projects were fully operational. Sanctioning was not uncommon: Almost two-thirds of the participants received formal warnings, and 36 percent had their grants reduced for at least one month.

MORE TOUGH LOVE

Voluntary educational and training programs can play an important role in helping those welfare mothers (often older and divorced) who want to improve their situations. But, by themselves, they seem unable to motivate the majority of young, unwed mothers to overcome their distressingly dysfunctional situations. Mandatory approaches are attractive to the public and to policy makers because they seem to do just that. In the ''learnfare'' component of Ohio's Learning, Earning, and parenting Program (LEAP), AFDC recipients who were under the age of 20 and did not have a high-school diploma or GED were required to attend school. Those who failed to attend school or did not attend an initial assessment interview had their welfare grant reduced by $62 per month. This penalty continued until the mother complied with the program's rules. Conversely, those who attended school regularly got a $62 per month bonus. Thus the monthly benefit for a ten with one child was almost 60 percent higher for those who complied with the program ($336 versus $212). The program also provided limited counseling and child care. Based on a random assignment methodology, MDRC's evaluation found that, one year after LEAP began, almost 20 percent more LEAP participants than controls remained in school continuously or graduated (61 percent versus 51 percent). Over 40 percent more returned to school after dropping out (47 percent versus 33 percent).

Despite early concerns, such behavior-related rules have not been burdensome to administer. Most have been implemented without creating new bureaucracies or new problems. According to MDRCC's Robert Granger, these ''large-scale programs have not been expensive.'' The cost of the LEAP program in Cleveland, for example, was about $540 per client per year, of which about $350 was for case management and $190 for child care.

Nor do such rules seem unduly harsh on clients. The sanctioning in the Teen Parent Demonstration caused little discernible dislocation among the young mothers. In fact, very few of them were continuously sanctioned (and, besides, the sanction was applied against only the mothers' portion of the grant). Rebecca Maynard, the director of the Mathematica evaluation, found that the ''clear message from both the young mothers and the case managers is that the financial penalties are fair and effective in changing the culture of welfare from both sides.'' Clients viewed the demonstration program as supportive, although also serious and demanding. Case managers believe it motivated both clients and service providers. Similarly, the LEAP sanctions caused ''no hardship whatsoever to the vase majority of participants and their children,'' according to David Long of MDRC, a co-author of the evaluation report. Mothers who had been sanctioned reported that they were able to ''get by'' either by trimming their budgets or by receiving assistance from others.

The early success of such experiments linking reductions (and increases) in welfare to particular behaviors led (as of May 1995) more than two-thirds of the state to adopt, and another nine to propose, one or more behavior-related welfare rules. (State reforms are authorized by a federal law that allows the Secretary of Health and Human Services to ''waive'' certain federal rules.) Between 1992 and 1995, 21 states adopted learnfare-type programs, which tie welfare payments to school attendance for AFDC children or teen parents (with federal waivers pending in three more); eight states adopted ''family caps'' that deny additional benefits to women who have more children while on welfare (with waivers pending in six more); 15 states adopted time limits for receiving benefits (with waivers pending in nine more); and 10 states adopted immunization requirements (with waivers pending in three more).

In the coming years, expect more states to adopt such rules—and expect more behaviors to become the subject of such rules.

This attempt to regulate the behavior of welfare recipients is a sharp break from the hands-off policy of the past 30 years—and an implicit rejection of past voluntary education and training efforts. It was not so long ago that people such as Princeton's Lawrence Mead were widely derided for suggesting that welfare is not simply a right but an obligation that should be contingent upon certain constructive behaviors. But, because of both political and practical experience, they are now in the mainstream of current developments.

THE LIMITS OF REFORM

No one, however, should expect such paternalistic welfare policies to eradicate dependency. Our political system is unlikely to adopt rules and sanctions tough enough to motivate the hardest-to-reach mothers—nor should it. No politician really wants tough welfare rules that result in large numbers of homeless families living on the streets. Although those who remain on welfare should feel the pinch of benefit reductions, they nevertheless need to be protected from hunger, homelessness, and other harmful deprivations. Thus there is a political limit to the amount of behavioral change that financial sanctions might potentially achieve.

Hence, in the coming years, states will have to grapple with issues such as: How many behaviors can be subject to regulation? How much can the sanctions be stiffened before becoming punitive (and counterproductive)? How should agencies handle clients who, because of emotional problems or substance abuse, seem unable to respond to financial incentives?

Even the experts can only guess about the impact of future rules. The jury is still out, for example, about the impact of New Jersey's family cap; and time-limited programs have yet to be tested in the ''real world.'' Just as important, no sanctioning scheme can compensate for the inadequacy of existing programs for low-skilled and poorly motivated mothers. Programs need to hold out a palpable promise of higher earnings, otherwise participants will drop out—even in the face of financial sanctions. New Chance, the Teen Parent Demonstration, and CCDP all had high dropout rates, suggesting that they failed the consumer test. Describing the services available to the Teen Parent Demonstration, Maynard says: ''We did not have much to offer. We had lousy public schools, boring and irrelevant GED programs, and very caring case managers.''

Current approaches need to be fundamentally rethought. For example, many welfare experts now believe that education in basic skills is less effective than simply pushing recipients toward work. A recently released evaluation of welfare-reform programs in three sites (Atlanta, Georgia, Grand Rapids, Michigan, and Riverside, California) by MDRC found that intensive education and training activities were only about one-third as effective in moving recipients off welfare as what it called ''rapid job entry'' strategies (6 percent versus 16 percent).

''The mothers were taught how to look for work and how to sell themselves to employers,'' according to Judith Gueron of MDRC. ''The focus was on how to prepare a resume, pursue job leads, handle interviews, and hold a job once you got one.'' The programs also maintained telephone banks from which recipients could call prospective employers. And, she stresses, ''The program was very mandatory, backed up with heavy grants reductions for mothers who did not comply with job search requirements.'' Institutionalizing such programs and developing others in all parts of the country will require creativity, clarity of purpose, and patience, and much trial and error. Still, success will be elusive.

Even if behavior-related rules do not sharply reduce welfare rolls, they could still serve an important and constructive purpose. The social problems associated with long-term welfare dependence cannot be addressed without first putting the brakes on the downward spirals of dysfunctional behavior common among so many recipients. Thus it would be achievement enough if such rules could stabilize home situations. Given the failure of voluntary approaches, the accomplishment of that alone would at least provide a base for other, more targeted approaches.

Aristotle is credited with the aphorism: ''Virtue is habit.'' To him, the moral virtues (including wisdom, justice, temperance, and courage), what people now tend to call ''character,'' were not inbred. Aristotle believed that they develop in much the same way people learn to play a musical instrument, through endless practice. In other words, character is built by the constant repetition of divers good acts. These new behavior-related welfare rules are an attempt, long overdue in the minds of many, to build habits of responsible behavior among long-term recipients; that is, to legislate virtue.

Mr. MOYNIHAN. I am coming to a close. The three demonstration projects of intense efforts for young, unmarried mothers, training them, stimulating them, encouraging them, reassuring them—it is so hard. If we knew how hard it was, we would know what we are putting at risk here. We are abandoning the national commitment to solve a national problem. We are doing it with very little understanding, very little understanding.

I have here, Mr. President, and I will close with these remarks—we are getting used to everyone who comes to the Senate floor having a poster—I have an artifact. Give this a little thought, just a little thought. What I am holding is a pen with which John F. Kennedy, in his last public bill signing ceremony at the White House, October 31, 1963, signed the Mental Retardation Facilities and Community Health Centers Construction Act of 1963. I was there. I had worked on the legislation. He gave me a pen.

In that act we undertook what was known as the deinstitutionalization of our great mental institutions. We developed tranquilizers, first in New York State, at Rockland State Hospital. We again used them systemwide. We thought we had a medication for schizophrenia. We thought it could be treated in the community, perhaps more effectively in the community than in a large mental institution. So we were going to build 2,000 community mental health centers by the year 1980. And then, thereafter 1 per 100,000.

President Kennedy was very deeply interested in this. I have always thought, if some person with wonderful fast-forward vision was in the Oval Office at that moment and said, ''Mr. President, before you sign that bill could I tell you we are going to empty out our mental institutions. In 30 years time they will have about 7 percent of the population in this time. We are only going to build about 600 of these community mental health centers. Then we are going to forget we started that and go on to other things and leave it be.'' I think the President would have put that pen down. I think he would have put that pen down and said, ''What, do you want people sleeping on grates on Constitution Avenue? Sleeping in doorways? In cities around the country, schizophrenic persons with no medication, no location, simply cast onto the streets?'' He would have said, ''They will be called homeless or something?''

I think he would not have signed the bill. I wish he had not. And that is why I am so pleased to say that President Clinton will veto this bill. And then we can get back together, work together for the next stage in what has to be a national effort for an extraordinarily severe national problem.

Mr. President, I see my friend from North Carolina is on the floor but I yield the floor. I thank the Chair for his courtesy.

Mr. ROTH. Mr. President, I yield 10 minutes to my distinguished colleague from North Carolina.

The PRESIDING OFFICER. The Senator from North Carolina.

Mr. FAIRCLOTH. Mr. President, I have, many times over the course of this session's welfare reform debate stated that it is my strong belief that unless we address the root cause of welfare dependency—illegitimacy—we will not truly reform our welfare system. And my belief in this principle has become stronger and strengthened by the twists and turns of almost a year of debate.

It is with mixed feelings that I rise to discuss this conference report on welfare reform. I am pleased that many of the weak points of our first Senate bills have been strengthened. This conference report contains important provisions to require real work from welfare recipients, a concept known as ''pay-for-performance.'' This means that welfare recipients will only receive benefits as compensation for work done. While this commonsense principle is the undisputed standard in the private sector, can you believe it is a revolutionary thing for the Government to expect work for pay? ''Pay-for-performance'' requirements are the key to replacing welfare with workfare.

I am also glad to see that the welfare conference report contains what has come to be called the family cap. Middle-class American families who want to have children have to plan for, prepare, and save money, because they understand the serious responsibility involved in bringing children into the world. It is grossly unfair to ask these same people to send their hard-earned tax dollars to support the reckless and irresponsible behavior of a woman who has a child out of wedlock and continues to have them, expecting support from the American taxpayer. In fact, their sole support would be the American taxpayer.

The family cap sends an important message that higher standards of personal responsibility will be expected of welfare recipients. If this conference report becomes law, welfare recipients will no longer receive automatic increases in their benefits when they have additional children.

I am very disappointed that the conference was unable to follow through on the courage and fortitude shown by our colleagues in the House of Representatives, who passed a welfare reform bill which would have prohibited the use of block grant funds for cash payments to unwed mothers under 18. In place of this crucial provision we merely have a statement that options exist for the States. We need much more.

This is little more than a statement of current policy. And current policy has resulted in an out-of-wedlock birth rate which has quadrupled over the last 30 years. Today, more than one in every three American children is born out of wedlock. And in some communities, the illegitimacy rate approaches 80 percent.

Children born out of wedlock are three times more likely to be on welfare when they become adults—three times more likely. Furthermore, children raised in single-parent homes are six times more likely to be poor, and twice as likely to commit crime and end up in jail.

In fact, a young girl who is born out of wedlock, when she reaches early maturity is 164 percent more likely to herself have a child out of wedlock.

To truly reform welfare we must reverse current welfare policies which subsidize, and thus promote, self-destructive behavior and illegitimacy—policies which are destroying the American family. This legislation fails to take this crucial step.

It is also unfortunate that this conference report fails to make major changes in the way welfare is administered at the Federal level. Even though this legislation will block grant the AFDC program, and several other smaller programs, it still leaves in place a structure of too many bureaucrats running too many programs through too many different agencies. This bureaucratic structure will continue to stop and stifle substantial reform.

Mr. President, in spite of these deficiencies, the welfare reform conference report before us does mark a turning point in the attitude which prevails here in Washington, and is reflective of the attitude that prevails around the country and that is that it is past time that we do something.

Finally, we have legislation that recognizes what many of us on this side have known for so long. All of our problems cannot be solved by more Government programs and more spending. Government spending is no substitute for personal responsibility.

This legislation is also significant as a step in the right direction after 30 years of failed welfare policies—30 years of them. But, Mr. President, it is only a very small step in comparison to the enormity of the problem our current welfare system has produced. And our current welfare system has produced, with $5 trillion of our dollars, the situation we find ourselves in today.

Mr. President, if this legislation does pass, it should not be taken as an excuse to rest, or to rest on any laurels from it. This legislation should serve as a start, to push ahead on the vast remainder of unfinished welfare reform business. The real work of welfare reform is still to be done, but this is a start.

Mr. President, I yield the floor.

Mr. FORD. Mr. President, on behalf of the floor manager for the minority, I yield 15 minutes to the distinguished Senator from Illinois.

The PRESIDING OFFICER. The Senator from Illinois.

Ms. MOSELEY-BRAUN. Thank you very much, Mr. President.

Mr. President, it is with sadness that I rise today to discuss the conference report on H.R. 4.

It is 4 days before Christmas, the season usually characterized by giving and good will. But here we are in this Congress in the middle of a partial Government shutdown considering legislation that will dismantle the Federal safety net for poor families and, in the process, push over 1 million additional children into grinding poverty.

Mr. President, it seems to me that too many of our colleagues have forgotten the lesson that Dr. Seuss tried to teach us in ''The Grinch Who Stole Christmas.'' Not only are their hearts too small, but their vision is too narrow as well.

We are, Mr. President, a national community—as Americans —the conditions in which the poor live, especially the poor children, affect us all no matter our wealth or where we happen to live in this great country.

I have in my years in public life advocated making welfare work better. In fact, earlier this year I introduced a welfare bill that I believe addressed the critical problems entrenched in our current system; lack of incentives to move from welfare to work and lack of jobs in low-income communities to absorb those people who want to work.

Mr. President, that bill acknowledged that changes are needed, and it also incorporated lessons that the States have learned—particularly those States that have already instituted successful reform. Those States have shown us that you cannot reform welfare on the cheap.

This bill ignores that experience altogether. Welfare reform should center on eliminating the incentives for dependency on building strong, two-parent families and moving recipients into the economic mainstream.

The Senate bill, though better than the House effort, did not accomplish those objectives, and this conference report is even worse. Reform may be needed, but not shortsighted reform.

I support increased State flexibility, experimentation, and positive and constructive change. But this bill will lead to a complete abandonment of any national commitment to poor families. There is room for a shared Federal-State partnership, but this bill gives us no partnership at all but simply envisions the Federal Government as the check writer of last resort. There is no accountability for the money. There is no accountability for the rules nor for the money, and the bill encourages a race to the bottom among the States with the States doing the least, potentially hurting the poor the most. There is no recognition in this legislation that as a national community we must have a national safety net if poverty is not to become an accident of geography.

In addition to dismantling the Federal safety net, this bill is flawed in a number of other ways.

The plan makes a mockery of the goal to move welfare recipients into private sector jobs.

The Congressional Budget Office, which has gotten a lot of support around these quarters in recent times, in discussions on the budget, has reported time and time again that the funding levels in this bill are inadequate to meet the work requirements. In fact, the Congressional Budget Office assumes that most States will fail to meet those work requirements and, therefore, will incur substantial penalties under the terms of the legislation.

If only 10 to 15 States—which is the estimate of the number of States that might meet the work requirements—if only 10 meet those work requirements, what of the other 40? What will be the ramifications for them?

Several studies, including one by Northern Illinois University, have shown that, even if the States could meet the work requirements in this legislation, the private sector job market cannot, at the present time, absorb all of the new workers entering the system. Half of the adults receiving AFDC in Chicago right now have never graduated from high school. And one-third of them have never held a job.

This conference report will seal the doom of many of these people for whom it will be difficult, if not impossible, to employ without appropriate support services, education, job training, and assistance—that is nowhere provided for in this legislation.

The plan also cuts funding and block grants critical child welfare programs. Mr. President, this is the last place where we should be making cuts. Our child protection system is already overburdened and underfunded. I can think of no more vulnerable population than abused children, and there have been, frankly, far too many heart-wrenching, alarming stories this year about children who have been abused by their parents who should have been

protecting them. This conference report would increase the chances that these children would languish in unsafe environments of abuse, neglect, disease, and death. This Congress should not blithely go down the road that will visit that kind of harm on the most vulnerable population of Americans.

Finally, Mr. President, most frightening, the conference report will push 1.5 million children into poverty. This country already has a higher child poverty rate than any other industrialized nation. Why would this legislative body knowingly exacerbate that already shameful figure?

It is clear to me that this plan fails those who need a national safety net the most. Welfare should have, I think, two goals at least—protecting children and helping adult recipients to become self-sufficient.

During the floor deliberations, I noted repeatedly that the majority of people receiving assistance under welfare, as we know it, are children. Currently, these are the facts. These are hard facts. This is not somebody's idea or speculation.

Currently, there are 14 million individuals receiving cash assistance, and two-thirds of them, or 9 million of them, are children. While the welfare rolls overall have declined recently, the number of children receiving welfare assistance has remained constant. And that trend is likely to continue because, while 50 percent of the recipients who go on welfare leave it within a year, many of them have a tendency to cycle on and off the rolls due to low-paying, entry-level jobs that barely provide a livable wage for a family. So we are looking at, again, 9 million children being involved in this debate.

Mr. President, I am not arguing that anybody should get a free ride. I do not believe anybody in this body or in this legislature believes that adults should get a free ride. People who can work should work. The role of government is not to subsidize indefinitely those who are capable of working. But it is our role, and indeed our responsibility, to provide a national safety net for children. It is not their fault that they are poor. But it is our fault if this bill dooms them to stay that way.

This Congress, Mr. President, should not pave the way to so-called welfare reform at the expense of poor children. What amazes me about this whole debate is that many of my colleagues know this and yet continue to support this legislation. Some of my colleagues believe that poor children are expendable and that it is, therefore, OK to experiment with their lives. If they can scratch and survive, that is fine. If they do not, well, that is life, and it is just too bad. It is a cruel game of survival of the fittest. We actually heard testimony to that effect in the Senate Finance Committee, and it was stunning to me.

But, Mr. President, policy based on political rhetoric is wrong. This debate has focused on the stereotypes and it gets in the way of our understanding the facts. Senator MOYNIHAN was brilliant earlier in talking about the notion that the facts here are—facts that we really have not gotten yet to the point of fully being able to appreciate, much less to know how, if you push one button, you will get one kind of consequence.

So we are experimenting here based on stereotypes. We talked about the stereotype of the underdeserving, free-loading poor for so long that many of my colleagues, I think, are frankly determined not to let those misperceptions stand in the way of their policymaking.

Mr. President, the fact is that most of the people who will be affected by this legislation are children.

So my colleagues who support this legislation continue to talk about the parents so they will not have to face the consequences of the children.

It is very difficult, Mr. President, to survive and to compete, or to be self-sufficient if you are a child. So I want to go over again some additional facts that we must not let escape this debate.

Fact one, 22 percent of the children in this, the richest nation in the world, live in poverty. In fact, I have a chart here on child poverty rates. I just hope that this, again, does not get lost in this debate.

Child poverty rates among industrialized countries—here is the United States, 21.5. Here is Australia, Canada, Ireland, Israel, the U.K. can you imagine is here? Italy, Germany, France, the Netherlands, Austria, Norway, Luxembourg, Belgium, Switzerland, Denmark, Sweden, Finland—from 2.5 to 21.5 percent of the children in this country live in poverty.

Children living in poverty are more likely to have poor nutrition, to experience a greater incidence of illness, and to perform more poorly in school, to obtain low-paying jobs and then to live in poverty as adults themselves. And even more shocking, Mr. President, even more shocking, every day, every day in this country, 27 children die due to causes associated with their poverty.

I think these facts are or should be common knowledge for anyone who would presume to legislate in an area such as this. And yet, Mr. President, this body has so far rejected attempts to provide some subsistence to just the children. Assuming for a moment their parents are off the deep end and do not want to be self-sufficient or cannot find a job through no fault of their own, at least let us provide for some subsistence for the children. And this body has rejected those attempts. Quite frankly, if that is not mean-spirited, I do not know what is.

I am going to refer to this picture, which I am sure the Presiding Officer has seen. This is a picture that was taken at the turn of the century, and it was an article in the Chicago History magazine called ''Friendless Foundlings and Homeless Half Orphans.'' It talked about the social service and social welfare system for children before we had the national safety net that this legislation seeks to dismantle. In that article on friendless foundlings and homeless half orphans, it talked about the phenomenon of what happened to children, the friendless foundlings, the children that the mothers would take and put on the church steps or put on the doorway of someone who had money because they knew they could not feed them, or the homeless half orphans, the children whose mothers, when the winter came and there was no way to support them, would take them to the orphanage and drop them off to be cared for during the wintertime.

It talked about the fact that the various States had various ways of dealing with this issue. And, in fact, in some States there were trains that would take the babies that they found lying in the gutters and lying in the alleys and the streets and ship them out West so they could be raised by farm families who could possibly provide them subsistence.

Are we to go back to this? That is what this conference report would have us do, Mr. President, and it is absolutely sobering and it is absolutely unconscionable, in my mind. Need I remind you of this experiment and would it not make sense for us to be reminded of what happened then when we did not have a national safety net? Do we want to go back to a time of friendless foundlings, homeless half orphans and orphan trains? And do we want to go back to the whole idea of State flexibility? We have been there. As they say in the community, ''been there; done that; hated it.'' We did that in this country. We had 50 separate welfare systems in this United States and this is what it produced. This conference report will send us back to that.

Mr. President, every child in this country is precious, too precious to risk on a poorly designed, shortsighted experiment, and that is what this legislation is. It is an experiment. I say to my colleagues, if the system is broke, this bill does not fix it but, rather, breaks it up even more and then shatters the parts and ships them out to the States. I urge my colleagues to think long and hard before they support this conference report for that reason.

In closing, Mr. President, I would like to end with a quote in a December 14 editorial from the Journal Star, a Peoria newspaper, remember how we used to talk about ''how is it playing in Peoria?'' I think the Journal Star has it exactly right. After describing the gory details—and I told my colleague on the other side of the aisle I would not read this out loud but, rather, would just put it in the RECORD—and the numerous negative consequences of this conference report, the article concluded by saying, ''We're not opposed to welfare reform. We're just opposed

to welfare reform that makes no sense.''

Mr. President, this bill makes no sense. This bill makes no sense. It will do more harm than good. And I am just delighted that the President has sent a letter saying that he will veto this bill and that he will do so quickly so that we can come together and, based on the facts as we know them, we can address welfare as we know it and begin to come up with responses to this problem that will make us proud as Americans for having addressed the condition of those who have the least in our community.

With that, Mr. President, I yield the floor.

Mr. ROTH. Mr. President, I yield 5 minutes to the distinguished Senator from Michigan.

The PRESIDING OFFICER. The Senator from Michigan.

Mr. ABRAHAM. I thank you very much, Mr. President.

Tonight I wish to talk about this bill from what I can see as a very different perspective. It is a perspective shared by a lot of people in my State and I think by people more broadly across America.

It may be that there are some in this Chamber who bought into the stereotype of people who are in the needy category in our country and view them only as freeloaders. I do not come from that perspective. We have people in my State—I know them well—who would like very much to not be dependent on the Government, people who would like to be earning their own income and people who would like to be on the first rung of the economic ladder. I know it from my own family's experience. My own father was at one time in a CCC camp, so I know a little bit about the experiences of people in hard times and the desire that I think exists within all of us to not be dependent on Government but, rather, dependent on ourselves.

What I think most people are saying in this country today is very simply this, that we have, over 20-plus years at a national level, attempted to fight a war on poverty with very little tangible success. Those who are below the poverty line today are approximately the same percentage of our country as the case when this program began. But in the meantime, and contrary I think to some of the things suggested here during the earlier debates and these, I think our States have changed their philosophy.

I know certainly that in Michigan the desire is not to have flexibility and liberation from Washington to put more people in poverty but, rather, to help the people who are below the poverty line to be able to take better care of themselves. Indeed, that is why I support this legislation, because I wish to really win the war on poverty, not just fight a battle that 20 years from now is at the same pace and point that we are today.

We have a broken system, and it should be fixed. I think the legislation before us moves us in the direction of fixing it. It establishes goals that are long overdue—foremost among them, the notion that intact families are a critical ingredient in addressing the poverty problem in America today; that the problem of illegitimacy, which many of our colleagues have spoken of and spoken more eloquently than I and understand in more detail than I can understand, the problem of illegitimacy I think has been lost over the years during this poverty debate where a check became a substitute often for a parent, a check from Washington.

So I think it is time, as this bill does, to change the goals and to put intact families and reducing the illegitimacy at the top of our national agenda, and also to put the goal of putting people to work rather than being part of a permanent welfare condition at the top of the agenda. And most importantly, to put hope and the inspiration needed to put people on the economic ladder at the top of the agenda. The current system has I think failed us in achieving those objectives.

What the bill does strategically is this. It gives States, the people on the front lines, the kind of flexibility they need to help people who are on welfare. It says, let us have less bureaucracy in Washington and let us give the people on the front line, the front-line caseworkers the chance to really work with people in our country who need help to get them on the economic ladder. That is what we need. In my State of Michigan, approximately two-thirds of the time of our front-line welfare caseworkers is spent basically filling out paperwork, most of it for the Federal Government, instead of helping the people these programs are intended to help.

A second objective is to give the States the flexibility to give better solutions to the problems, rather than the Washington-knows-best solutions that they have labored under for far too long. The States in fact, Mr. President, care a lot more about the people who live in them than anybody here inside the beltway. And Governors and legislators are just as concerned and compassionate as we are, and I happen to think are a lot more likely to be creative and inventive in dealing with the problems in their own States than we possibly can be trying to administer a 50–State program with one set of solutions. So State flexibility is a cornerstone of the program. So, too, is the consolidation of the programs.

Instead of having the massive numbers of programs that have grown up during the last 25 years, this program, this welfare bill, reduces, consolidates programs. It saves us money in terms of bureaucracy but it makes the programs comprehensible and workable, instead of far too complicated, and oftentimes in conflict with one another.

Third, it addresses, as I suggested earlier, the illegitimacy problem facing our Nation today in a variety of, I think, very effective ways. During the original debate on this bill I was on the floor promoting part of this legislation which I helped draft, the so-called bonus to States who reduce the rate of illegitimacy without simultaneously increasing the number of abortions.

The PRESIDING OFFICER. The Senator has used his 5 minutes.

Mr. ABRAHAM. Mr. President, I ask the manager if I might have an additional 2 minutes?

Mr. ROTH. I yield 2 additional minutes.

The PRESIDING OFFICER. The Senator may continue.

Mr. ABRAHAM. I thank the Chair and I thank the manager.

This approach addressing the illegitimacy problems will start finally to focus priorities at the State level where they ought to be, on keeping families intact, on reducing the number of out-of-wedlock births, and as a consequence addressing the problem at its core, the child poverty statistics we hear so often about.

The concern I think we all have for children born in poverty is in no small sense a result of the fact that too many children are born out of wedlock into families that are not economically strong enough to protect them.

Finally, the strategy in this legislation is to put strong, tough work requirements into place and to give States the incentives they need to try to get people to work rather than simply administering the massive transfer of payment program that does very little to give people the kind of dignity, incentive, and encouragement and help they need to get onto the economic ladder.

For those reasons, Mr. President, I think this bill is on target. I will support the conference report when we vote tomorrow. I hope that the President will reconsider his comments with respect to vetoing the legislation because I believe this truly will accomplish something that he and many of us have spoken about in the context of our campaigns, the notion that we truly would reform welfare and change welfare as we know it.

This legislation ends business as usual. This legislation will address the welfare problems effectively. Mr. President, I hope our colleagues will support it. I thank the Chair and I yield the floor.

Mr. BENNETT addressed the Chair.

The PRESIDING OFFICER (Mr. BROWN). Who yields time?

Mr. ROTH. Mr. President, I yield 10 minutes to the distinguished Senator from Utah.

The PRESIDING OFFICER. The Senator from Utah is recognized.

Mr. BENNETT. Mr. President, I appreciate the willingness of the manager to yield me some time. I had the privilege of being in the chair and thereby being able to give my full attention to the statement of the Senator from New York, and following that the Senator from Illinois, two Senators for whom I have enormous respect and personal affection.

I am moved by the clear and unalloyed concern they have for the children in poverty in our country and for the failure of our present system to solve that problem. I can think of no two Senators who have better motives and more genuine urges to solve this problem than these two.

I am a supporter of the conference report. And I want to respond to the comments that were made so that my support for the conference report will not be misunderstood. I think the Senator from New York put it in the best context when he described the signing ceremony that took place in the Kennedy administration against a backdrop of great optimism and unfortunately complete ignorance as to what the future would actually be like.

I think the Senator's point is well taken. We are embarking once again on a leap of faith with considerable ignorance as to what the future would be like. I would be reluctant to take that leap of faith if I thought the present was working. But the present is not working. And I am willing to take a leap into the future in the hope that it will be better than the present and frankly a fear that things could not be much worse than we have in the present, that we are not risking that much by dismantling some of the present circumstance.

Let me share with you an experience from my home State of Utah that gives me more hope for the future than perhaps my friends have. In the State of Utah we set up—I say we, I had nothing to do with it—the Governor and the office of social services set up a program which required a whole series of waivers from Federal regulations in order to implement.

These waivers took a great deal of time and effort to put in place. Finally the Feds said, ''Well, we will grant you the waivers''—my memory tells me that it took 44 such waivers—''We will grant you the waivers from the Federal regulations because we think the program you will put in place will in fact improve the lot of the poor, who come under your program. However, we tell you that based on our analysis, the program will cost 20 percent more than is being expended right now. And we do not think you can afford it, but we will give you the opportunity to spend that extra money.''

We wanted to have—in response to the kinds of concerns the Senator from New York raised about ''understanding''—a proper kind of control of this circumstance, so even though some centers were set up for the pilot program, in the one center where the most people would come for the pilot program, they established a truly random control group; that is, one would come in and be put in the present Federal programs, the next person through the door would be put in the State pilot program, the next person through the door in the Federal program, the next person in the State pilot program, and so on, so that you had exactly the same kind of people, from exactly the same neighborhood, serviced by exactly the same social workers to see what happened.

Under the program devised by the State, which was completely flexible, the question asked was, ''What do you need? Tell us your circumstance. And what do you need?''

''Oh, all right, if this is what you need, I have control over all of the Federal programs, all of the money, and I can give you so much for food stamps, I can give you so much for this, I can give you so much for that. By the way, before you receive this, we have to have an understanding that this is temporary and you are looking for work.''

Under those that came in under the Federal program, the question was not ''What do you need?'' the question was, ''For what are you eligible?'' The whole focus was on eligibility. ''You may need this program, but you don't happen to be eligible, and, therefore, I'm not empowered to give it to you. So I will give you only what you're eligible for.''

And by the way, no one really brings up the issue of work. Very interesting results. First the financial results. The program managed by the State was not 20 percent more expensive, it was 5 percent cheaper. We saved money. That was not the purpose of the program. The purpose of the program was to do something better for the people who were poor, but the byproduct of doing it the way we did it is that we saved money. People who came in who had never had an experience with the welfare system before, when asked ''Are you willing to go to work?'' responded instantly, ''Of course. That's what I want. I am only here because I can't get work.''

''We'll help you find a job. That is part of the reason we're here for. We'll help you find employment.''

People who came in who had experience with the Federal welfare program before said, ''Wait a minute. Nobody ever asked me about work before. And I don't want to talk to you about that. I'm here to get that to which I am entitled. And I'm going to fight you if you say I have to do anything other than show up.'' Admittedly, those are people who had previous experience with the Federal welfare program.

The people who had not had the previous experience did not have that attitude. But among the new folk who were coming in for the first time—automatic—''We want to do something to get a job.''

These are the statistics, as I remember them. The folks under the State pilot program, 95 percent of them are ultimately employed. Admittedly, they may not be employed in the kinds of jobs you and I would like, Mr. President. There are many of them employed in what are sometimes derisively called leaf raking jobs, but there are things for them to do somewhere, someplace that the office involved with their lives helps them find. And 95 percent of them have some kind of income as a result of their work.

Mr. President, I cite this example as justification for my support of this conference report. The State devised this program, and it is better than the Federal program. The State devised this program, and it is cheaper than the Federal program. Then the final blow here, that says to me we must do what we can to get this out of the hands of the Federal control.

Donna Shalala came to Utah and saw this program, and she was entranced. She said, ''This is what we should be doing nationwide.'' That was 3 years ago, Mr. President, and nothing has happened at the Federal level.

The Federal bureaucracy is so cumbersome and so difficult that even the Secretary, with all of her good will and desire to solve these problems—and I grant her all of that—has been unable to move the bureaucracy under her control in the direction that she herself said it ought to go. Governors move more rapidly than that. Federal bureaucrats, if I may use an old cliche, and I know that it is not entirely fair, but it makes the point. When I entered the Federal bureaucracy, I was told, we think in 40-year periods because that's how long it takes us to get our pension.

Governors get reelected in 4-year periods, so perhaps they think 10 times as rapidly. But the Governor who put in place the program I have just described already knew at the time he was doing that that he was going to face the electorate 4 years later and he had to have a success and he had to have it quickly. The bureaucrats who are in the Civil Service who think in 40-year periods think perhaps some day we might.

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

Mr. MOYNIHAN. I yield 5 minutes to my friend from Utah. He makes great sense.

Mr. BENNETT. I thank the Senator for his courtesy. I had not intended to go on this long. But it is this experience that has said to me: we ought to try this. We ought to turn this over to the States and see what happens.

When people say to me, ''But you're playing with children's lives here''—and the Senator from Illinois was tremendously moving in her comments in that regard, and that is one of the reasons I take the floor, because I want to make it clear I am aware of the fact that we are playing with children's lives here, and I do not take that responsibility lightly—but I look at the results of the present system and I say, ''What are we risking if we try something else?'' I look at the disasters that have occurred under the present system and ultimately decide we are not risking that much.

Mr. President, I am not announcing for reelection at this point, but I expect to be in the Senate longer than my present term. I assure the Senator from New York and anyone else, if we

find out, as a result of the passing of this kind of torch from the Federal level to the State level, that we do, indeed, get a race to the bottom, we do, indeed, see greater disasters than what we have right now, I will be one of the first Senators to come here and say, ''Let us not let the future roll continue'' for however many years it has been since President Kennedy signed that bill that I think had a major, significant impact on the rise of homelessness. I will be one of the first Senators to be here and say, ''OK, we tried it, it is clearly not working, the race to the bottom is happening, let's stop it, let's stop it now.''

But I am not content to let the present circumstances go on without this kind of experimentation, because the human tragedy that the present circumstances created is so significant that we must do what we can.

I thank the Senator for his courtesy. That is my response to listening to the comments that were made. I appreciate the Senators letting me get it out while it is still fresh in my mind. I yield the floor.

The PRESIDING OFFICER. The Senator from New York.

Mr. MOYNIHAN. Mr. President, I yield myself 5 minutes, briefly to respond to my distinguished friend from Utah to say that I believe every word he says is true for him. I do not think this will lead to a race to the bottom in Utah. It will in New York, I am sorry to say. The proportions are so much vaster.

In New York City, we have 1.1 million people on welfare at this moment. These are overwhelmed systems, and you do what is easiest: You send out checks. That is the cheapest, easiest, and most destructive thing to do. We are learning the kinds of things you describe in Utah. The Manpower Development Research Corp., which is the principal evaluator of studies like this, said of some study results in Atlanta, Riverside, CA, Grand Rapids, MI, that they had an effect on bringing down AFDC rolls to the point where they said this exceeds the savings achieved by experimentally evaluated programs in the last 15 years.

We are beginning to get a hold, maybe. I begin with the thought that things are so much worse than we know.

In the fine State of Utah in 1970, the illegitimacy ratio was 3.6 percent. It is now 15.5. That is half the national average, but the trend line is the same. This is something so deep in our society, we have not found an answer. I simply want to maintain a national commitment, but I am sure that Secretary Shalala said just what she did, and I am sure she tried to move the Department of Health and Human Services.

That is our dilemma. The easiest thing to do is what we now do and it is the most destructive, but it need not be that way. President Reagan thought it would change, and it is changing, because the Utah program proceeds under the Family Support Act.

I can say no more but thanks for the candor and the quality of the Senator's statement.

Mr. President, the Senator from New Jersey was to be next. I am sorry if I seem to be stammering here, but it is because I am stammering.

The Senator from New Jersey is here now, and I would like to yield him such time as he may desire for the purpose of speaking. The Senator was one of 11 Members on this side who voted against this bill when it first came forward.

Mr. LAUTENBERG. Thank you very much, Mr. President. I thank my friend and colleague from New York not only for allotting me some of the time to respond to this conference report, but also for his long-time work, scholarly review of the problems of families, welfare, and balance in our society. Few have paid as much attention to the issue as has the distinguished Senator from New York.

Oddly enough, however, whenever I am doing something with the Senator from New York, whether I sit on the Environment Committee or another committee, he always has more knowledge than anyone else. I am still trying to figure out how he does it, but he does it very well. This is just one example of many.

Mr. President, I rise in strong opposition to the conference report. I think it is a terrible Christmas present to give the children in our country. If this bill becomes law, many children in this Nation will wake up on Christmas day with no safety net and hardly any prospect of anything pleasant in the Christmas stocking.

This piece of legislation represents the worst, I think, of Speaker GINGRICH's agenda. It rips at the safety net, tears it to shreds. These poor children fend for themselves, and it violates the most basic values of our country.

Mr. President, all of us here constantly extoll the justified virtues of this Nation of ours, the greatest country on God's Earth. But what a paradox. Here we are, the wealthiest country in the world, no exceptions, and despite our prosperity, 9 million children are so poor that their families are on AFDC assistance.

Mr. President, there is no question that the current welfare system needs reform. I think there are many avenues of reform that are not fully explored. I think we want to encourage family structuring. I think we have to think in terms of letting someone who is on welfare—typically a woman with children—who perhaps meets someone that she would like to share her life with and provide her own family network, we immediately say to her, ''Well, you are off the welfare assistance, you are out of the health care program.''

What you do is you cut off your opportunities when you form this union, and you are in far worse shape than you otherwise would be. That does not encourage family togetherness. What it does do is it encourages a kind of deception and says, ''OK, you maintain your address; I maintain my address; and we will cohabitate, but we will not violate the rules.'' I think we ought to be looking at that kind of program. We ought to help welfare recipients find productive work. I am all for that. I do not think we ought to punish the poor kids who are on AFDC.

Mr. President, this bill is not a serious policy document. It is a budget document. It is a downpayment on the Republican tax break that targets the benefits for the millionaires and other wealthy Americans. We found out what the thinking is when I proposed an amendment one night that said, tell you what we will do, friends in the U.S. Senate. We will limit any tax break to those who earn under $1 million. Well, the outcome of the vote is in the RECORD. We did not get any Republican votes on that one. They said that even if you earn over $1 million, if a tax break comes along, you have to get your share. We know what we face.

I had the opportunity yesterday morning to be on one of the early-morning local shows with a freshman Republican Congressman from the other body, and we start our discussion and the first thing he says is, ''We are committed to providing that tax break.'' That overrides almost every other consideration. That is why we are here, wringing our hands, pleading the plight of those who face Christmas without an income, with a great deal of uncertainty, 280,000, roughly, Federal employees who give their all whenever they are asked, but now suddenly we have decided that they are good pawns to play in this chess game. Why? So they can force this reconciliation bill down the throat of the administration. It is a terrible game to play, I think.

The focus is on the tax break. Included in that will be those who are dependent on welfare who will suffer significantly if the program, as prescribed now, through the conference committee, goes through.

If you make $350,000 a year, the GOP reconciliation bill includes an $8,500 tax break. It is nice but certainly not necessary. I think it is painful because it comes from other people who do not have the means to get by on a day-to-day basis.

I want to talk for a moment about some of the facts with this legislation. The proponents talk about philosophy, giving States flexibility. It sounds good, but I found out there is kind of a catch-all situation here that says it is the bureaucracy—they do not say it is the bureaucracy, stupid; sometimes they say that—but it is the bureaucracy. That is the evil force that commands everything here. It may be a bureaucracy, but I do not know how you conduct a business or a structure of any kind without having people who work there—in this case, we are talking about people who are told to carry on policy in a particular fashion—and

perhaps they need more training, perhaps we have to alter the policy.

To conceal the fact that we are going to be shortchanging the recipients, the dependents on the welfare assistance, by calling it a block grant is, I believe, hypocrisy. The fact is that an HHS study shows this legislation—I was reminded about it in a letter I have included among my precious papers, a letter from the Senator from New York, just a short paragraph, talking about the children that will pay a price for the legislation that passed this body the first time with 11 Democrats and one Republican voting the other way.

Mr. President, 1.2 million to 2 million children will be facing hunger in roughly 7 years. That is hardly a way to design a program—punish the children, move 1 million to 2 million of them into poverty, into hunger. This is based on conservative assumptions. In all likelihood, the figure will be somewhat higher. I wish all Senators would fully appreciate what we are doing. Living below the poverty line is not a particularly pleasant experience. Having tried it myself as a child, I did not like it. My parents did not like it. The poverty level for a family of three, a woman and two children in this country, is $11,800 a year. How many people here believe that they could properly raise two children on $11,800 a year? It is not possible.

This bill also cuts food stamp funding by over $32 billion. These cuts, literally, as I said earlier, will take the food out of the mouths of our children.

Unfortunately, this bill is not the end of the pain for our Nation's children. The budget reconciliation is yet another assault on our children. The Republican budget bill ends the guarantee of health care for poor children. The bill's Medicaid cuts will mean that about 4 million kids—to use the expression—will be denied health care coverage. The cuts in the earned-income tax credit will mean that the parents of 14.5 million children, parents making under $30,000 a year, will get a tax increase on average of $332 a year.

Mr. President, $332 does not seem like a lot of money. But to a poor family it is an enormous sum. Working parents could use this money to buy the basic food, books, clothing, and pay for rent. I think it is unconscionable that our friends in the Republican majority are asking this of our children while providing a $8,500 tax break for people who make over $350,000 a year.

Republicans say they are making these deep cuts to help the children, the next generation. If I were the children I would say to them, ''Thanks; no thanks. Do not do us any favors. Just kind of keep us in balance now. Make sure we get the appropriate nutrition so we can learn and be productive citizens.''

The one thing I think that is really fallacious in what I hear going around here is that, somehow or other, those who are poor, those who are, perhaps, different, are another group. They do not belong to us.

One does not have to be a genius to know that we all have a stake in their well-being. It is our responsibility to protect them and help lift them out of poverty as if they were our own children, because we will pay the price—in many cases personally—for the lack of development that these children suffer.

I do not know how many have been to Brazil, to Rio de Janiero, one of the most beautiful cities in the world, where poverty fills every sight that you see, whether it is the mountains or the sea or what have you. Little kids, abandoned by their families, who will steal from open tables in the restaurant. I saw it happen. Because they are so hungry, they do not know any bounds, by virtue of appropriate conduct. Hunger, cunning takes over at all levels.

There was a shocking program the other night on ''Nightline'' about children who beg in the streets of Rio, who, when they get to be just a little more than 8 or 9 or 10 years old, they realize that their appeal for this baby face no longer has a salutary effect on the cups that they hold out for coins. Do you know what they do? They turn to prostitution at 9, 10, 11 years old. And they turn HIV positive in a hurry. And there is an epidemic of AIDS among little kids in Brazil, because they sell themselves. They do not know any other way to stay alive.

That is hardly a picture that we ought to aspire to and I am sure we do not. Those who are against this, I am not suggesting in any way, are for that kind of condition. But that is the reality when you cut off food and shelter and some caring concern. These little people find ways to exist, ways that we do not like, ways that we do not approve of, especially when they get a weapon in their hands, and especially when they gang up on someone who they think has the means to help them out.

That is why they are our responsibility, as well as some compassion in the hearts and souls of Americans. We have that as a people.

So, Mr. President, I hope we will reconsider. I hope my colleagues will reject this legislation. Once again, I commend our colleague from New York for his distinguished leadership in so many things, but particularly with this piece of legislation on welfare. I commend the President, also, for his veto statement, and I hope we will be able to sustain it.

Mr. President, this piece of legislation represents the worst of Speaker GINGRICH's radical agenda. It tears the safety net to threads. It leaves poor children to fend for themselves. It violates the most basic values of our Nation.

Mr. President, we live in the greatest nation on Earth. We are the wealthiest country in the world. But it is clear that some in our society do not share in this wealth. They are poor. They are jobless and in some cases homeless. And they must rely on public assistance to survive. In America, this is unacceptable. And we should be committed to improving their lives.

Mr. President, there in no question that the current welfare system needs reform. But the central goal for any welfare reform bill should be to move welfare recipients into productive work.

This will only happen if we provide welfare recipients with education and job training to prepare them for employment. It will only happen if we provide families with affordable child care. It will only happen if we can place them into jobs, preferably in the private sector or—as a last resort—in community service.

But this welfare bill is not designed to help welfare recipients get on their feet and go to work. It is only designed to cut programs—pure and simple.

It is designed to take money from the poor so that Republicans can provide huge tax cuts for the rich. That is what is really going on here.

Unfortunately, Mr. President, the radical experiment proposed in this legislation will inflict additional problems on our society while producing defenseless victims.

Those victims are not represented in the Senate offices. They are not here lobbying against this bill. They do not even know they are at risk.

The victims will be America's children. And there will be millions of them.

Mr. President, the AFDC Program provides a safety net for 9 million children. These young people are innocent. They did not ask to be born into poverty. And they don't deserve to be punished.

These children are African-American, Hispanic, Asian, and white. They live in urban areas and rural areas. But, most importantly, they are American children. And we as a nation have a responsibility to provide them with a safety net.

The children we are talking about are desperately poor, Mr. President. They are not living high off the hog. These kids live in very poor conditions.

Mr. President, it is hard for many of us to appreciate what life is like for the 9 million children who are poor and who benefit from AFDC.

I grew up to a working class family in Paterson, NJ, in the heart of the Depression. Times were tough. And I learned all too well what it meant to struggle economically.

But as bad as things were for my own family, they still were not as bad as for millions of today's children.

These are children who are not always sure whether they will get their next meal. Not always sure that they will have a roof over their heads. Not always sure they will get the health care they need.

Mr. President, these children are vulnerable. They are living on the edge of homelessness and hunger. And they did not do anything to deserve this fate.

Mr. President, if we are serious about reforming a program that keeps these children afloat, we will not adopt a radical proposal like this bill. We will not put millions of American children at risk. And we will not simply give a blank check to States and throw up our hands.

Mr. President, this Republican bill isn't a serious policy document. It is a budget document. It is a downpayment on a Republican tax break that targets huge benefits for millionaires and other wealthy Americans. For those who make $350,000 per year, the GOP reconciliation bill includes an $8,500 tax break.

Mr. President, if the Republicans were serious about improving opportunities for those on welfare, they would be talking about increasing our commitment to education and job training. In fact, only last year, the House Republican welfare reform bill, authored in part by Senator SANTORUM, would have increased spending on education and training by $10 billion.

This year, by contrast, this welfare bill actually cuts $82 billion, including huge reductions in education and training.

So what has changed? The answer is simple. This year, the Republicans need the money for their tax breaks for the rich.

Mr. President, shifting our welfare system to 50 State bureaucracies may give Congress more money to provide tax breaks. But it is not going to solve the serious problems facing our welfare system, or the people it serves.

To really reform welfare, Mr. President, we first must emphasize a very basic American value: the value of work.

We should expect recipients to work. In fact, we should demand that they work, if they can.

Of course, Mr. President, that kind of emphasis on work is important. But it is not enough. We also have to help people get the skills they need to get a job in the private sector. I am not talking about handouts.

I am talking about teaching people to read. Teaching people how to run a cash register or a computer. Teaching people what it takes to be self-sufficient in today's economy.

We also have to provide child care.

Mr. President, How is a woman with several young children supposed to find a job if she cannot find someone to take care of her kids? It is simply impossible. There is just no point in pretending otherwise.

Unfortunately, this bill does not address these kind of needs. It does not even try to promote work. It does not even try to give people job training. It does little to provide child care.

All it does is throw up its hands and ship the program to the States. That is it.

Mr. President, that is not real welfare reform. It is simply passing the buck to save a buck. And who is going to get the buck that is saved? The people the Republicans really care about: those who are well off.

Mr. President, I would like to take a moment now to talk about some of the facts about this legislation. The proponents of this legislation talk about philosophy and giving States flexibility, but I would like to talk about the facts.

The fact is that an HHS study showed that this legislation will force 1.2 to 2.1 million children into poverty.

And this is based on conservative assumptions. In all likelihood, the figure will be much higher.

Mr. President, I wish that all Senators would fully appreciate this. Living below the poverty rate is no fun. As I said, the poverty level for a family of three, a woman with two children, is $11,821 per year.

Mr. President, How many people here think that they could raise two children well on $11,821 per year?

Mr. President, not only does this analysis contain conservative assumptions, it also does not document what will happen to those children who already live in poverty. It is clear that they will also be harmed by this legislation because AFDC spending will be frozen at 1994 levels under this bill even though the cost of living for the poor will rise during the next 7 years.

This bill also includes a mandatory 5-year cap for the receipt of benefits. Once this time period is completed, there is nothing left for a poor family. No job, no education, no income support—nothing.

Mr. President, this seems like a benign provision but it will have harsh consequences for our children.

The cap will mean that 3.3 to 4.3 million children will get no help after 5 years. They will have no income support. They could be homeless.

Mr. President, I would like to point out that the 5-year cap is a maximum. It is an outer barrier. States can enact 1-, 2-, or 3-year caps and that will mean that even more children will have to go without assistance.

Mr. President, this bill also cuts Supplemental Security Income [SSI] benefits for disabled children. Under this conference report, 300,000 disabled children will be denied benefits in the year 2002.

Furthermore, approximately 500,000 children with disabilities, such as cerebral palsy, Down's syndrome, muscular dystrophy and cystic fibrosis, would have their benefits cut in the year 2002.

Mr. President, this bill also cuts food stamp funding by $36 billion. These cuts will literally take food right out of the mouths of our children.

Mr. President, the children of this country belong to all of us. We all have a stake in their well being. It is our responsibility to protect them, as if they were our own children.

And, Mr. President, I would point out that we don't take risks with our own children's well being. We do not say to them—you better shape up or we will put you out on the street without food.

We protect our own children. And we want to do more to help them. Parents across this country work hard to make sure that their children will have a better life. This is the same philosophy we should take towards reforming our welfare system. We must protect our children and we must help them become better off.

We can not do this by cutting millions of children off and forcing them into poverty. This will make them worse off—not better off.

Mr. President, I urge my colleagues to reject this legislation and I urge the President to issue an emphatic veto.

I yield the floor.

Mr. MOYNIHAN. Mr. President, I yield myself such time as I may require to thank my colleague and neighbor and friend from New Jersey for his statement, and particularly for raising a point, absolutely central to the legislation before us, which has not been raised until this moment in the debate, which is that this measure would repeal the eligibility of families who are now on Aid to Families with Dependent Children for Medicaid. This was not in the bill that passed the House. It was not in H.R. 4. It was not in the Senate bill. It is in the conference bill, which we have never seen. We never saw it. The conference never met.

I am sorry, we met once, October 24, for opening statements. And it never met again and the bill has come out. It was handed to us, the conference report was handed to us this afternoon. We found out what the Senator from New Jersey has said. That is the degree of the destructiveness of this measure.

I find it hard to comprehend, but I am not in the least surprised that every major religious group in the country, save one alone, pleads with us "Don't do this." Catholic bishops, the Lutheran Conference, on and on, UJA: "Don't do this to children."

I am increasingly confident, Mr. President, that we will not.

I yield the floor.

The PRESIDING OFFICER. Who seeks recognition? The Senator from Delaware.

Mr. ROTH. Mr. President, I yield 10 minutes to the distinguished Senator from Iowa.

Mr. GRASSLEY. Thank you, Senator ROTH, and thank you for being a good chairman of this committee and shepherding through a very important piece of legislation.

I have to acknowledge that it is with mixed emotions that I speak tonight on this conference report before us. I am very pleased to join my colleagues in support of a sweeping welfare reform proposal, probably the most sweeping in recent history. But I am angry at the President for saying that he will veto this.

I suppose you would say I should not be surprised that the President would veto this. I suppose you would look at his complaining about the Government being shut down and understand that he vetoed four bills this week, that if

he had not vetoed them, Government would be functioning. Yet he wants to point the finger at us.

This is the President who, in 1992, said we are going to change, reform welfare as we know it. He said that as a candidate. He said that as President of the United States. And considering the fact that he is always for a balanced budget on television but never negotiating for a balanced budget when he sits down to do it, or his people sit down to do it, and you cannot even get numbers on a sheet of paper, we maybe should not be surprised that the President said he is for reforming welfare as we know it and all of a sudden does not want to reform welfare as we know it, because he has a record of changing his mind on the very most critical issues before our country. He kind of has a real problem with making up his mind.

Mr. President, I have made up my mind. I am supporting this conference agreement. The House passed this conference by a vote of 245 to 178. That is a bipartisan vote. We should pass this bill more overwhelmingly than the House did. Remember, this passed the Senate 88 to 11. As I have said many times on this floor, States have been very successful in their efforts to reform welfare under waivers that are begrudgingly given to them by some faceless bureaucrat from time to time down at HHS. My own State of Iowa has a very successful effort at moving people from welfare to work, saving the taxpayers money, moving people off of welfare completely and trying to change the atmosphere in welfare of dependence to one of independence, where there is a sense of pride and esteem once again. The way my State of Iowa is doing this is by having the highest percentage of any State in the Nation of welfare recipients who are on private-sector jobs.

We have raised that percentage in 3 years of our reform from 18 percent to 34 percent. This is the kind of success that we at the Federal level have failed to achieve. Even in our best attempts in the 1988 Family Support Act we failed. That bill passed 96 to 1. That vote means that it was the best of intent to reform welfare. But we have three and a quarter million more people on welfare now than we did then. And it is costing billions of dollars more, which means we have failed to reform welfare.

We have seen States in the meantime succeed at welfare reform. That is the premise of this legislation. Moving out of the Washington bureaucracy the responsibility for welfare, moving it to our State and local governments to accomplish what we could not accomplish—moving people from welfare to work, moving people from dependence to independence, and saving the taxpayers' money.

I am pleased that we are making this move. We are acknowledging that we in Congress do not have a lock on wisdom or compassion. We are saying that we trust Governors and State legislatures to take care of citizens in need, and to do it with a community-based approach and to reform welfare thus doing.

When we started this process 10 months ago now, I set four goals that I wanted to accomplish in welfare reform.

First, to provide a system that will meet the short-term needs of low-income Americans as they prepare for independence.

Second, to provide States a great deal of flexibility.

Third, to reduce the incidence of out-of-wedlock births.

And, finally to save the taxpayers some of their hard-earned money.

I am pleased that Senator ROTH has led a conference that has given us a report that substantially addresses each of these goals.

The conference report provides for a block grant of the AFDC program to the States so that the States can meet the needs of low-income Americans in the most community-oriented, cost-efficient manner. It accepts a fact of life—that you cannot pour one mold here in Washington, DC, and expect to spend the taxpayers' money wisely solving the problems the same in New York City as you do in Waterloo, IA. This will let New York do the best with the taxpayers' money they can to accomplish the goals that they know should be accomplished, and the people in Iowa will do it according to their best way.

In doing so, this gives the States the great flexibility they need to design their programs to meet the needs of their individual citizens. Iowa has demonstrated a great benefit of the program designed with its citizens in mind, its very own program. Over 2 years ago, the Iowa State Legislature passed a bill that totally overhauls our welfare system. State leaders came to us at the Congress at the Federal level for that waiver necessary to implement their ideas. The waiver was finally approved, and the State plan was implemented in October 1993.

As I mentioned before, in the last 2 years, we have moved from 18 percent to 34 percent the number of our welfare recipients in jobs. This dramatic increase shows the ingenuity of the Iowa State plan to move people from welfare to work. It also shows the importance of giving much greater flexibility to State leaders.

Another positive portion of the final report is that it protects States which are under waiver agreements like my State of Iowa.

When Iowa came to the Federal Government for their waiver, they were required to have a cost neutrality clause in their contract agreement with the Federal Government. If my State wanted to try new ideas, then they were told by the Federal Government that they would have to bear the burden of any additional cost incurred. Being sensitive to the Federal deficit, I understood the need for that agreement.

But since we are now changing the rules of the game midstream, it was critical that we not hold the States liable under those waiver agreements. Since we are going to change our end of the deal—we at the Federal level by this legislation—States should not be required to live up to their end of the deal. This issue was addressed in the conference agreement by allowing States to cancel their waiver agreements while addressing the up-front costs that States have invested in their welfare programs.

My next goal was to take steps to address the seemingly intractable problem of out-of-wedlock births. The conference report requires that teenage mothers live at home, or in a supervised setting. If there is anything that we should all be able to agree upon, it is that young teenage mothers should not be left alone in raising children. They need support.

Witness after witness who came before Senator ROTH's committee agreed that teenage moms should not be left to fend for themselves and their children.

The conference also keeps the family cap but allows States to opt out if they desire. This compromise between the original House and Senate language is reasonable because it keeps the States from ignoring the issue but leaves the final determination to each State legislature.

My last goal—to save the taxpayers some of their hard-earned money—is really more of a result of reform than a goal itself. If we take steps to move people from welfare to work, give greater flexibility to the States, and reduce illegitimacy, we will—in the long run—save some taxpayer money. This would be a positive result.

I urge my colleagues to recognize this conference agreement as a good compromise between the House and Senate bills. It accomplishes the President's goal to end welfare as we know it.

We should send the President this conference report in the hopes that he will reconsider his recent comments and sign this bill into law. I urge adoption of the conference agreement.

Mr. KENNEDY addressed the Chair.

The PRESIDING OFFICER. The Senator from Massachusetts.

Mr. KENNEDY. Mr. President, as I understand it, we have been rotating back and forth. I know that Senator GRAMS has been here. I do not intend to take very long. But I would like to address the Senate on this issue.

I yield myself 12 minutes.

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

Mr. KENNEDY. Mr. President, there is a right way and a wrong way to reform welfare. Punishing children is the wrong way. Denying realistic job training and work opportunities is the wrong way. Leaving States holding the bag is the wrong way. While we all want to reform welfare, this conference report is simply the wrong way. It takes a bad Senate bill and makes it worse.

Mr. President, I know all of our Members are familiar with the excellent work that has been done by our friend, the Senator from New York, Senator MOYNIHAN, both in his presentations earlier this evening and his very considerable contribution to this debate over the years. I hope all of our Members will read carefully, prior to the time that we vote, the presentation of our good friend and colleague, Senator MOYNIHAN.

The Senate bill eliminated a 60-year old good faith national commitment to protect all needy children, and for that reason, in my opinion, it was fatally flawed. The Office of Management and Budget documented that the Senate bill would have pushed an additional 1.2 million children into poverty—hardly the goal of real reform. This conference report simply adds insult to injury. It will undoubtedly result in increased suffering for millions of American children and families. It continues to be legislative child abuse—and it should be defeated.

The Senate bill cut food stamps for 14 million children, SSI benefits for 225,000 disabled children, essential protections for 100,000 abused children, and minimal assistance for 4 million children left with no safety net after the time limit. This conference report slashes each of these survival programs even further—with nutrition services, disability benefits, and child protection efforts footing most of the bill.

If the conference report becomes law, children born to parents on welfare will be punished in every State. Victims of domestic violence will lose their special protections. Food stamps for the working poor and the unemployed will be further restricted. Women and children on AFDC will lose their Medicaid guarantee. Family preservation programs, child abuse programs, and child nutrition programs will be block granted. Family hardship exemptions and State investment requirements will be further reduced. All this pain is inflicted above and beyond the Senate bill.

And even the modest child care provisions added to the Republican Home Alone bill on the Senate floor have been rolled back. The Republican welfare agreement not only falls far short of providing essential child care funding but guts essential protections for children in child care.

During consideration of the Senate bill, the Congressional Budget Office said most States were likely to simply throw up their hands and ignore the new work requirements. Unfortunately, nothing on that front has changed for the better. CBO continues to believe that under this conference agreement, States will accept the sanctions for failing to comply, rather than try to reach the goals without the resources needed to make it possible.

This conference report more than doubles the child care short fall found in the final Senate bill. According to the Congressional Budget Office, the conference report is more than $6 billion short of providing States with enough child care funding to make the work requirements work. Once again, this is not welfare reform; it is welfare fraud.

What we know is that there are certain ingredients which are necessary to make any real welfare reform effort work. First of all, you have to provide some degree of job training and education for the individual. There has to be a job market out there so that the individual is able to gain employment and hopefully earn a decent wage. And there has to be health insurance coverage, particularly for small children, and there has to be child care.

Those are the effective ingredients and without these effective ingredients we are not going to have the kind of welfare reform which is so important and necessary. We will not be able to move people out of dependency into some degree of hope and opportunity for themselves and for their children.

What we have seen here is, even after the debate held on the floor of the Senate, even after the amendment of Senator DODD, myself and others was accepted, it goes to the conference and is rolled back from that position. Not only is the total amount of funds inadequate, but the protections for children in child care are gone.

Mr. SANTORUM. Will the Senator from Massachusetts yield for a question?

Mr. KENNEDY. If any Member of this Senate wants to see the best child care in this country, go to a military base. Go to any military camp across this country and you see child care programs at their very best. That is what has happened, Mr. President. Military child care represents the kind of high quality care that was fought for by our friend and colleague, Senator DODD, and also that was eventually worked out in a bipartisan way with Senator HATCH and Senator DODD and signed into law by President Bush—bipartisan support.

Now we read that these important child care protections have been stripped away in this conference report. It is absolutely untenable. And you and I know what is going to happen. With inadequate funding and protections for child care, we are going to hear in another 2 or 3 years about how child care is being bungled in the various States, and this is going to be used as an excuse to further reduce it. That is what is going to happen. And that I think is unfair, unjustified, and unwarranted.

Mr. SANTORUM. Will the Senator from Massachusetts yield for a question?

Mr. KENNEDY. I would like to just finish. I do not intend to speak for long. And then I will be glad to yield.

Mr. President, further, the conference agreement will undoubtedly ensure that those struggling to stay off welfare will lose their support to those seeking to get off welfare. But low-income working families need help, too. The average cost of a child in child care is almost $5,000 a year, yet the take-home pay from a minimum wage job is stuck at $8,500 a year. This is not manageable. It is not acceptable.

The conference agreement pulls the rug out from under these families just as they are getting on their feet. Such an approach is callous and counterproductive. In Massachusetts, of mothers who left welfare for work and then returned to welfare, 35 percent cited child care problems as the reason that they do not get enough of it. And the principal reason is we have three different child care programs that existed under the Finance Committee, all repealed. We also had a block grant program that was out there dealing with children of working parents. You had about 760,000 in one, about 650,000 in the other programs. And those programs have been combined and the entitlement status eliminated. At the same time, the need has been dramatically increased. In the Republican welfare conference, the total amount that is now being provided is even more inadequate than before. And even though we made some adjustment in this Chamber, that child care program has been very much emasculated.

The Republicans have cut by more than 50 percent the funds set aside to improve the quality of child care. This is true despite the fact that report after report documents the shockingly poor quality of child care in far too many child care centers and home-based child care settings. These Federal quality funds are making a measurable difference in the growth and development of low-income children.

The changes in this bill reduce child safety, parental choice, and parental opportunity. They do not promote work or protect children. This bill is not about moving American families from welfare to work. It is about taking assistance away from millions of poor, homeless and disabled children—and passing it out in tax breaks to the rich. It is about starving small children and feeding corporate fat cats. It is Robin Hood in reverse.

My Republican colleagues are correct when they say that this is a historic moment. If this bill passes, it will go down in history as the day the Congress turned its back on needy children, on poor mothers struggling to make ends meet, on millions of fellow citizens who need our help the most.

Some may wonder why the Republicans want to jam through a welfare conference report that they just managed to twist enough arms to get signed last night? The Republicans put a premium on speed. They hope that no one will find out exactly what their plan means until it is too late. They want to hide the harsh reality. When you strip away their rhetoric, their overall budget plan is to punish children and to protect corporate loopholes.

Republican priorities are clear. For millionaires, they will move mountains.

We passed in the Senate under the leadership of Senator MOYNIHAN and others by over 90 votes a repeal of the billionaire's tax cut. This is the provision that allows you to make $4, $5, $6 billion, trade in your citizenship, and get a tax break to take up residency in another country while the rest of Americans are working hard and paying their fair share. We voted overwhelmingly to eliminate it. Only four Members actually voted against it. But as soon as they went to conference and closed the door, they put it right back in here. While they are cutting child protection and child nutrition programs, they are protecting the billionaire's tax cut. And that is untenable, Mr. President.

Poor children, there is not a finger lifted for them.

Some of the Nation's corporate executives purchased full page ads in the Washington Post and the New York Times calling on Congress to produce a budget deal stating that every form of spending should be on the table. I couldn't agree more. It is high time that we had shared sacrifice.

We all want to balance the budget. But it cannot and should not be done on the backs of America's children. Enough is enough. Enough of backroom deal with high paid corporate lobbyists. Enough of dismantling commitments made to our children and families who need our help.

In the end, it is a battle for the heart and soul of this Nation. It is a simple question of priorities. Are we going to leave millions of American low-income children behind in order to give huge tax breaks to the rich? Are we going to put disabled children back in institutions in order to allow corporations to ship their profits overseas.

A ''survival of the richest'' plan is not what makes America America.

President Kennedy said in his Inaugural Address: ''If a free society cannot help the many who are poor, it cannot save the few who are rich.''

And in defense of the national safety net—President Reagan said in 1984: ''We can promote economic viability, while showing the disadvantaged genuine compassion.''

We have learned from experience that some cuts never heal—and I caution my colleagues that this conference report is full of them.

I am proud to join President Clinton and my Democratic colleagues in the House and the Senate vigorously opposing this conference report. Clearly, we can do better, and now is the time to start trying.

For the children who are too young to vote and who cannot speak for themselves—we must be their voice. I urge my colleagues to vote ''no'' on this conference report.

I will be glad to yield.

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

Mr. KENNEDY. I yield myself 6 minutes to be able to respond, if the Senator from Pennsylvania had a question.

Mr. SANTORUM. I thank the Senator from Massachusetts. I just want to clear——

The PRESIDING OFFICER. The Senator from New York yields time?

Mr. MOYNIHAN. To the Senator from Massachusetts.

Mr. KENNEDY. The Senator from Pennsylvania had inquired earlier, and I indicated I wanted to complete my statement, and I have. And the Senator from New York has granted I think 2 more minutes—

Mr. MOYNIHAN. As much time as the Senator likes.

Mr. KENNEDY. To respond to the Senator who wanted to ask questions. Otherwise, I yield the floor.

Mr. SANTORUM. I would like to ask a question of the Senator from Massachusetts. The Senator from Massachusetts made the statement that child care funding under this bill is rolled back, has declined. I would just refer him to—he said we had a premium on speed, and I think in this case the premium on speed has been to our detriment because I am not sure the Senator has the most current figures on child care. Let me review for the Senator what is in the bill.

Like the Senate bill that passed, there is a $1 billion per year block grant to the States, identical to what we passed here. There is a difference in the mandatory child care category. We in the Senate-passed bill spent $10 billion over 7 years for child care. In the conference report it is $11 billion, $1 billion more than the Senate bill overall. And in addition, it is over $1.8 billion more than the current CBO baseline. So it is more than the Senate bill, and it is substantially more than what would be under current law.

Mr. KENNEDY. Well, Mr. President, just to respond, I understand that it provides $11 billion over 7 years for child care as opposed to $8 billion over 5 years in the Senate bill. I think I am correct on that. I see my friend from New York nodding his head. And CBO says that this amount is $6 billion short of the funding needed to make the work requirements work. In addition, the conference report caps the child care block grant for working poor families at $1 billion—is that correct?—rather than such sums as in the Senate bill. So I think I stand by the earlier statement. I see the Senator from New York——

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

Mr. MOYNIHAN. The Senator can have as much time as remains to us, if he wishes.

Mr. SANTORUM. If I can say to the Senator from Massachusetts that the 5-year number is correct, $8 billion over 5 years in the Senate-passed bill, but $10 billion over 7 years in the conference report. The Senator is correct it is not $8 billion in 5 years; it is $7.8 billion. So you trade off in a sense $200 million in the first 5 years for an additional $1 billion in the final 2 years, which many would see as a pretty good trade-off and an increase in the overall allocation of $1 billion.

So I do not think it is fair to say that it is a decrease in chapter funding when you are spending $1 billion over a year covered by the bill.

Mr. KENNEDY. Well, I say to the Senator, I will put in the RECORD my understanding on the child care provisions, as I indicated earlier, the $11 billion over 7 years, still far short of what CBO says is needed, and also that the cap of the child care block grant. This bill also rejects the Senate provisions preserving the funding entitlement for all protective services, including essential foster care and adoption programs.

As the Senator from Pennsylvania knows, the conference agreement maintains the entitlement for room and board costs associated with foster care and adoption, but block grant the funds used to keep children safe by removing them from dangerous situations and finding and monitoring alternative placements.

That is one of the most important aspects of the program. I am extremely familiar with the excellent program that is taking place in Los Angeles, one of the most effective family preservation programs around. With outreach and support efforts, children are being kept safe and experiencing good care and attention.

The Senate bill emphasized prevention and family preservation. But by block granting these special efforts with crisis intervention programs, these particular provisions have been effectively eliminated. Independent living programs are also repealed. And at a time when the needs will increase in terms of the children protection, the report cuts essential services by $1.3 billion more than the Senate bill.

We have not even talked about the disabled children, what has happened to them. We have not talked about the food stamp programs that are going to affect children. We have not talked about child nutrition. You nearly double the size of the cuts in the Senate bill from $3.4 to $5 billion. There are 32 million needy children currently in this program. And the list goes on.

I know the Senator will want to address this. This is a listing of my understanding of it. I know the Senator from Pennsylvania will do likewise. But I welcome the opportunity to identify the impact of this legislation on children. And what exists at the present time, what was in the Senate bill, and what has come out of this conference. I think it should be listed, and attention should be drawn to it, hopefully prior to the time we vote. I know the Senator will put in his interpretation, as I do mine.

I thank the Senator from New York. I yield myself 30 more seconds to say how much all of us appreciate his leadership, not only this evening and the work on the conference report, but the

brilliance of his leadership during the consideration earlier in the debate and for all the good work that he has done over the years. In 1988, his true reform program provided the child care, provided jobs training and education, and provided for transitional support in terms of the health care.

That still is, when the final chapter is written, the way to go. All of us, all Americans are in his debt for the leadership that he has provided. I thank the Chair.

Mr. MOYNIHAN. Mr. President, may I yield myself 30 seconds to thank my friend from Massachusetts, who is, as ever, at the fore in these matters.

The President in his statement that he will veto this bill says that he looks forward to bipartisan efforts to pursue the directions we took in 1988 and on which we should continue. But it is not cheaper. Mr. President, the cheapest thing to do is what we do now, what we are going to do in this bill. And it is ruinous to children. We would look back at this as a day without precedent in the history of this body, an idea that a year ago would have been, I think, unthinkable.

I think now we will at long last, when we have come to our senses, as I said earlier, in a bipartisan effort accomplish what we need to as soon as this particular one is behind us. I thank the Chair.

The PRESIDING OFFICER. Who seeks recognition?

Mr. ROTH. I yield 5 minutes to the Senator from Minnesota.

The PRESIDING OFFICER. The Senator from Minnesota is recognized.

Mr. GRAMS. I ask the manager of the bill if I could have up to 10 minutes?

Mr. ROTH. I am sorry, just 5.

Mr. GRAMS. Mr. President, I rise today in support of the conference report to H.R. 4, the Work Opportunity Act of 1995, and I commend the majority leader and my colleagues for the months of concentrated effort it took to bring us to this point. And I appreciate the opportunity to speak on this bill tonight.

Mr. President, since the beginning of the 104th Congress, we have been debating the state of this Nation's welfare system. Both sides of the aisle recognize that the system is broken.

It encourages illegitimacy.

It does not recognize the importance of marriage and family. It offers no hope or opportunity for those Americans who are trapped within its layers of bureaucracy.

And it was not supposed to be this way.

After signing the 1964 Welfare Act, President Lyndon Johnson proclaimed, ''We are not content to accept the endless growth of relief rolls or welfare rolls,'' and he promised the American people that ''the days of the dole in our country are numbered.''

The New York Times predicted the legislation would lead to ''the restoration of individual dignity and the long-run reduction of the need for government help.''

In 1964, America's taxpayers invested $947 million to support welfare recipients—an investment which President Johnson declared would eventually ''result in savings to the country and especially to the local taxpayers'' through reductions in welfare caseloads, health care costs, and the crime rate.

But yet, 30 years later, none of those predictions have materialized, and the failure of the welfare system continues to devastate millions of Americans every day—both the families who receive welfare benefits and the taxpayers who subsidize them.

Despite a $5.4 trillion investment in welfare programs since 1964, at an average annual cost that had risen to $3,357 per taxpaying household by 1993:

One in three children in the U.S. today is born out-of-wedlock;

One child in seven is being raised on welfare through the Aid to Families with Dependent Children program; and

Our crime rate has increased 280 percent.

Mr. President, those are the kinds of devastating statistics which until recently have been ignored by the bureaucratic establishment in Washington, but those are the statistics H.R. 4 will finally address.

By rewriting Federal policies and working in close partnership with the States, we can create a welfare system which will effectively respond to the needs of those who depend on it—at the same time to protect the taxpayers.

This bipartisan welfare conference report sets in place the framework for meeting those needs by offering individuals who are down on their luck some opportunity, self-respect and most importantly, the ability to take control of their own lives.

And yes, we will ask something of them in return.

The most significant change in our welfare system will be the requirement that able-bodied individuals put in 20 hours of work every week before they receive assistance from America's taxpayers.

Mr. President, my colleagues and I have come to the floor repeatedly this session to suggest that our present welfare system promotes dependency by discouraging recipients from working, but nothing sums up the problem more perfectly than a story which appeared just last month in the Baltimore Sun.

It seems that the Baltimore regional office of the Salvation Army is having trouble this year recruiting volunteer bell ringers to staff the red kettles that have become a symbol of the holiday season.

So they decided to pay for the help—$5 an hour, thinking it would give people on public assistance the opportunity to earn some money. Here is where the Baltimore Sun picks up the story:

> The Frederick chapter ran a help-wanted ad for bell ringers in the local paper for a week but received only four applications. It then approached an agency that provides temporary workers.
>
> The agency interviewed 25 people for the bell ringing job, but no one wanted to do it. One person accepted the job at a second temporary help agency.
>
> ''I'm beating my head against the wall,'' Captain Mallard said.

That is Butch Mallard, commander of the Salvation Army in Frederick, MD:

> I don't know if people don't want to work outside, or that they just don't want to work for $5 an hour when they can stay home and get that much from the government.

Mr. President, the Salvation Army has found out what we have been saying all along: the government makes it so easy for a welfare recipient to skip the work and continue collecting a federal check that there is absolutely no incentive to ever get out of the house and find a job.

And if someone actually takes the initiative to take a job—perhaps as a bell ringer—they risk forfeiting their welfare benefits entirely.

During Senate consideration of the Work Opportunity Act, Senator SHELBY and I joined forces with the majority leader to ensure that welfare recipients receive benefits only after they work.

We believe welfare recipients should be held to the same standards, the same work ethic, to which America's taxpayers are held.

American taxpayers are putting in at least 40 hours on the job each week—and are sometimes forced to take on an additional job or work overtime hours just to make ends meet.

And all the while, they have been generously providing welfare recipients with cash and benefit assistance, while the only thing we ask of welfare recipients is to provide an address where we can mail their checks.

Under the Grams-Shelby pay-for-performance amendment which was adopted earlier this year, this practice will end. Welfare recipients will be required to work before they receive any cash assistance.

Simply put, our amendment stipulates that welfare recipients will receive financial assistance from the taxpayers only for the number of hours they are actually engaged in a work activity.

A work activity includes: a private sector job, on-the-job-training, a subsidized job, workfare, community service, job search limited to 4 weeks, and vocational education limited to 1 year.

A welfare recipient is required to required to work 20 hours a week—if they only put in 15 hours in a particular week, they will only receive cash assistance for those 15 hours of work.

Many of my colleagues have expressed their support for these tough work requirements and the need for the pay-for-performance amendment.

But some Members believe our original bill did not include adequate funding to provide child care while parents were working.

These concerns were raised despite the fact that the Senate bill dedicated $8 billion toward child care services.

But in order to address the concerns that $8 billion is still not enough, the conference report increases child care funding to $18 billion.

As it has in the past, safeguarding the well-being of children will continue to remain a primary concern of the refocused welfare system our bill will create.

I am proud that we have taken additional steps through this conference report to ensure our children's readiness, and ability, to learn.

Throughout the last year, I have been meeting with parents, educators, nutrition experts and pediatricians who are concerned about the future of Federal nutrition standards.

Many of them have pointed out that unless children receive and maintain a proper level of nutrition, they will perform significantly lower than their learning potential.

And so I have worked to ensure that medically devised Federal nutrition standards, established by the National Advisory Council on Maternal, Infant and Fetal Nutrition, are maintained under this legislation.

I am pleased that my colleagues have joined me in recognizing the need for these uniform standards by including them in this bill.

Mr. President, our bill also recognizes that officials elected locally—our state legislators and governors—are more capable than their representatives in far-away Washington to administer effective programs on the State and local level.

And so this welfare reform legislation will give States like Minnesota the flexibility they need to develop innovative programs to assist those who need help most.

States will no longer have to ask Washington for permission to establish successful programs like the Minnesota family investment plan. States will finally be able to save money and use it wisely, rather than being forced to spend it on the wasteful paperwork Washington requires them to fill out.

Mr. President, the bipartisan legislation before us today to overhaul our failed welfare system is the first positive step away from a system which has held nearly three generations hostage with little hope of escape.

Only be enacting this legislation can we offer these Americans a way out and a way up.

I challenge my colleagues on both sides of the aisle, and the President, and the American people themselves, to take this message to heart: Government cannot solve all our problems.

As Americans, we need to look within ourselves rather than continuing to look to Washington for solutions.

Does anybody really believe the Federal Government embodies compassion, that it has a heart?

Of course not—those are qualities found only outside Washington, in America's communities.

Mr. President, there is no one I can think of who better exemplifies heart and compassion than Corla Wilson-Hawkins, and I was so fortunate to have had the opportunity to meet her recently.

She was one of 21 recipients of the 1995 National Caring Awards for her outstanding volunteer service to her community.

Corla is known as ''Mama Hawk'' because, more than anything else, she has become a second mother to hundreds of schoolchildren in her west-side Chicago community, children who, without her guidance, might go without meals, or homes, or a loving hug.

Mama Hawk gives them all that and more, and she and the many, many other caring Americans just like her represent the good we can accomplish when ordinary folks look inward, not to the government—and follow their hearts, not the trail of tax dollars to Washington.

Mama Hawk tells a story that illustrates better than I ever could how the present welfare system has permeated our culture and become as ingrained as the very problems it was originally created to solve.

These are her words.

> When I first started teaching, I asked my kids, what did they want to be when they grew up? What kind of job they wanted. Most of them said they wanted to be on public aid. I was a little stunned.
>
> I said, ''Public aid—I didn't realize that was a form of employment.'' They said, ''Well, our mom's on public aid. They make a lot of money and, if you have a baby, they get a raise.''

Mr. President, that is the perception, maybe even the reality, we're fighting to change with our vote today on this historic conference report. While there is more work to accomplish, this bill is a good first step toward truly ending welfare as we know it.

I look forward to working with my colleagues in the future to finish the good work we have started today.

Ms. MIKULSKI. Mr. President, I oppose this conference report. We should reject this bill. We should return to the bargaining table to negotiate real welfare reform which moves people from welfare to work and provides a safety net for kids.

Nearly 3 months ago, I joined 34 of my Democratic colleagues in reaching across the aisle to pass a bipartisan welfare reform bill by a vote of 87–12.

We did so because our deliberations had produced a bill that began to move the welfare reform debate away from the harsh rhetoric of the House bill.

I had hoped that our initial success at compromise in the Senate could lead to true compromise with the House. Regrettably, it did not.

During Senate action last September, Senate Republicans and Democrats worked together to find common ground and the sensible center. In contrast, the House-Senate welfare conference was shaped by Republican back room deals. Democrats were shut out.

This Conference Report is punitive. It's tough on kids, and it does not give people the tools they need to get and keep a job.

This bill moves us in the wrong direction.

First, this bill is part of the Republican assault on needy families. This bill cuts $82 billion from child care, food stamps, child nutrition, child protection, welfare and other programs over 7 years—drastically more than the Senate welfare reform bill. These cuts are draconian.

They are coupled with other budget cuts critical to working families, such as the earned income tax credit. The EITC helps keep working families out of poverty. The Republicans welfare plan says go to work. The Republican budget says, once you get to work, we're going to make you pay more in taxes.

Second, the conference report snatches away the safety net for kids. It weakens the Senate effort to provide child care to working families by cutting $1.2 billion. These drastic cuts mean that parents will have to choose between taking care of their kids and going to work. Today, 34 percent of women on welfare say they are not working because they cannot find or afford child care.

Children will go hungry under this conference report. It jeopardizes the nutrition and health of millions of children, working families, and the elderly. It cuts food stamps and school lunches. And, if there is a recession, there is no guarantee those in need can get either. At least 14 million kids will suffer from this cut.

Third, neglected and abandoned children, and children in foster and adoptive care, will suffer further under this conference report. It slashes protective services to these kids by 23 percent or $4.6 billion over the next 7 years. The bill also cuts funding to investigate reports of abuse and neglect, to train potential foster and adoptive parents, to help place children in foster and adoptive homes and to monitor State child protection programs. These cuts come at a time when resources can't meet current needs to protect children from abuse and neglect.

Fourth, the conference agreement is punitive to disabled children. We all agree Supplemental Security Income needs to be reformed. But, this goes too far. It too narrowly defines who qualifies. So, only the most severely disabled children will get SSI, stranding many disabled kids and their families.

Fifth, the conference report allows States to cut back on their financial commitment to poor families. It weakens the State maintenance of effort provisions the Senate fought so hard for. Under this bill States could cut their contributions to poor families by 25 percent each year. The net effect—less child care, fewer tools to help get people to work, and more children falling into poverty.

And sixth, the bill fails to recognize that when there is an economic downturn, people lose their jobs and need a helping hand. There is not an adequate contingency fund for use during times

of natural disasters, changes in child poverty, and population shifts.

This bill fails to move people from welfare to work. And it is a bill that will force more than a million additional children into poverty.

The welfare package of the President's 7-year balanced budget plan is a good place to start. It takes a significant page from the Work First proposal that Senators DASCHLE, BREAUX, and I wrote earlier this year. It requires welfare recipients to go to work by providing them with the tools to get a job and keep it. It cuts $49 billion in welfare programs, but does so responsibly—not in the reckless and punitive fashion of this conference report.

The best social program in America is a job. Unfortunately, the Republicans welfare bill now before the Senate is a con job when it comes to Americans' desire to get welfare recipients back to work. Vote no on this conference report.

The PRESIDING OFFICER. Who yields time?

Mr. MOYNIHAN. I yield myself 3 minutes.

The PRESIDING OFFICER. The Senator from New York.

Mr. MOYNIHAN. Mr. President, we are truly at the end of our debate this evening, toward the end. I ask unanimous consent that statement by the presidents of the National League of Cities, the National Association of Counties, and the United States Conference of Mayors urging the defeat of this measure be printed in the RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

NATIONAL LEAGUE OF CITIES, NATIONAL ASSOCIATION OF COUNTIES, THE UNITED STATES CONFERENCE OF MAYORS, DECEMBER 20, 1995.

DEAR SENATOR: On behalf of the nation's local elected officials, we are writing to urge you to oppose H.R. 4, the conference agreement on the Personal Responsibility Act. Although the conferees agreed to some changes in the areas of foster care consultation with local governments, we cannot support the Final conference agreement which fails to address many of the other significant concerns of local governments. In particular, we object to the following provisions:

The bill ends the entitlement of Aid to Families with Depend Children, thereby dismantling the critical safety net for children and their families.

The bill places foster care administration and training into a block grant. These funds provide basic services to our most vulnerable children. If administration and training do not remain an individual entitlement, our agencies will not have sufficient funds to provide the necessary child protective services, thereby placing more children at risk.

The eligibility restrictions for legal immigrants go too far and will shift substantial cost into local governments. The most objectionable provisions include denying Supplemental Security Income and Food Stamps, particularly to older immigrants. Local governments cannot and should not be the safety net for federal policy decisions regarding immigration.

The work participation requirements are unrealistic, and funding for child care and job training is not sufficient to meet these requirements, One example of the impracticality of these provisions is the removal of Senate language that would have allowed states to require lower hours of partition for parents with children under age six.

We remain very concerned with the possibility of any block granting of child nutrition programs. A strong federal role in child nutrition would continue to ensure an adequate level of nutrition assistance to children and their families. School lunch programs are necessary to ensure that children receive the nutrition they need to succeed in school. Children's educational success is essential to the economic well being of our nation's local communities.

The implementation dates and transition periods are inadequate to make the changes necessary to comply with the legislation. We suggest delaying them until the next fiscal year.

As the level of government closets to the people, local elected officials understand the importance of reforming the welfare system. However, the welfare reform conference agreement would shift costs and liabilities and create new unfunded mandates for local governments, as well as penalize low income families. Such a bill, in combination with federal cuts and increased demands for services, will leave local governments with two options: cut other essential services, such as law enforcement, or raise revenues. We, therefore, urge you to vote against the conference agreement on H.R. 4.

Sincerely,

GREGORY S. LASHUTKA,
President, National League of Cities, Mayor, Columbus, Ohio.

DOUGLAS R. BOVIN,
President, National Association of Counties, Commissioner, Delta County, Michigan.

NORMAN B. RICE,
President, The United States Conference on Mayors, Mayor, Seattle, Washington.

Mr. MOYNIHAN. Mr. President, they make a number of points, but the first one being:

The bill ends the entitlement of Aid to Families with Dependent Children, thereby dismantling the critical safety net for children and their families.

This is the central point. We do not have welfare reform before us, we have welfare repeal, a repeal of a commitment made in the 1930's in the middle of the Depression. To be abandoned now would be unthinkable, and I am increasingly confident it will not occur.

Also, I ask unanimous consent to print in the RECORD a joint statement by Catholic Charities USA, the Lutheran Social Ministry Organizations of the Evangelical Lutheran Church in America, the Salvation Army, and the Young Women's Christian Association on these and other matters.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

JOINT STATEMENT OF LARGE NONPROFIT SOCIAL SERVICE PROVIDERS, OCTOBER 19, 1995

Catholic Charities USA, the Lutheran Social Ministry Organizations of the Evangelical Lutheran Church in America (ELCA), The Salvation Army, and the Young Women's Christian Association (YWCA) are the nonprofit organizations who together do more for low-income families and poor people in the United States than anyone else. We are greatly concerned about the consequences that deep cuts in programs that serve poor and low-income people will likely create. The very fabric of our society is at risk. We believe that such cuts will exacerbate the despair already felt among many and turn it into hopelessness. As we go about our business of serving both the physical and spiritual needs of people, we see the desperation in many of their eyes.

The chasm between the rich and poor in our country appears to be growing. While children born to families in the upper twenty percent of the income scale in the United States experience the highest standard of living in the industrialized world, the children born to families in the lowest twenty percent receive one of the lowest. We should be developing policy that narrows that gap rather than policy that widens it. The reduction in the support for programs serving low-income people such as Aid to Families with Dependent Children, food and nutrition, Medicaid, housing, the Legal Services Corporation, Supplemental Security Income, and the Earned Income Tax Credit, when combined, will have a devastating effect on families that have few options. Even if these families are able to work, that work is often at or near minimum wage with no benefits leaving families still living in terrible deprivation. Elderly people as well will experience increased poverty and all that it brings.

In addition to the hopelessness of spirit, we believe the proposed policy changes will increase hunger, homelessness, and abuse and neglect within families.

Historically, we have worked quite successfully in partnership with government to provide services to persons with special needs. On every front we have received commendation for the great work we have done. However, we do not have either the financial or physical capacity to serve the increased need we expect to occur because of these policy changes. In fact some of the changes may force us to terminate some programs and even close our doors in some ares. We are deeply concerned that the partnership between government and religious institutions, which has worked so well in the past, is now being broken.

We will do our part to alleviate as much suffering as possible by our acts of mercy. However, we believe that all have a responsibility for the needs of the people, the general welfare, the common good—church members and non-church members alike. Because not all seek what is just and good, dependence on charity for the basic needs of life is inadequate. Charity can supplement, but it will never be able to replace ''justice.'' It is not just the responsibility of faith group members who choose to give generously of both their time and resources to ensure that people's needs are met. Society as a whole must be committed to the well being of all. We believe that government, as a means by which Americans act corporately, has a major role in establishing justice, protecting and advancing human rights, and providing for the general welfare of all. This is not a time for government to deny their role and reduce their portion of the partnership.

We believe that Congress and the President should be cautious when making sweeping changes in policy and not reverse the present working relationship with nonprofit providers which has worked so well in the past.

Rev. CHARLES MILLER,
Executive Director, Lutheran Social Ministry Organizations of the Evangelical Lutheran Church in America.

Rev. FRED KAMMER, S.J.,
President, Catholic Charities USA.
Commissioner KENNETH L. HODDER,
National Commander, The Salvation Army.
PREME MATHAI-DAVIS,
Executive Director, YWCA of the U.S.A.

Mr. MOYNIHAN. I reserve the remainder of my time as I believe we are going to try to go to a concluding measure here.

Mr. ROTH. Mr. President, first, I yield 5 minutes to the distinguished Senator from Texas.

The PRESIDING OFFICER. The Senator from Texas is recognized.

Mrs. HUTCHISON. Thank you, Mr. President. I thank the distinguished chairman of the committee for the wonderful job that he has done. It is never easy to make such changes as we are making in this bill. But it is one of the most important decisions that we will make, because it is one of the key elements to change the direction of this country as it relates to welfare and to allow us to balance the budget.

We have heard a lot of talk this afternoon and this evening about helping children. Mr. President, if we are going to help the children of this country, the most important thing we can do is balance the budget. We cannot balance the budget unless we put welfare on a budget. If we do not put welfare on a budget, we will not be able to do what is right for this country.

I am voting yes on this conference report for two reasons: We must take welfare off entitlement status and, Mr. President, we have talked all day and all night about the President saying he is going to veto this bill. There is one reason he is going to veto this bill. It is because we are taking welfare off entitlement status and putting it on a budget. That is the fundamental difference between the President and those of us who are going to support this bill.

This bill does not cut welfare spending. This bill slows the rate of growth of welfare spending from 5.8 percent to 4.02 percent, less than 2 percentage points of difference in the rate of growth. We are going to spend more on welfare. But the difference is we are going to put some parameters around it. We are going to give the States the right to have a welfare program that fits the needs of their States.

Mr. President, my Governor, George Bush, says, ''What are they talking about, hurting the children? Do they think I am going to have starving children in my home State?''

My Governor is a graduate of Yale. I mean, it is not the University of Texas, but it is OK. I think he is enlightened. I think he can handle the job, and I think every other Governor in the United States of America knows best what will fit their State's needs.

This is going to make some monumental changes in the priorities we have. We have heard tonight Senators saying, ''What are the priorities of this country?'' We are going to decide.

The priorities of this country are that we want to help people who need a transition for a temporary period, and that is what this bill does. Can people stay on welfare if they are able-bodied and do not have young children under 6? They cannot do it forever. No, they cannot. They cannot stay on it generation to generation. They have to work after 2 years and they have a lifetime limitation of 5 years.

What does that tell working people of this country, especially the working poor? It says there is an incentive for you to do what is right. No longer are you going to have to support people who can work but will not. If you can work and do, if you consider it a privilege to work and contribute to the economy of this country, you will not be subsidizing people who can work and do not.

We have talked about what is a block grant and what is not a block grant. We are going to put AFDC on a block grant with growth. There is a formula that allows for the growth States to have a fair allocation. But there still is a safety net, Mr. President. There is a safety net in food stamps, in child nutrition. Those will not be block granted. Those are going to be based on need. So food and nutrition programs are a safety net, and they are kept in the bill as a safety net.

Mr. President, we are going to set the priorities of our country with this bill. We are going to say to the working people of this country that it is worth something to work, it is a privilege in this country to have a job and to contribute to the economy and you are not going to be competing with someone who refuses to work even if they can. The working people of this country are going to know that we have a budget and that this is not going to be unlimited spending.

Mr. President, I know that my time is up, and I will just say that we are making decisions that will determine the priorities of our country and we are going to get this country back on track and we are going to bring back what made this country great.

It was the strong families, it was the spirit of entrepreneurship and the working relationships that have built this country. We are going to bring it back and make this country strong again.

Thank you, Mr. President. I yield the floor and thank the chairman.

Mr. ROTH. Mr. President, I yield the remainder of my time to the distinguished Senator from Pennsylvania.

The PRESIDING OFFICER. The Senator from Pennsylvania is recognized for 18 minutes, 52 seconds.

Mr. SANTORUM. Mr. President, I want to thank the distinguished chairman of the committee who has done an absolutely superb job with this piece of legislation in shepherding it through the conference. It has been a pleasure to work with him in the time we have worked on the welfare bill since he has become chairman.

For the benefit of the staff here, I am going to do the wrap-up and then proceed with my remarks after the wrap-up.

MORNING BUSINESS

Mr. SANTORUM. Mr. President, I ask unanimous consent that there now be a period for the transaction of morning business.

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

THE BAD DEBT BOXSCORE

Mr. HELMS. Mr. President, as of the close of business yesterday, December 20, the Federal debt stood at $4,988,966,775,602.69, a little more than $11 billion shy of the $5 trillion mark, which the Federal debt will exceed in a few weeks.

On a per capita basis, every man, woman, and child in America owes $18,938.20 as his or her share of that debt.

HONORING JOHN C. STENNIS

Mr. WARNER. Mr. President, I rise today to pay tribute to Senator John C. Stennis, for whom our Nation's newest aircraft carrier is named. Further, I include in today's RECORD the excellent remarks given by the Secretary of Defense, William Perry, and Senator THAD COCHRAN, the two principal speakers at the commissioning of this great ship on December 9, 1995.

Built with the minds, hands, and sweat of thousands of workers at Newport News Shipbuilding, and manned by the men and women of the most powerful Navy in today's world, this ship serves as an symbol of peace, that will stand guard night and day on the seven seas deterring aggression. As a former sailor in World War II, Secretary of the Navy, and now a senior member of the Senate Armed Services Committee, I know well the awesome capabilities of these magnificent ships.

In my brief remarks to an impressive audience of over ten thousand people who braved a wintery day, I recalled how, as I worked by his side for over a decade, Senator Stennis would relate stories of how a succession of Presidents would say ''Whenever I was awakened in the middle of the night by a report of a crisis somewhere in the world, my first thoughts were always 'Where is the nearest U.S. aircraft carrier?' ''

Mr. President, it is fitting that this great ship bears the name of Senator Stennis. Senator Stennis was my friend and mentor, whose humble beginnings in a small working-class home and equally humble and proud manner in which he lived his entire life, stand in stark contrast to this magnificent ship that now bears his name. He was a true visionary and champion of our Nation's

Armed Forces. When Senator Stennis left the Senate, he gave me a plaque which was always on his desk. While the plaque itself may be simple and plain, the message ''Look ahead'' has deep meaning. Indeed, even today, our Nation is reaping the benefits of the forward thinking Senator who lived by these words.

Mr. President, during the commissioning ceremony of the USS *John C. Stennis*, attended by many Members of Congress including Senators STROM THURMOND, THAD COCHRAN, TRENT LOTT, CHUCK ROBB, SAM NUNN, and DIRK KEMPTHORNE, and Congressmen SONNY MONTGOMERY, OWEN PICKETT, HERB BATEMAN, BOBBY SCOTT, and GENE TAYLOR, I was honored to be able to present the ship with that plaque, as I am sure Senator Stennis would have wanted, in hopes that it would inspire the gnerations of men and women that will serve on her.

I ask unamious consent that Senator COCHRAN's and Secretary Perry's remarks be printed in the RECORD.

There being no objection, the remarks were order to be printed in the RECORD as follows:

REMARKS OF SENATOR THAD COCHRAN AT THE COMMISSIONING OF THE U.S.S. ''JOHN C. STENNIS'' (CVN–74)

Those of us from the State of Mississippi could not be more proud today. We are all honored by the career and life of John C. Stennis.

When he was elected to the United States Senate in 1947, an editor of one of our newspapers said our State would ''earn the plaudits of the Nation'' by choosing such ''a thoughtful, purposeful, and high-minded man.''

That turned out to be very true indeed. Integrity was not just a virtue with John Stennis, it was a way of life. For that he was greatly admired.

With all his good personal qualities, he had an enormous capacity for hard work and endurance. His personal toughness as well as his courage and determination was greatly tested when he was shot by robbers in 1973, and then later when serious health problems threatened his life.

He not only survived, he prevailed, as William Faulkner might say, and he did so without complaint or any noticeable ill humor.

John Stennis was always in good spirits, friendly with all his colleagues, the epitome of decorum and courtesy. In the ten years I was privileged to be his State colleague in the Senate, I never heard him say a critical or unkind word about anybody.

But he was tough minded, resolute, and firm, like he had been as a trial judge, insisting on order and respect for the Court, and later the Senate. The judicial temperament he exhibited included a strong respect for justice and fairness.

It is no wonder then that as a young Senator he was chosen to serve as the first chairman of the Committee on Standards and Conduct.

His effective work as chairman of the Subcommittee on Military Preparedness gave him his first opportunity to develop expertise in national defense matters. When he later chaired the Armed Services and Appropriations Committees, he helped authorize and fund what all now recognize as the mightiest military force in the world, distinguished from all others by our nuclear powered aircraft carriers.

As the officers and crew of this fine ship carry out their duties, I know that they will be challenged and strengthened by the example of this ship's namesake, John C. Stennis. It is the kind of ship that appropriately bears his name. It is robust, well made in all respects, and ready and able to meet every challenge. May it be God's will that it will do so safely.

REMARKS OF SECRETARY WILLIAM PERRY AT THE COMMISSIONING OF THE USS JOHN C. STENNIS (CVN–74)

Admiral Boorda and Secretary Dalton have both rightly said that the United States Navy is the most powerful in the world. I want to tell you that that is not simply rhetoric, it is a statement of fact. And the ship we're commissioning today, U.S.S. *JOHN C. STENNIS*, will be the most powerful warship in the world.

Two hundred and twenty years ago, this very day, America learned its first lesson on why our Nation needs a powerful Navy. For on that day, only a few miles from here, the battle of Great Bridge began. It was the first military engagement of the Revolutionary War in the Virginia colony. American forces won this battle. But, afterwards, the defeated British forces proceeded to bombard the city of Norfolk, with their cannons, from the sea. The American forces were helpless to stop them because we had no Navy.

Throughout that year, 1775, some members of the Continental Congress had been opposed to trying to build a Navy. In fact, one member, Samuel Chase, remarked, ''Building an American navy is the maddest idea in the world.'' His views were countered by John Paul Jones, who said, ''Without a respectable navy, alas America.''

Incidents like the bombardment of Norfolk showed that not having an American navy was the maddest idea in the world. So, the views of John Paul Jones prevailed over the views of Samuel Chase and America did build a respectable Navy.

By the time of the Second World War, our respectable Navy had become a global naval power. And this naval power helped defeat the forces of totalitarianism on two sides of the globe. And all during the Cold War, our global naval power contained the forces of Soviet expansionism. Today, we are adding another great ship to our global naval power—a ship that will help project and defend America's interests for the next fifty years. The *John C. Stennis* is America's seventh Nimitz class carrier. Both of these names, Nimitz and Stennis, capture the glorious history of our Navy in this century.

Fifty years ago, Admiral Chester Nimitz commanded our Pacific force. It was that war that witnessed the emergence of the aircraft carrier as a powerful tool for the most powerful nation. Then, through 50 years of the Cold War, Senator John Stennis saw to it that America's Navy remained the most powerful in the world. He has been called the father of America's modern Navy, because, when John Stennis said, ''America needs this ship,'' Congress listened. Senator Warner has told you that one of Senator Stennis's favorite sayings was, ''Look ahead,'' and it is fitting that this saying has become the unofficial motto of U.S.S. *John C. Stennis*. Because at the end of the Cold War, there are some who ask why America still needs ships like *John C. Stennis*, and the answer to their question is, ''Look ahead.''

When you look ahead, you see that America will remain a global power with global interests, that America will continue to face threats to its interests, and that protecting these interests requires a powerful presence in many places around the world. A critical way of getting that presence is by having a strong Navy. And no Navy ship has more presence than a Nimitz class aircraft carrier.

Let me give you an example of what forward presence does for our security. The U.S.S. *Theodore Roosevelt*, affectionately called ''TR''—another Nimitz class carrier—recently led a battle group through a six month deployment. When it started out, last March, it first went to the Arabian Gulf to enforce the no-fly-zone over southern Iraq. Then, it sailed to the Mediterranean to conduct routine exercises with our allies and friends in the area—exercises that improve the ability of our forces and other nations to work together. At the same time, ''TR'' supported NATO's Deny Flight operations—enforcing the no-fly-zone over the former Yugoslavia. Then, in August, several members of Saddam Hussein's family defected to Jordan and the world worried that Saddam might lash out at his neighbors. To deter this potential aggressor, we moved ''TR'' to the eastern Med and repositioned an amphibious force in the Red Sea. These forward deployed forces with credible combat power sent Saddam a message, loud and clear. Soon after this crisis died down, ''TR'' rushed back to the Adriatic Sea to conduct NATO air strikes over Bosnia. And, as we all know, these air strikes played a critical role in bringing the parties to the bargaining table in Dayton.

So, on one deployment, for six months, ''TR'' improved our ability to operate with our allies; helped a friend in need; deterred Saddam Hussein; and helped create an opportunity for ending the deadliest fighting in Europe since World War II.

As we look ahead, it is clear that deployments like these will not be uncommon for our carriers. And, as we realize this, we must also recognize that this craft is not just a fast, powerful vessel with fast, powerful aircraft. Instead, it is four and a half acres of American turf, off the coast of any trouble spot in the world we send it to. In other words, it's not just a floating runway for airplanes, it is a mobile island of American power. An island we can rush to anywhere our interests are threatened and use to do anything needed to support our operations.

In addition to using it for large, powerful air strikes, we can use it to launch a team of Navy SEALs. We can use it as a joint command and control center to shape the battlefield in almost any theater. And, as Admiral Paul David Miller showed us last year, when we went into Haiti, we can even use it as a launching pad for the 10th Mountain Division troops and Army helicopters.

But, even with these tremendous capabilities, this carrier is still only as good as the men and women who will operate it. Admiral Nimitz himself said, ''There is simply no substitute for good seamanship.'' A ship like this carrier requires intelligent, dedicated, well trained people. People like Captain Robert Klosterman, who will very soon command this ship, and the officers and the crew who are handpicked to join him.

I have great confidence that the *John C. Stennis* is one of the most capable ships in the world. I have equally great confidence that this crew is one of the best groups of sailors in the world. Captain Klosterman and his crew will present some of the world's most sophisticated and deadly equipment. They not only have to operate this equipment, they also have to maintain it. There are no Maytag repairmen on the open seas. And that is why it is essential for our sailors to have the best training available. And once we train them, we need to keep them in the Navy. To do that, we need to treat them right and we must take care of their families as they weather the strain of having a parent or spouse away from home. And that is why the title that we invest in our sailors quality

of life. Caring about our people—giving them decent pay, housing, and medical care—is not just the right thing to do, it is also the smart thing to do, because it is vital to maintaining the quality and readiness of our forces.

Finally, let us remember, on this holiday season, that many of our servicemen and women are deployed in the Mediterranean, the Adriatic, and in Yugoslavia. Still more are on their way. They are all preparing to support the peace Implementation Force in Bosnia. It is a tough assignment for them. It is even tougher on their families. So as we celebrate this year, let us all pray for the safety of our soldiers, sailors, airmen, and Marines performing these difficult missions. And let us also pray for their comrades—some 150,000 of them—who will also spend their holidays away from their loved ones as they perform other missions for peace and freedom around the globe.

Next to my office in the Pentagon is a painting depicting a soldier, he's in a church praying with his family just before a deployment. Underneath this painting are the lines from the Bible, in which God says, ''Whom shall I send and who will go for us?'' And, Isaiah answers, ''Here am I. Send me.'' This Christmas, our Nation asks, ''Whom shall I send?'' And, 150,000 of our military personnel answered, ''Here am I. Send me.'' These military personnel are America's finest and they deserve the prayers and support of all Americans.

PATRICK T. ALLEN: DEDICATED TO SOUTH CAROLINA

Mr. HOLLINGS. Mr. President, I rise today to remember and to thank Patrick R. Allen for his 25-year career as head of the Central Electric Power Cooperative in my home State. Pat is retiring in January and he'll be sorely missed.

Central Electric plays a critical role in the lives of thousands of South Carolinians. It is a wholesale supplier for 15 rural electric cooperatives in South Carolina, which in turn supply electricity to more than 345,000 residential, commercial and industrial customers in two-thirds of the State. Pat Allen's role in steering Central Electric has been critical.

Pat moved to South Carolina from his native Texas in 1970 to take a job as manager of engineering and construction with Central Electric. He became president and chief executive officer in 1975. The company has grown tremendously under his leadership and moved from a one-floor office in the Farm Bureau Building in Cayce to its present home in Columbia.

Pat introduced the first computers to Central and wrote the original programs. He installed an economic development department, which later became the nucleus of a successful new venture, Palmetto Economic Development Corp. Now, the spin-off company represents Central Electric and another public service company, Santee Cooper, in its economic development mission.

Pat introduced many marketing concepts to Central's member cooperative that have earned national recognition for their proactive and aggressive approaches.

Mr. President, I appreciate the opportunity to recognize the years of devotion and strong leadership that Pat has brought to Central Electric and its customers. I wish him and his wife JoAnne all the best during Pat's retirement and hope they have many more happy years to come.

MESSAGES FROM THE PRESIDENT

Messages from the President of the United States were communicated to the Senate by Mr. Thomas, one of his secretaries.

EXECUTIVE MESSAGES REFERRED

As in executive session the Presiding Officer laid before the Senate messages from the President of the United States submitting sundry nominations which were referred to the appropriate committees.

(The nominations received today are printed at the end of the Senate proceedings.)

MESSAGES FROM THE HOUSE

At 9:33 a.m., a message from the House of Representatives, delivered by Mr. Hays, one of its reading clerks, announced that the House has passed the following bill and joint resolution, in which it requests the concurrence of the Senate.

H.R. 2704. An act to provide that the United States Post Office building that is to be located at 7436 South Exchange Avenue, Chicago, Illinois, shall be known and designated as the ''Charles A. Hayes Post Office Building''.

H.J. Res 134. Joint resolution making further continuing appropriations for the fiscal year 1996, and for other purposes.

The message also announced that the House has agreed to the following concurrent resolution, in which it requests the concurrence of the Senate:

H. Con. Res. 106. Concurrent Resolution permitting the use of the rotunda of the Capitol for ceremony as part of the commemoration of the days of remembrance of victims of the Holocaust.

At 11:15 a.m., a message from the House of Representatives, delivered by Ms. Goetz, one of its reading clerks, announced that the House of Representatives having proceeded to reconsider the bill (H.R. 1058) to reform Federal securities litigation, and for other purposes, returned by the President of the United States with his objections, to the House of Representatives, in which it originated, it was passed, two-thirds of the House of Representatives agreeing to pass the same.

ENROLLED BILLS AND JOINT RESOLUTIONS SIGNED

At 1:01 p.m., a message from the House of Representatives, delivered by Mr. Hays, one of its reading clerks, announced that the Speaker has signed the following enrolled bills and joint resolutions:

H.R. 965. An act to designate the Federal building located at 600 Martin Luther King, Jr. Place in Louisville, Kentucky, as the ''Romano L. Mazzoli Federal Building.''

H.R. 1253. An act to rename the San Francisco Bay National Wildlife Refuge as the Don Edwards San Francisco Bay National Wildlife Refuge.

H.R. 2481. An act to designate the Federal Triangle Project under construction at 14th Street and Pennsylvania Avenue, Northwest, in the District of Columbia, as the ''Ronald Reagan Building and International Trade Center.''

H.R. 2527. An act to amend the Federal Election Campaign Act of 1971 to improve the electoral process by permitting electronic filing and preservation of Federal Election Commission reports, and for other purposes.

H.R. 2547. An act to designate the United States courthouse located at 800 Market Street in Knoxville, Tennessee, as the ''Howard H. Baker, Jr. United States Courthouse.''

H.J. Res. 69. Joint resolution providing for the reappointment of Homer Alfred Neal as a citizen regent of the Board of Regents of the Smithsonian Institution.

H.J. Res. 110. Joint resolution providing for the appointment of Howard H. Baker, Jr. as a citizen regent of the Board of Regents of the Smithsonian Institution.

H.J. Res. 111. Joint resolution providing for the appointment of Anne D'Harnoncourt as a citizen regent of the Board of Regents of the Smithsonian Institution.

H.J. Res. 112. Joint resolution providing for the appointment of Louis Gerstner as a citizen regent of the Board of Regents of the Smithsonian Institution.

The message also announced that the House agrees to the report of the committee of conference on the disagreeing votes of the two Houses on the amendment of the Senate to the bill (H.R. 1655) to authorize appropriations for fiscal year 1996 for intelligence and intelligence-related activities of the United States Government, the Community Management Account, and the Central Intelligence Agency Retirement and Disability System, and for other purposes.

The enrolled bills and joint resolutions were signed subsequently by the President pro tempore (Mr. THURMOND).

The message further announced that pursuant to the provisions of Public Law 84–372, the Speaker appoints the following Members on the part of the House to the Franklin Delano Roosevelt Memorial Commission: Mr. ENGLISH of Pennsylvania and Mr. HINCHEY of New York.

At 4:24 p.m., a message from the House of Representatives, delivered by Mr. Hays, one of its reading clerks, announced that the House agrees to the report of the committee of conference on the disagreeing votes of the two Houses on the amendments of the Senate to the bill (H.R. 4) to restore the American family, reduce illegitimacy, control welfare spending and reduce welfare dependence.

ENROLLED BILL SIGNED

At 6:06 p.m., a message from the House of Representatives, delivered by Ms. Goetz, one of its reading clerks, announced that the Speaker has signed the following enrolled bill:

H.R. 1530. An act to authorize appropriations for the fiscal year 1996 for military activities of the Department of Defense, for

military construction, and for defense activities for the Department of Energy, to prescribe personnel strengths for such fiscal year for the Armed Forces, and for other purposes.

MEASURES REFERRED

The following bill, received previously from the House of Representatives for concurrence, was read twice, referred as indicated:

H.R. 632. An act to enhance fairness in compensating owners of patents used by the United States; to the Committee on the Judiciary.

The following bill was read the first and second times by unanimous consent and referred as indicated:

H.R. 2704. An act to provide that the United States Post Office building that is to be located at 7436 South Exchange Avenue, Chicago, Illinois, shall be known and designated as the ''Charles A. Hayes Post Office Building''; to the Committee on Governmental Affairs.

The following concurrent resolution was read and referred as indicated:

H. Con. Res. 106. Concurrent resolution permitting the use of the rotunda of the Capitol for a ceremony as part of the commemoration of the days of remembrance of victims of the Holocaust; to the Committee on Rules and Administration.

MEASURE READ THE FIRST TIME

The following joint resolution was read the first time:

H.J. Res. 134. Joint resolution making further continuing appropriations for the fiscal year 1996, and for other purposes.

REPORTS OF COMMITTEES

The following reports of committees were submitted:

By Mr. MURKOWSKI, from the Committee on Energy and Natural Resources, without amendment:

H.R. 2437. A bill to provide for the exchange of certain lands in Gilpin County, Colorado (Rept. No. 104–196).

By Mr. HATCH, from the Committee on the Judiciary:

Report to accompany the bill (S. 956) to amend title 28, United States Code, to divide the ninth judicial circuit of the United States into two circuits, and for other purposes (Rept. No. 104–197).

EXECUTIVE REPORTS OF COMMITTEES

The following executive reports of committees were submitted:

By Mr. HATCH, from the Committee on the Judiciary:

C. Lynwood Smith, of Alabama, to be United States District Judge for the Northern District of Alabama.

Barbara S. Jones, of New York, to be United States District Judge for the Southern District of New York.

Jed S. Rakoff, of New York, to be United States District Judge for the Southern District of New York.

Joan A. Lenard, of Florida, to be United States District Judge for the Southern District of Florida.

Bernice B. Donald, of Tennessee, to be United States District Judge for the Western District of Tennessee.

(The above nominations were reported with the recommendation that they be confirmed.)

INTRODUCTION OF BILLS AND JOINT RESOLUTIONS

The following bills and joint resolutions were introduced, read the first and second time by unanimous consent, and referred as indicated:

By Mr. AKAKA [for himself, Mr. GLENN, and Mr. INOUYE]:

S. 1492. A bill to amend the Robert T. Stafford Disaster Relief and Emergency Assistance Act to combat fraud and price-gouging committed in connection with the provision of consumer goods and services for the cleanup, repair, and recovery from the effects of a major disaster declared by the President, and for other purposes; to the Committee on Environment and Public Works.

By Mr. LAUTENBERG:

S. 1493. A bill to amend title 18, United States Code, to prohibit certain interstate conduct relating to exotic animals; to the Committee on the Judiciary.

By Mr. D'AMATO [for himself, Mr. MACK, Mr. BOND, Mr. DOMENICI, Mr. BENNETT, and Mr. SHELBY]:

S. 1494. A bill to provide an extension for fiscal year 1996 for certain programs administered by the Secretary of Housing and Urban Development and the Secretary of Agriculture, and for other purposes; to the Committee on Banking, Housing, and Urban Affairs.

By Mr. KYL [for himself, Mr. HATCH, and Mr. DEWINE]:

S. 1495. A bill to control crime, and for other purposes; to the Committee on the Judiciary.

By Mr. SIMON [for himself, Mr. HATCH, Mr. BOND, and Mr. ASHCROFT]:

S. 1496. A bill to grant certain patent rights for certain non-steroidal anti-inflammatory drugs for a two year period; to the Committee on the Judiciary.

By Mr. NICKLES [for himself, Mr. SMITH, Mr. PRYOR, Mr. BOND, Mr. BUMPERS, Mr. INHOFE, Mr. LOTT, Mr. BREAUX, Mr. JOHNSTON, Mr. ABRAHAM, Mr. KEMPTHORNE, Mr. LIEBERMAN, Mr. FAIRCLOTH, Mr. GLENN, and Mr. WARNER]:

S. 1497. A bill to amend the Solid Waste Disposal Act to make certain adjustments in the land disposal program to provide needed flexibility, and for other purposes; to the Committee on Environment and Public Works.

By Ms. SNOWE [for herself, Mr. KERRY, Mr. COHEN, and Mr. KENNEDY]:

S. 1498. A bill to authorize appropriations to carry out the Interjurisdictional Fisheries Act of 1986, and for other purposes; to the Committee on Commerce, Science, and Transportation.

By Mr. HATFIELD:

S. 1499. A bill to amend the Interjurisdictional Fisheries Act of 1986 to provide for direct and indirect assistance for certain persons engaged in commercial fisheries, and for other purposes; to the Committee on Commerce, Science, and Transportation.

By Mr. BROWN:

S. 1500. A bill to establish the Cache La Poudre River National Water Heritage Area in the State of Colorado, and for other purposes; read the first time.

SUBMISSION OF CONCURRENT AND SENATE RESOLUTIONS

The following concurrent resolutions and Senate resolutions were read, and referred (or acted upon), as indicated:

By Mr. SPECTER [for himself, Mr. KERREY, Mr. GLENN, Mr. BRYAN, Mr. ROBB, Mr. JOHNSTON, Mr. CHAFEE, Mr. BAUCUS, Mr. WARNER, Mr. KERRY, Mr. SHELBY, Mr. GRAHAM, Mr. KYL, Mr. LUGAR, Mr. INHOFE, Mr. BYRD, and Mr. DEWINE]:

S. Res. 201. A resolution commending the CIA's statutory Inspector General on his 5-year anniversary in office; considered and agreed to.

By Mr. EXON [for himself and Mr. WELLSTONE]:

S. Con. Res. 37. A concurrent resolution directing the Clerk of the House of Representatives to make technical changes in the enrollment of the bill (H.R. 2539) entitled ''An Act to abolish the Interstate Commerce Commission, to amend subtitle IV of title 49, United States Code, to reform economic regulation of transportation, and for other purposes; considered and agreed to.

STATEMENTS ON INTRODUCED BILLS AND JOINT RESOLUTIONS

By Mr. LAUTENBERG:

S. 1493. A bill to amend title 18, United States Code, to prohibit certain interstate conduct relating to exotic animals; to the Committee on the Judiciary.

THE CAPTIVE EXOTIC ANIMAL PROTECTION ACT OF 1995

Mr. LAUTENBERG. Mr. President, today I am introducing the Capitive Exotic Animal Protection Act of 1995, a bill to stop what are known as canned hunts—the cruel and inhumane business in which a customer pays to shoot a tame, captive exotic animal in a fenced-in enclosure for entertainment, or to collect a trophy.

Mr. President, canned hunts do not involve hunting, tracking, or shooting skills. In such an operation, the client merely hands over a check, walks to within yards of his prize, aims carefully to avoid the head, and shoots, killing the unsuspecting exotic animal. This is not sport—it is easy slaughter for a price. Sportsmen do not support this, and neither should we.

Mr. President, imagine this: A black leopard, raised in captivity, is released from a crate in the presence of a paying hunter and is immediately surrounded by a pack of hounds. The cat, virtually defenseless because it has been declared and is greatly outnumbered by the hounds, tries to escape by running under a truck. The hounds follow the leopard who then darts from under the truck slightly ahead of the pack. The customer gets his shot—and his trophy.

Mr. President, in the United States today, there are estimated to be more than 1,000 private hunting ranches where exotic mammals are shot for a fee. Many of these hunting ranches have a land area of 1,000 acres or less—some are less than 100 acres. The animals are tame targets for hunters and the proprietors of these operations

offer a guaranteed kill opportunity for their clients. It is called no kill, no pay. The animals are shot at point blank range—with bow or firearm—and have no chance of eluding a hunter.

These hunting operations provide a laundry list of potential trophies for hunters. For a fee, a hunter can kill whatever animal he or she wishes. Gazelles typically sell for $800 to $3,500; Cape buffaloes, $5,000; angora goats, $325; Corsican sheep, $500; red deer, $1,500 to $6,000. The rarer the animal—lions and tigers, for instance, the higher the price.

I want to emphasize, Mr. President, that most sportsmen decry these despicable practices as unsporting. They say that canned hunts make a mockery of hunting. The Boone and Crockett Club, a hunting organization founded by former President Teddy Roosevelt that maintains records of North America's big game, takes the position that ''hunting game confined in artificial barriers, including escape-proof fenced enclosures or hunting game transplanted solely for the purpose of commercial shooting'' is ''unfair chase and unsportsmanlike.'' In 1994, in the publication Outdoor America, the magazine of the pro-hunting Izaak Walton League, Maitland Sharpe, the organization's executive director at the time, stated that this practice ''tarnishes all hunting, all hunting. . . .''

The American Zoo and Aquarium Association [AZA] forbids its membership organizations from selling, trading, or transfering zoo animals to hunting ranches, though the prohibition too often is ignored. The AZA opposes canned hunts, and has written to Members of Congress that it ''(a) deplores and is opposed to canned hunts of exotic animals and (b) supports the prohibition of interstate practices which allow exotic animals to be killed in such hunts.''

Mr. President, exotic hunting ranches threaten native wildlife populations with the spread of disease. If these ranch animals escape, they can transmit diseases to native wildlife. John Talbott, acting director of the Wyoming Department of Fish and Game, stated in January of this year, ''Tuberculosis and other diseases documented among game ranch animals in surrounding states'' pose ''an extremely serious threat to Wyoming's native big game.'' This is one reason why Wyoming bans canned hunts. Other States also ban these hunts, including California, Connecticut, New Jersey, North Carolina, and Wisconsin. However, States that permit these operations import exotic mammals from other States—including those that prohibit canned hunts—and victimize these animals in unsporting canned hunts. Federal legislation is needed to ban the interstate trade in exotic mammals for the purpose of shooting them for a fee to collect a trophy.

Federal legislation is also needed because exotic mammals are not carefully regulated by the States. Exotic mammals often fall outside the traditional range of responsibility for State fish and game agencies. They fall outside the purview of State agriculture departments. Exotic mammals—not being native wildlife or livestock—are in a sense, caught in regulatory limbo. This lack of oversight by State agencies allows canned hunt operators to exploit these animals for profit.

My legislation is identical to a similar bill that has been introduced in the House, H.R. 1202. The bill would ban only those operations of 1,000 acres or less in which tame animals are shot for a fee for the purposes of collecting a trophy. Larger hunting ranches, where the animals are provided with some room to maneuver, are exempt. The hunting of native wildlife would not be affected in any way. The House bill has attracted strong bipartisan support, with over 100 cosponsors to date.

Mr. President, this legislation is needed to put a stop to this amoral, cruel business. I urge my colleagues to support me in this effort, and ask unanimous consent that a copy of the bill be printed in the RECORD.

There being no objection, the bill was ordered to be printed in the RECORD, as follows:

S. 1493

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the ''Captive Exotic Animal Protection Act of 1995''.

SEC. 2. TRANSPORTATION OR POSSESSION OF EXOTIC ANIMALS FOR PURPOSES OF KILLING OR INJURING THEM.

(A) IN GENERAL.—Chapter 3 of title 18, United States Code, is amended by adding at the end the following:

''§ 48. Exotic animals

''(a) Whoever, in or affecting interstate or foreign commerce, knowingly transfers, transports, or possesses a confined exotic animal, for the purposes of allowing the killing or injuring of that animal for entertainment or the collection of a trophy, shall be fined under this title or imprisoned not more than one year, or both.

''(b) As used in this section—

''(1) the term 'confined exotic animal' means a mammal of a species not historically indigenous to the United States that in fact has been held in captivity for the shorter of—

''(A) the greater part of the animal's life; or

''(B) a period of one year; whether or not the defendant knew the length of the captivity; and

''(2) the term 'captivity' does not include any period during which the animal—

''(A) lives as it would in the wild, surviving primarily by foraging for naturally occurring food, roaming at will over an open area of at least 1,000 acres; and

''(B) has the opportunity to avoid hunters.''.

(b) CLERICAL AMENDMENT.—The table of sections at the beginning of chapter 3 of title 18, United States Code, is amended by adding at the beginning the following new item:

''48. Exotic animals.''.

By Mr. D'AMATO (for himself, Mr. MACK, Mr. BOND, Mr. DOMENICI, Mr. BENNETT, and Mr. SHELBY):

S. 1494. A bill to provide an extension for fiscal year 1996 for certain programs administered by the Secretary of Housing and Urban Development and the Secretary of Agriculture, and for other purposes; to the Committee on Banking, Housing, and Urban Affairs.

THE HOUSING OPPORTUNITY PROGRAM EXTENSION ACT OF 1995

Mr. D'AMATO. Mr. President, I rise to introduce the Housing Opportunity Program Extension Act of 1995. I wish to thank Senators MACK, BOND, SHELBY, BENNETT, and DOMENICI for their cosponsorship of this much needed legislation.

This important measure would provide short-term extensions of housing programs which have expired. This bill does not create new housing policy, but is a stopgap measure which would allow existing programs to continue until October 1, 1996. Next year, the Banking Committee and its Housing Subcommittees will continue its evaluation of proposals for reorganization and elimination of the Department of Housing and Urban Development. Omnibus housing legislation will be introduced in the Spring of 1996 which will reorganize, transfer or eliminate housing and community development programs. Some of the programs extended in this legislation will be reformed at that time. Modifications of these programs will be reserved until the Banking Committee has the opportunity for hearings and debate next year.

The majority of the housing program extensions contained in this bill were passed by the Senate and House in the fiscal year 1996 Departments of Veterans Affairs and Housing and Urban Development, and Independent Agencies appropriations bill (H.R. 2099). If it were not for the recent veto of H.R. 2099, this legislation would not be necessary. However, the President's veto has placed our Nation's housing delivery system in serious jeopardy. It is imperative that we act to extend housing programs which would otherwise be suspended for an indefinite time period.

This legislation would extend the following: Section 8 contract renewals; the Community Development Block Grant homeownership program; the Section 515 rural multifamily loan program; the Home Equity Conversion Mortgage program; and the Multifamily Housing Risk-Sharing programs.

I look forward to working with all Members of the Senate on a bipartisan basis to ensure the swift passage of this much needed legislation. I urge my colleagues to protect the needy recipients of these effective housing programs by supporting the Housing Opportunity Program Extension Act of 1995. Mr. President, I ask unanimous consent that the text of the bill be printed in the RECORD.

There being no objection, the bill was ordered to be printed in the RECORD, as follows:

S. 1494

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE; DEFINITION.

(a) SHORT TITLE.—This Act may be cited as the ''Housing Opportunity Program Extension Act of 1995''.

(b) DEFINITION.—For purposes of this Act, the term ''Secretary'' means the Secretary of Housing and Urban Development.

SEC. 2. SECTION 8 CONTRACT RENEWALS.

(a) IN GENERAL.—During fiscal year 1996, with respect to any project that is determined by the Secretary to meet housing quality standards under the United States Housing Act of 1937 and to be otherwise in compliance with that Act, at the request of the owner of the project, the Secretary shall renew, for a period of 1 year, any contract for assistance under section 8 of the United States Housing Act of 1937 that expires or terminates during fiscal year 1996, at current rent levels under the expiring of terminating contract.

(b) AMENDMENTS TO THE NATIONAL HOUSING ACT.—Section 236(f) of the National Housing Act (12 U.S.C. 1715z–1(f)) is amended—

(1) in paragraph (1), by striking the second sentence and inserting the following: ''The rental charge for each dwelling unit shall be at the basic rental charge, or such greater amount, not to exceed the lesser of (i) the fair market rental charge determined pursuant to this paragraph, or (ii) the fair market rental established under section 8(c) of the United States Housing Act of 1937 for existing housing in the market area in which the housing is located, as represents 30 percent of the tenant's adjusted income.''; and

(2) by striking paragraph (6).

SEC. 3. COMMUNITY DEVELOPMENT BLOCK GRANT ELIGIBLE ACTIVITIES.

Notwithstanding the amendments made by section 907(b)(2) of the Cranston-Gonzalez National Affordable Housing Act, section 105(a)(25) of the Housing and Community Development Act of 1974, as in existence on September 30, 1995, shall apply to the use of assistance made available under title I of the Housing and Community Development Act of 1974 during fiscal year 1996.

SEC. 4. EXTENSION OF RURAL HOUSING PROGRAMS.

(a) UNDERSERVED AREAS SET-ASIDE.—Section 509(f)(4)(A) of the Housing Act of 1949 (42 U.S.C. 1479(f)(4)(A)) is amended—

(1) in the first sentence, by striking ''fiscal years 1993 and 1994'' and inserting ''fiscal year 1996''; and

(2) in the second sentence, by striking ''each''.

(b) RURAL MULTIFAMILY RENTAL HOUSING.—Section 515(b)(4) of the Housing Act of 1949 (42 U.S.C. 1485(b)(4)) is amended by striking ''September 30, 1994'' and inserting ''September 30, 1996''.

(c) RURAL RENTAL HOUSING FUND FOR NONPROFIT ENTITIES.—The first of section 515(w)(1) of the Housing Act of 1949 (42 U.S.C. 1485(w)(1)) is amended by striking ''fiscal years 1993 and 1994'' and inserting ''fiscal year 1996''.

SEC. 5. EXTENSION OF FHA MORTGAGE INSURANCE PROGRAM FOR HOME EQUITY CONVERSION MORTGAGES.

(a) EXTENSION OF PROGRAM.—The first sentence of section 255(g) of the National Housing Act (12 U.S.C. 1715z–20(g)) is amended by striking ''September 30, 1995'' and inserting ''September 30, 1996''.

(b) LIMITATION ON NUMBER OF MORTGAGES.—The second sentence of section 255(g) of the National Housing Act (12 U.S.C. 1715z–20(g)) is amended by striking ''25,000'' and inserting ''30,000''.

SEC. 6. EXTENSION OF MULTIFAMILY HOUSING FINANCE PROGRAMS.

(a) RISK-SHARING PILOT PROGRAM.—The first sentence of section 542(b)(5) of the Housing and Community Development Act of 1992 (12 U.S.C. 1707 note) is amended by striking ''on not more than 15,000 units over fiscal years 1993 and 1994'' and inserting ''on not more than 7,500 units during fiscal year 1996''.

(b) HOUSING FINANCE AGENCY PILOT PROGRAM.—The first sentence of section 542(c)(4) of the Housing and Community Development Act of 1992 (12 U.S.C. 1707 note) is amended by striking ''on not to exceed 30,000 units over fiscal years 1993, 1994, and 1995'' and inserting ''on not more than 10,000 units during fiscal year 1996''.

SEC. 7. APPLICABILITY.

This Act and the amendments made by this Act shall be construed to have become effective on October 1, 1995.

Mr. BOND. Mr. President, I am introducing with Senators D'AMATO and MACK the Housing Opportunity Program Extenders Act of 1995. This legislation is designed to provide HUD and the Rural Housing and Community Development Service—commonly known as FmHA—with authority to continue certain housing programs which are strongly supported by the American public and which will generally be suspended if the administration continues to ignore responsible dialogue on housing issues and vetoes S. 2099, the VA/HUD fiscal year 1996 appropriations bill.

I emphasize the importance of this bill and urge my colleagues to support this legislation. Most importantly, similar to the VA/HUD fiscal year 1996 appropriations bill, this bill would require HUD to renew expiring section 8 project-based contracts for fiscal year 1996 for 1 year at current rents. There are some 900,000 FHA-insured units with section 8 project-based assistance contracts that are expiring over the next 10 years. Many of these section 8 contracts are currently subsidized at above market rents and fiscal responsibility requires that Congress contain the spiraling costs associated with this inventory. Moreover, under a recent HUD legal opinion, HUD may renew these expiring section 8 project-based contracts at no more than 120 percent of fair market rents; this means that these section 8 projects could begin to default and face foreclosure by HUD during fiscal year 1996.

I believe it is critical that Congress reform and adjust the costs, including section 8 costs, of these assisted housing programs. However, in doing so, we must balance the cost of the expiring section 8 contracts with the cost of foreclosure of these projects to the HUD insurance fund, as well as the significant social policy of the possible displacement of low-income housing residents and the disinvestment by project owners in these projects which could result in significant deterioration of this housing stock. Like the VA/HUD fiscal year 1996 appropriations bill, renewing these section 8 contracts for 1 year will provide the Banking Committee with an opportunity to address these concerns through comprehensive legislation that will preserve this valuable housing resource as low-income housing at a reasonable cost to the Federal Government.

Second, the legislation would extend the Home Equity Conversion Mortgage Program through fiscal year 1996, increasing the maximum number of units eligible for insurance from 25,000 to 30,000. This program is designed to allow the elderly to tap the accumulated equity in their homes for needed expenses without the risk of losing the housing as a principal residence. This is a successful program that is growing in popularity among the elderly population as an option to assist in providing continuing independence, both financially and through the continuing use of their homes as a principal resident.

Third, the legislation would extend the homeownership program under the CDBG program as a continuing eligible activity through fiscal year 1996. This program is widely supported by a number of communities throughout the Nation which use the program as an additional resource to expand homeownership opportunities.

Fourth, the bill would extend the FHA multifamily risk-sharing programs for fiscal year 1996. These programs authorize HUD to enter into mortgage insurance agreements and partnerships with Fannie Mae and Freddie Mac and with State housing finance agencies for the creation of affordable multifamily housing. These are important programs which help to guarantee the availability of affordable rental housing in the Nation.

Finally, the bill would extend the Rural Housing and Community Development Service's section 515 rural multifamily housing program for fiscal year 1996. Currently, fiscal year 1996 appropriations generally have limited the available funding for fiscal year 1996 to rehabilitation. However, there is a significant need for additional rural housing which is affordable. Moreover, section 515 projects are, in many cases, the only available and affordable low-income housing in rural areas. While there has been substantial criticism leveled at abuses in the section 515 program, the Rural Housing and Community Development Service has addressed a number of the failings in the program and the Banking Committee has pledged to review closely the section 515 program and address any concerns as part of a major housing and community development overhaul and reform bill.

Mr. President, this legislation is bipartisan, simple, straightforward and necessary. I strongly urge my colleagues to support this legislation.

Mr. MACK. Mr. President, I am pleased to join with Senator D'AMATO as a cosponsor of this bill to extend for 1 year a number of housing activities under the jurisdiction of the Banking Committee. The fiscal year 1996 VA-HUD-Independent agencies appropriation bill extended the authority for a

number of expired HUD programs and activities for 1 year to give the authorizing committee time to consider needed reforms in those programs and deal with them more permanently.

Unfortunately, the President vetoed the appropriation bill, and these programs are in immediate jeopardy. This legislation is necessary to continue authorizations for activities that have broad support. I stress to my colleagues that this is emergency legislation that contains no programmatic reforms.

First, and foremost, this bill would allow HUD to renew expiring section 8 rental assistance contracts at current rents for 1 year. HUD has taken the position that it currently has no authority for fiscal year 1996 to renew expiring section 8 contracts at above fair market rent [FMR]. Without language to allow contract renewals at above FMR, a large number of FHA-insured multifamily housing projects could face default this year. This extension will give the authorizing committee time to develop an orderly ''mark-to-market'' strategy to restructure the debt on these projects, end payments of excessive rental subsidies, and help bring HUD's budget under control.

This bill also extends the Federal Housing Administration's mortgage insurance program Home Equity Conversion Mortgages. This popular demonstration program has allowed more than 14,000 elderly homeowners to tap into the equity in their homes, but mortgage authority for the program expired at the end of fiscal 1995. This extension will give us the time needed to pass legislation extending the program for another 5 years and to enact reforms that will make the program more effective.

The legislation extends the FHA section 515 rural rental housing loan program. This is the only program extension included that is not under the jurisdiction of the VA-HUD-Independent Agencies appropriations subcommittee. However, this is an important housing development program under the Banking Committee's jurisdiction, and there is currently a significant backlog of preapproved applications for section 515 loans.

I am, however, concerned by reports issued by the General Accounting Office and others indicating that structural and financial management problems exist in the section 515 program. As chairman of the Housing Opportunity and Community Development Subcommittee, I intend to hold hearings on this and other rural housing programs early next year and to propose program reforms where needed. No further extensions of the section 515 program should be approved until the program has been thoroughly reviewed by the Banking Committee.

By Mr. KYL (for himself, Mr. HATCH, and Mr. DEWINE):

S. 1495. A bill to control crime, and for other purposes; to the Committee on the Judiciary.

THE CRIME PREVENTION ACT OF 1995

Mr. KYL. Mr. President, I rise to introduce the Crime Prevention Act. One of the most important responsibilities for the 104th Congress is to pass a tough comprehensive crime measure that will restore law and order to America's streets.

Reported crime may have decreased slightly over the past few years, but the streets are still too dangerous. Too many Americans are afraid to go out for fear of being robbed, assaulted, or murdered.

In fact, according to the Bureau of Justice Statistics report ''Highlights from 20 Years of Surveying Crime Victims,'' approximately 2 million people are injured a year as a result of violent crime. Of those who are injured, more than half require some level of medical treatment and nearly a quarter receive treatment in a hospital emergency room or require hospitalization.

THE CRIME CLOCK IS TICKING

The picture painted by crime statistics is frightening. According to the Uniform Crime Reports released by the Department of Justice, in 1994 there was: a violent crime every 17 seconds; a murder every 23 minutes; a forcible rape every 5 minutes; a robbery every 51 seconds; an aggravated assault every 28 seconds; a property crime every 3 seconds; a burglary every 12 seconds; and a motor vehicle theft every 20 seconds.

In short, a crime index offense occurred every 2 seconds. And this is just reported crime.

STATISTICS

Again, according to the Uniform Crime Reports in 1994, there were 1,864,168 violent crimes reported to law enforcement, a rate of 716 violent crimes per 100,000 inhabitants. The 1994 total was 2 percent above the 1990 level and 40 percent above that of 1985.

Further, juvenile crime is skyrocketing. According to statistics compiled by the FBI, from 1985 to 1993 the number of homicides committed by males aged 18 to 24 increased 65 percent, and by males aged 14 to 17 increased 165 percent. In addition, according to statistics recently released by the Department of Justice, during 1993, the youngest age group surveyed—those 12 to 15 years old—had the greatest risk of being the victims of violent crimes.

Crime in my State, Arizona, is very much on the rise. In 1994, Phoenix suffered a record 244 homicides. An article in the December 12th Arizona Republic, stated that 235 people have been slain this year, 9 short of last year's record. Statewide crime was up in Mesa, Chandler, Glendale, Scottsdale, and Tempe. By August, the number of murders in Tucson this year eclipsed last year's total.

THE HEAVY COST OF CRIME

Aside from the vicious personal toll exacted, crime also has a devastating effect on the economy of our country. Business Week estimated in 1993 that crime costs Americans $425 million annually. To fight crime, the United States spends about $90 billion a year on the entire criminal justice system. Crime is especially devastating to our cities, which often have crime rates several times higher than suburbs.

The Washington Post ran an October 8 article detailing the work of professors Mark Levitt and Mark Cohen in estimating the real cost of crime to society. According to the article, ''[i]nstead of merely toting up the haul in armed robberies or burglaries, Cohen tallied all of the costs associated with various kinds of crime, from loss of income sustained by a murder victim's family to the cost of counseling a rape victim to the diminished value of houses in high-burglary neighborhoods.'' These quality of life costs raise the cost of crime considerably. Cohen and Levitt calculated that one murder costs society on average $2.7 million. A robbery nets the robber an average of $2,900 in actual cash, but it produces $14,900 in quality of life expenses. And while the actual monetary loss caused by an assault is $1,800, it produces $10,200 in quality of life expenses.

LEGISLATION

Fighting crime must be one of our top priorities. Few would dispute this. In fact, according to an article in the July 19th *Tucson Citizen*, about 500 business, education, and government leaders in Tucson ranked crime as the No. 1 issue in a survey commissioned by the Greater Tucson Economic Council.

The House has done its part. It has delivered on the Contract With America by passing a series of strong crime bills in February.

The Senate has not acted with comparable vigor. Given the magnitude of the problem of crime in our society, I believe that it is important to consider a comprehensive crime package. My bill has solid reforms that should blunt the forecasted explosion in crime.

I would like to take this opportunity to given an outline of the major provisions included in the Crime Prevention Act of 1995.

PRISON LITIGATION REFORM

Although numbers are not available for all of the States, 33 states have estimated that inmate civil rights suits cost them at least $54.5 million annually. Thus, extrapolating this figure to all 50 states, the estimate cost for inmate civil rights suits is $81.3 million per year. Not all of these cases are frivolous, but according to the National Association of Attorneys General, more than 95 percent of inmate civil rights suits are dismissed without the inmate receiving anything.

Title I of this bill will deter frivolous inmate lawsuits by:

Removing the ability of prisoners to file free lawsuits, instead making them pay full filing fees and court costs.

Requiring judges to dismiss frivolous cases before they bog down the court system.

Prohibiting inmate lawsuits for mental and emotional distress.

Retracting good-time credit earned by inmates if they file lawsuits deemed frivolous.

These provisions are based on similar provisions that were enacted in Arizona. Arizona's recent reforms have already reduced state prisoner cases by 50 percent. Now is the time to reproduce these common sense reforms in Federal law. If we achieve a 50-percent reduction in bogus Federal prisoner claims, we will free up judicial resources for claims with merit by both prisoners and nonprisoners.

SPECIAL MASTERS

This bill requires the Federal judiciary to pay for special masters in prison litigation cases. Currently, Federal court judges can, and do, force States to pay the costs for special masters. This is an unfunded judicial mandate. The special masters appointed in prison litigation cases have cost Arizona taxpayers more than $370,000 since 1992. Arizona taxpayers have paid special masters up to $175 an hour. In one case, taxpayers funds were used to hire a chauffeur for a special master.

VICTIM RIGHTS AND DOMESTIC VIOLENCE

Women are the victims of more than 4.5 million violent crimes a year, including half a million rapes or other sexual assaults, according to the Department of Justice. The National Victims Center calculates that a woman is battered every 15 seconds.

Last year's crime bill, which is now law, did much to help victims of domestic violence—making it easier for evidence of intrafamilial sexual abuse to be introduced, for example. It will now be much easier for prosecutors in Federal cases to introduce evidence that the accused committed a similar crime in the past. The crime act also provides Federal funding for battered women's shelters and training for law-enforcement officers and prosecutors.

But more needs to be done. A message must be sent to abusers that their behavior is not a family matter. Society should treat domestic violence as seriously as it does violence between strangers. My bill will strengthen the rights of domestic violence victims in Federal court and, hopefully, set a standard for the individual States to emulate.

First, my bill authorizes the death penalty for cases in which a woman is murdered by her husband or boyfriend.

My bill also provides that if a defendant presents negative character evidence concerning the victim, the Government's rebuttal can include negative character evidence concerning the defendant.

We must establish a higher standard of professional conduct for lawyers. My legislation prohibits harassing or dilatory tactics, knowingly presenting false evidence or discrediting truthful evidence, willful ignorance of matters that could be learned from the client, and concealment of information necessary to prevent sexual abuse or other violent crimes.

Violence in our society leaves law-abiding citizens feeling defenseless. It is time to level the playing field. Federal law currently gives the defense more chances than the prosecution to reject a potential juror. My bill protects the right of victims to an impartial jury by giving both sides the same number of peremptory challenges.

FIREARMS

Almost 30 percent of all violent crimes are committed through the use of a firearm, either to intimidate the victim into submission or to injure the victim, according to the Bureau of Justice Statistics. And 70 percent of all murders committed were accomplished through the use of a firearm. To help stop this violence the bill increases the mandatory minimum sentences for criminals who use firearms in the commission of crimes. It imposes the following minimum penalties: 10 years for using or carrying a firearm during the commission of a Federal crime of violence or drug trafficking crime; 20 years if the firearm is discharged; incarceration for life or punishment by death if death of a person results.

THE EXCLUSIONARY RULE

To ensure that relevant evidence is not kept from juries, the bill extends the good faith exception to the exclusionary rule to nonwarrant cases, where the court determines that the circumstances justified an objectively reasonable belief by officers that their conduct was lawful.

THE DEATH PENALTY

The vast majority of the American public supports the option of the death penalty. An ABC News/Washington Post poll conducted in January 1995 found that 74 percent of Americans favor the death penalty for persons convicted of murder. Similarly, a Market Opinion Research poll conducted in December 1994 found that nearly three-quarters of Americans support capital punishment.

To deter crime and to make a clear statement that the most vicious, evil behavior will not be tolerated in our society, the bill strengthens the death penalty standards.

Additionally, the bill adds murder of a witness as an aggravating factor that permits a jury to consider the death penalty; provides effective safeguards against delay in the execution of Federal capital sentences resulting from protracted collateral litigation, including time limits on filing and strict limitations on successive motions; and provides for capital punishment for murders committed in the District of Columbia.

HABEAS CORPUS

To eliminate the abuse, delay, and repetitive litigation in the lower Federal courts, title VIII of this bill provides that the decision of State courts will not be subject to review in the lower Federal courts, so long as they are adequate and effective remedies in the State courts for testing the legality of a person's detention. This provision limits the needless duplicative review in the lower Federal courts, and helps put a stop to the endless appeals of convicted criminals. Judge Robert Bork has written a letter in support of this provision.

COMPUTER CRIME

I am pleased to include, in this bill, my National Information Infrastructure Protection Act which will strengthen current public law on computer crime and protect the national information infrastructure. My fear is that our national infrastructure—the information that bonds all Americans—is not adequately protected. I offer this legislation as a protection to one of America's greatest commodities—information.

Although there has never been an accurate nationwide reporting system for computer crime, specific reports suggest that computer crime is rising. For example, the Computer Emergency and Response Team [CERT] at Carnegie-Mellon University reports that computer intrusions have increased from 132 in 1989 to 2,341 last year. A June 14 Wall Street Journal article stated that a Rand Corp. study reported 1,172 hacking incidents occurred during the first 6 months of last year. A report commissioned last year by the Department of Defense and the CIA stated that ''[a]ttacks against information systems are becoming more aggressive, not only seeking access to confidential information, but also stealing and degrading service and destroying data.'' Clearly there is a need to reform the current criminal statutes covering computers.

ADMINISTRATIVE SUBPOENA

This bill allows high-ranking Secret Service agents to issue an administrative subpoena for information in cases in which a person's life is in danger. The Department of Agriculture, the Resolution Trust Corporation, and the Food and Drug Administration already have administrative subpoena power. The Secret Service should have it to protect the lives of American citizens.

INTERNET GAMBLING

There is a new underworld of gambling evolving. Gambling on the Internet is on the rise. Many ''virtual'' casinos have emerged on this vast network that accept real money at the click of a mouse or the punch of a key. It is estimated that Internet gambling could, before too long, become a $50 billion business. That is why I have included a section which will make it illegal, if it is illegal to gamble in your State, to gamble on the Internet. Current statutes make it illegal only if you are in the business of gambling on the Internet. I have also included a provision that would require the Department of Justice to analyze all problems associated with enforcing the current gambling statute.

CONCLUSION

The Kyl crime bill is an important effort in the fight against crime. We can win this fight, if we have the conviction, and keep the pressure on Congress to pass tough crime-control measures. It is time to stop kowtowing to prisoners, apologists for criminals, and the

defense lawyers, and pass a strong crime bill.

Mr. President, I ask unanimous consent that additional material be printed in the RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

THE CRIME PREVENTION ACT OF 1995

TITLE I—PRISON LITIGATION REFORM

Section 101: Amendments to Civil Rights of Institutionalized Persons Act

Amends the Civil Rights of Institutionalized Persons Act to require that administrative remedies be exhausted prior to any prison conditions action being brought under any federal law by an inmate in federal court.

Section 102: Proceedings in forma pauperis

Provides that whenever a federal, state, or local prisoner seeks to commence an action or proceeding in federal court as an indigent, the prisoner will be liable for the full amount of a filing fee, and will initially be assessed a partial filing fee of 20 percent of the larger of the average monthly balance in, or the average monthly deposits to, his inmate account. The fee may not exceed the full statutory fee, and an inmate will not be barred from suing if he is actually unable to pay. This section also imposes the same payment system for court costs as it does for filing fees. This provision, like the filing fee provision, will ensure that inmates evaluate the merits of their claims.

Section 103: Judicial screening

Requires judicial screening of a complaint in a civil action in which a prisoner seeks redress from a governmental entity or officer or employee of a governmental entity. The court must dismiss a complaint if the complaint fails to state a claim on which relief may be granted. Also, the court must dismiss claims for monetary relief from a defendant who is immune from such relief.

Section 104: Federal tort claims and civil rights claims

Prohibits lawsuits by inmates for mental or emotional injury suffered while in custody unless the inmates can show physical injury.

Section 105: Payment of damage award in satisfaction of pending restitution orders

Provides that restitution payments must be taken from any award won by a prisoner.

Section 106: Notice to crime victims of pending damage award

Mandates that restitution payments must be taken from any award won by the prisoner and requires victims to be notified whenever a prisoner receives a monetary award from the state.

Section 107: Earned release credit or good time credit

Deters frivolous inmate lawsuits by revoking good-time credits when a frivolous suit is filed. Specifically, in a civil action brought by an adult convicted of a crime and confined in a federal correctional facility, the court may order the revocation of earned good-time credit if the court finds that (1) the claim was filed for a malicious purpose, (2) the claim was filed solely to harass the party against which it was filed, or (3) the claimant testifies falsely or otherwise knowingly presents false evidence or information to the court.

TITLE II—PRISONS

Section 201: Special masters

Requires the federal judiciary to pay for special masters in prison litigation cases. Each party shall submit a list of five recommended special masters and can strike three names from the opposing party's list. The court shall select the master from the remaining names. Each party shall have the right to an interlocutory appeal, on the grounds that the master is not impartial or will not give due deference to the public safety. The court shall review the appointment of the special master every six months to determine whether the services of the special master are still required. Imposes new requirements on special masters. The special master must make findings on the record as a whole, is prohibited from making findings or communications ex parte, and shall be terminated upon the termination of relief.

TITLE III—EQUAL PROTECTION FOR VICTIMS

Section 301: Right of the victim to impartial jury

Protects the right of victims to an impartial jury by equalizing the number of peremptory challenges afforded to the defense and the prosecution in jury selection.

Section 302: Rebuttal of attacks on the victim's character

Provides that if a defendant presents negative character evidence concerning the victim, the government's rebuttal can include negative character evidence concerning the defendant.

Section 303: Victim's right of allocution in sentencing

Extends the right of victims to address the court concerning the sentence to all criminal cases. Current law provides such a right for victims only in violent crime and sexual abuse cases, though the offender has the right to make an allocutive statement in all cases.

SECTION 304: RIGHT OF THE VICTIM TO FAIR TREATMENT IN LEGAL PROCEEDINGS

Establishes higher standards of professional conduct for lawyers in federal cases to protect victims and other witnesses from abuse, and to promote the effective search for truth. Specific measures include prohibition of harassing or dilatory tactics, knowingly presenting false evidence or discrediting truthful evidence, willful ignorance of matters that could be learned from the client, and concealment of information necessary to prevent violent or sexual abuse crimes.

SECTION 305: USE OF NOTICE CONCERNING RELEASE OF THE OFFENDER

Repeals the provision that notices to state and local law enforcement concerning the release of federal violent and drug trafficking offenders can only be used for law enforcement purposes. This removes an impediment to other legitimate uses of such information, such as advising victims or potential victims that the offender has returned to the area.

SECTION 306: BALANCE IN THE COMPOSITION OF RULES COMMITTEES

Provides for equal representation of prosecutors with defense lawyers on committees in the judiciary that make recommendations concerning the rules affecting criminal cases.

TITLE IV—DOMESTIC VIOLENCE

SECTION 401: DEATH PENALTY FOR FATAL DOMESTIC VIOLENCE OFFENSES

Authorizes capital punishment, under the federal interstate domestic violence offenses, for cases in which the offender murders the victim.

SECTION 402: EVIDENCE OF DEFENDANT'S DISPOSITION TOWARD VICTIM IN DOMESTIC VIOLENCE

Clarifies that evidence of a defendant's disposition toward a particular individual—such as the violent disposition of a domestic violence defendant toward the victim—is not subject to exclusion as impermissible evidence of character.

SECTION 403: BATTERED WOMEN'S SYNDROME EVIDENCE

Clarifies that battered women's syndrome evidence is admissible, under the federal expert testimony rule, to help courts and juries understand the behavior of victims in domestic violence cases and other cases.

SECTION 404: HIV TESTING OF DEFENDANTS IN SEXUAL ASSAULT CASES

Provides effective procedures for HIV testing of defendants in sexual assault cases, with disclosure of test results to the victim.

TITLE V—FIREARMS

SECTION 501: MANDATORY MINIMUM SENTENCES FOR CRIMINALS USING FIREARMS

Imposes the following minimum penalties: 10 years for using or carrying a firearm during the commission of a federal crime of violence or drug trafficking crime; 20 years if the firearm is discharged; incarceration for life or punishment by death if death of a person results.

SECTION 502: FIREARMS POSSESSION BY VIOLENT FELONS AND SERIOUS DRUG OFFENDERS

Provides mandatory penalties (5 years and 10 years respectively) for firearms possession by persons with one or two convictions for violent felonies or serious drug crimes.

SECTION 503: USE OF FIREARMS IN CONNECTION WITH COUNTERFEITING OR FORGERY

Adds counterfeiting and forgery to offenses making applicable mandatory penalties under 18 U.S.C. 924(c) when firearms are used to facilitate their commission.

SECTION 504: POSSESSION OF AN EXPLOSIVE DURING THE COMMISSION OF A FELONY

Strengthens mandatory penalty provision for cases of felonies involving explosives.

SECTION 505: SECOND OFFENSE OF USING AN EXPLOSIVE TO COMMIT A FELONY

Increases to 20 years the mandatory penalty for a second conviction for using or possessing an explosive during the commission of a felony.

TITLE VI—EXCLUSIONARY RULE

Section 601: Admissibility of certain evidence

Extends the ''good faith'' exception to the exclusionary rule to non-warrant cases, where the court determines that the circumstances justified an objectively reasonable belief by officers that their conduct was lawful.

TITLE VII—FEDERAL DEALTH PENALTY

Section 701: Strengthening of Federal death penalty standards and procedures

Strengthens federal death penalty standards and procedures. Requires defendant to give notice of mitigating factors that will be relied on in capital sentencing hearing (just as the government is now required to give notice of aggravating factors), adds use of a firearm in committing a killing as an aggravating factor that permits a jury to consider the death penalty, directs the jury to impose a capital sentence if aggravating factors outweight mitigating factors, and authorizes uniform federal procedures for carrying out federal capital sentences.

Section 702: Murder of witness as aggravating factor

Adds murder of a witness as an aggravating factor that permits a jury to consider the death penalty.

Section 703: Safeguards against delay in the execution of capital sentences in Federal cases

Provides effective safeguards against delay in the execution of federal capital sentences resulting from protracted collateral litigation, including time limits on filing and strict limitations on successive motions

Section 704: Death penalty for murders committed with firearms

Creates federal jurisdiction and authorizes capital punishment for murders committed

with a firearm where the firearm has crossed state lines.

Section 705: Death penalty for murders committed in the District of Columbia

Provides for capital punishment for murders committed in the District of Columbia.

TITLE VIII—HABEAS CORPUS

Section 801: Stopping abuse of Federal collateral remedies

Provides that an application for a writ of habeas corpus in behalf of a person in custody pursuant to a judgment or order of a state court shall not be entertained by a judge or a court of the United States unless the remedies in the courts of the state are inadequate or ineffective to test the legality of the person's detention.

TITLE IX—IMMIGRATION

Section 901: Additional expansion of definition of aggravated felony

Aliens who commit aggravated felonies can be deported from the country. The section adds to that definition crimes involving the transportation of persons for the purposes of prostitution; serious bribery, counterfeiting, or forgery offenses; serious offenses involving trafficking in stolen vehicles; offenses involving trafficking in counterfeit immigration documents; obstruction of justice, perjury, and bribery of a witness; and an offense relating to the failure to appear to answer for a criminal offense for which a sentence of two or more years my be imposed.

Section 902: Deportation procedures for certain criminal aliens who are not permanent residents

Modifies the INA to make it clear that the existing expedited deportation procedures which apply to non-resident criminal aliens apply also to aliens admitted for permanent residence on a conditional basis. The section also prohibits the Attorney General from using discretionary power under the INA to grant relief from deportation to any non-resident alien who has been convicted of committing an aggravated felony.

Section 903: Restricting the defense to exclusion based on seven years permanent residence for certain criminal aliens

Modifies that portion of the INA which determines who may be denied entrance to the United States and who may be deported from the country. Under present law, legal permanent residents who have lived in the country for seven years may leave temporarily and return but not be subject to many of the INA provisions that determine who may legally enter the United States. However, if these persons have been convicted of an aggravated felony and served five years in prison, the government may exclude them from the country notwithstanding their seven years of residence. The change made by this section strengthens this exception to allow the government to exclude these persons if they were sentenced to five or more years in prison for one or more aggravated felonies. The change is being made so that the government may begin deportation proceedings when the criminal alien is incarcerated rather than having to wait for five years to pass.

Section 904: Limitation on collateral attacks on underlying deportation order

This section applies to cases where an alien is charged with attempting to re-enter the United States after having been deported. The penalties for illegally re-entering the United States after having been deported were enhanced by the 1994 Crime Act. This section makes it clear that an alien charged with illegally re-entering may only challenge the validity of the original deportation order when the alien can show that he or she has exhausted all administrative remedies, that the deportation order improperly deprived the alien of the opportunity for judicial review, and that the deportation order was fundamentally unfair.

Section 905: Criminal alien identification system

Modifies that part of the 1994 Crime Act which created a ''Criminal Alien Tracking Center.'' The 1994 act failed to state the purpose of the center. This section specifies that the center is to be used to assist federal, state, and local law enforcement agencies in identifying and locating aliens who may be deportable because they have committed aggravated felonies. The bill also changes the name of the center to ''Criminal Alien Identification System'' in order to more accurately reflect its function.

Section 906: Wiretap authority for alien smuggling investigations

Adds certain immigration-related offenses to the list of crimes to which the Racketeer Influenced Corrupt Organizations (''RICO'') law applies. The RICO statute is among the principal tools that federal law enforcement officials use to combat organized crime. The amendment made by this section expands the definition of ''predicate acts'' to enable them to use that statute to combat alien smuggling organizations. The bill also gives federal law enforcement officials the authority to utilize wiretaps to investigate certain immigration-related crimes.

Section 907: Expansion of criteria for deportation for crimes of moral turpitude

This section amends the INA to deport aliens who have been in the country for less than five years (and legal permanent resident aliens who have resided in the country for less than ten years) and who are convicted of a felony crime involving moral turpitude. Under current law, persons convicted of crimes of moral turpitude can only be deported if they have been sentenced to, or serve, at least one year in prison.

Section 908: Study of prisoner transfer treaty with Mexico

Requires the Secretary of State and the Attorney General to submit a study to the Congress concerning the uses and effectiveness of the prisoner transfer treaty with Mexico. That treaty provides for the deportation of aliens who have been convicted of a crime while they are in the United States.

Section 909: Justice Department assistance in bringing to justice aliens who flee prosecution for crimes in the United States

Requires the Attorney General, in cooperation with the INS Commissioner and the Secretary of State, to establish an office within the Justice Department to provide technical and prosecutorial assistance to states and political subdivisions in connection with their efforts to obtain extradition of aliens who commit crimes in the United States and then flee the country. This section also requires a report within one year assessing the nature and extent of the problem of bringing to justice aliens who flee prosecution in the United States.

Section 910: Prison transfer treaties

Advises the President that Congress desires him to negotiate prison transfer treaties with other countries within 90 days of the bill's enactment

Section 911: Interior repatriation program

Requires the Attorney General and the INS Commissioner to develop programs under which aliens who illegally enter the United States from Mexico or Canada on three or more occasions would be deported at least 500 kilometers within the country. The intent of this section is to make it more difficult for aliens who have a history of illegal entry to re-enter the country after they have been deported. The program is to be implemented within 180 days of enactment of the bill.

Section 912: Deportation of nonviolent offenders prior to completion of sentence of imprisonment

Gives the Attorney General the discretion to deport certain aliens held in federal prison before they complete their sentences. Only those criminal aliens who have committed a non-violent aggravated felony may be deported, and the Attorney General must first determine that early deportation is in the best interest of the United States. The Attorney General may also deport non-violent criminal aliens held in state prisons if the governor of the state submits a written request to the Attorney General that aliens be deported before they have served their sentence. In both cases, should an alien illegally re-enter the United States, the Attorney General is required to incarcerate the alien for the remainder of the prison term.

TITLE X—GANGS, JUVENILES, AND DRUGS

Section 1001: Criminal street gang offenses

Contains provisions, passed by the Senate in the 103rd Congress Senate crime bill, which create new offenses and authorize severe penalties for criminal street gangs activities.

Section 1002: Serious juvenile drug offenses as Armed Career Criminal Act predicates

Contains a provision, passed by the Senate in the 103rd Congress Senate crime bill, which adds serious juvenile drug offenses as predicate offenses for purposes of the Armed Career Criminal Act.

Section 1003: Adult prosecution of serious juvenile offenders

Permits adult prosecution down to the age of 13 of junvenile offenders who commit serious violent felonies, and creates a presumption in favor of adult prosecution for such juvenile offenders who are 15 or older.

Section 1004: Increased penalties for recidivists committing drug crimes involving minors

Increases to three years the mandatory minimum penalties for a second offense of distributing drugs to a minor or using a minor in trafficking.

Section 1005: Amendments concerning records of crimes committed by juveniles

Incorporates the amendments of section 618 of the 103rd Congress Senate-passed crime bill which broaden the retention and availability of records for federally prosecuted juvenile offenders.

Section 1006: Drive-by shootings

Incorporates the broad drive-by shooting offense that was passed by the House of Representatives in section 2335 of H.R. 3371 of the 102nd Congress.

Section 1007: Steroids offense

Incorporates the offense, passed by the Senate in section 1504 of the 103rd Congress Senate crime bill, which prohibits coaches and trainers from attempting to get others to use steroids.

Section 1008: Drug testing of Federal offenders

Adds hair analysis to the permissible forms of drug testing.

TITLE XI—PUBLIC CORRUPTION

Section 1101: Strengthening of Federal anti-corruption statutes generally

Strengthens federal public corruption laws. Specific improvements include more adequate coverage of election fraud, more uniform jurisdiction over corruption offenses, increased penalties for such offenses, and protection for whistle blowers.

Section 1102: Interstate commerce

Extends wire fraud statute, which is often used to prosecute public corruption offenses,

including strengthening of jurisdictional provision.

Section 1103: Narcotics-related public corruption

Adopts special provisions for drug-related public corruption, including severe penalties.

TITLE XII—ADMINISTRATIVE SUBPONEA

Section 1201: Administrative summons authority of United States Secret Service

Allows high-ranking Secret Service agents to issue an administrative subponea for information in cases in which the President or other federal protectees are in danger. The Department of Agriculture, the Resolution Trust Corporation, and the Food and Drug Administration already have administrative subponea power.

TITLE XIII—COMPUTER CRIMES

Section 1301: Protection of classified government information

Penalizes individuals who deliberately break into a computer, or attempt to do so, without authority and, thereby, obtain and disseminate classified information.

Section 1302: Protection of financial, government, and other computer information

Makes interstate or foreign theft of information by computer a crime. This provision is necessary in light of *United States* v. *Brown*, 925 F.2d 1301, 1308 (10th Cir. 1991), where the court held that purely intangible intellectual property, such as computer programs, cannot constitute goods, wares, merchandise, securities, or monies which have been stolen, converted, or taken within the meaning of 18 U.S.C. §2314.

Section 1303: Protection of government computer systems

Makes two changes to §1030(a)(3), which currently prohibits intentionally accessing, without authorization, computers used by, or for, any department or agency of the United States and thereby ''adversely'' affecting ''the use of the Government's operation of such computer.'' First, it deletes the word ''adversely'' since this term suggest, inappropriately, that trespassing in a government computer may be benign. Second, the bill replaces the phrase ''the use of the Government's operation of such computer'' with the term ''that use.'' When a computer is used for the government, the government is not necessarily the operator, and the old phrase may lead to confusion. The bill makes a similar change to the definition of ''protected computer'' in §1030(e)(2)(A).

Section 1304: Increased penalties for significant unauthorized use of a computer system

Amends 18 U.S.C. §1030(a)(4) to insure that felony level sanctions apply when unauthorized use or use in excess of authorization is significant.

Section 1305: Protection from damage to computer systems

Amends 18 U.S.C. §1030(a)(5) to further protect computer systems covered by the statute from damage by anyone who intentionally damages a computer, regardless of whether they were authorized to access the computer.

Section 1306: Protection from threats directed against computer systems

Adds a new section to 18 U.S.C. §1030(a) to provide penalties for the interstate transmission of threats directed against computers and computer networks. The new section covers any interstate or international transmission of threats against computers, computer networks, and their data and programs, whether the threat is received by mail, telephone, electronic mail, or through a computerized messaging service.

Section 1307: Increased penalties for recidivist and other sentencing changes

Amends 18 U.S.C. 1030(c) to increase penalties for those who have previously violated any subsection of §1030. This section provides that anyone who is convicted twice of committing a computer offense under §1030 would be subject to enhanced penalties.

Section 1308: Civil actions

Limits damage to economic damages, where the violation caused a loss of $1,000 or more during any one-year period. No limit on damages would be imposed for violations that modified or impaired the medical examination, diagnosis or treatment of a person; caused physical injury to any person; or threatened the public health or safety.

Section 1309: Mandatory reporting

The current reporting requirement under §1030(a)(5) is eliminated. By ensuring that most high technology crimes can be prosecuted, there is less need for reporting requirements. Convictions will provide more information on computer crime. To create a mandatory reporting requirement is unnecessary because private sector groups, such as the Forum of Incident Response and Security Teams (FIRST), are leading the effort to monitor computer crimes statistically.

Section 1310: Sentencing for fraud and related activity in connection with computers.

Requires the United States Sentencing Commission to review existing sentencing guidelines as they apply to sections 1030 (a)(2), (a)(3), (a)(4), (a)(5), and (a)(6) of Title 18 of the United States Code (The Computer Fraud and Abuse Act). The Commission must also establish guidelines to ensure that criminals convicted under these sections receive mandatory minimum sentences for not less than 1 year. Currently, judges are given great discretion in sentencing under the Computer Fraud and Abuse Act. In many cases, the sentences don't match the crimes; and criminals receive light sentences for serious crimes. Mandatory minimum sentences will deter computer ''hacking'' crimes, and protect the infrastructure of computer systems.

Section 1311: Asset forfeiture for fraud and related activity in connection with computers

Amends 18 U.S.C. §1030(a)(2), (a)(3), and (a)(4) to insure that individuals who commit crimes under the aforementioned sections will forfeit the property used in connection with those crimes. For example, computers and ''hacking'' software used in crimes would be subject to forfeiture.

TITLE XIV—COMPUTER SOFTWARE PIRACY

Section 1401: Amendment of title 17

Amends 17 U.S.C. §506(a) to extend criminal infringement of copyright to include any person—not just those who acted for purposes of commercial advantage or private financial gain—who willfully infringes a copyright. Corrects the problem highlighted by the *United States* v. *LaMacchia*, 871 F. Supp. 535 (D. Mass. 1994), that a person could pirate software maliciously, so long as they received no financial gain.

Section 1402: Amendment of title 18

Amends 18 U.S.C. 2319 to allow the court, in imposing a sentence on a person convicted of software piracy, to order that the person forfeit any property used or intended to be used to commit or promote the commission of such offense.

TITLE XV—INTERNET GAMBLING

Section 1501: Amendment of title 18

Amends 18 U.S.C. §1084 to insure that individuals who gamble or wager via wire or electronic communication are penalized—not just those who are in the business of gambling. Current statutes make it illegal only if you are in the business of sports gambling on the INTERNET. This section would make it illegal to gamble on ''virtual casinos'' as well as electronic sports books.

Section 1502: Sentencing guidelines

Requires the United States Sentencing Commission to review the deterrent effect of existing sentencing guidelines as they apply to sections 1084 of Title 18 and promulgate guidelines to ensure that criminals convicted under section 1084 receive mandatory minimum sentences for not less than one year.

Section 1503: Reporting requirements

Requires the Attorney General to report to Congress on (1) the problems associated with enforcing INTERNET gambling, (2) recommendations for the best use of resources of the Department of Justice to enforce section 1084 of Title 18, (3) recommendations for the best use of the resources of FCC to enforce section 1084 of title 18, and (4) an estimate on the amount of gambling activity on the INTERNET. It is not clear how effective law enforcement can police the INTERNET. A report may answer that question.

By Mr. SIMON (for himself, Mr. HATCH, Ms. MOSELEY-BRAUN, Mr. BOND, and Mr. ASHCROFT):

S. 1496. A bill to grant certain patent right for certain non-steroidal anti-inflammatory drugs for a 2-year period; to the Committee on the Judiciary.

PROPERTY RIGHT PROTECTION LEGISLATION

Mr. SIMON. Mr. President, today, I introduce legislation to grant for a 2-year period additional property right protection for oxaprozin, an important drug in treating arthritis. Oxaprozin is a non-steroidal, anti-inflammatory drug [NSAID]. It is produced and marketed as Daypro by the G.D. Searle & Co., headquartered in Skokie, IL. I am introducing this legislation as a matter of simple fairness and equity because of a protracted review by the Food and Drug Administration [FDA] that consumed the entire patent life of Daypro.

The Drug Price Competition and Patent Term Restoration Act of 1984, commonly referred to as the Hatch-Waxman Act, was designed in part to address the unfairness caused by unduly long FDA reviews. Unfortunately, the two major protections created by Hatch-Waxman did not remedy Daypro's situation. First, Hatch-Waxman provides patent extensions in cases of regulatory delay. Ironically, since the FDA review consumed Daypro's entire patent life, the delay rendered Daypro ineligible for a patent extension; Hatch-Waxman simply did not contemplate that an FDA review would consume the entire patent life of a drug prior to its approval. Second, Hatch-Waxman allows up to 10 years of market exclusivity to brand name drug manufacturers following protracted FDA review. If the FDA had promptly approved Daypro, Daypro would have been protected for 10 years; however, as a result of the delay, Daypro only received 5 years of marketing exclusivity protection.

The legislation I am introducing today would provide Daypro 2 years of property right protection beyond the 5 years provided in the Hatch-Waxman Act. This additional property right protection is being sought because the

delay in obtaining FDA approval of Daypro was so excessive that the provisions of the Hatch-Waxman Act are inadequate to compensate for the complete loss of patent protection for Daypro due to the FDA review.

I seek this remedy for a drug that was a victim of even more extreme regulatory delays than those that were instrumental in causing Congress to recognize that the Hatch-Waxman Act was necessary in the first place. The Investigational New Drug Application [IND] for Daypro was filed in 1972, and the New Drug Application [NDA] for Daypro was filed 10 years later in August 1982. FDA approval of Daypro was not finally granted until October 29, 1992. During the 20 years it took FDA to approve Daypro, its patent expired. Thus, the practical patent life for Daypro was zero.

A number of reports have been published by the U.S. General Accounting Office and congressional committees in both Houses on the regulatory problems that the class of NSAIDs faced in the 1980's. These reports and studies make it clear that at least some of the problems encountered at FDA were generic—the unprecedented delay in NSAID approvals was due to FDA inaction on all NDAIDs after serious problems were encountered with previously approved NSAIDs. During this time, the FDA effectively imposed a moratorium on the approval of all NSAIDs. It is important to note that the purpose of this moratorium was not to allow the FDA to collect further data on Daypro or because there were concerns about health and safety findings related to Daypro. The FDA ultimately approved Daypro in 1992 as safe and efficacious based upon the same studies originally submitted to the FDA in the NDA. it took the FDA longer to approve Daypro than any other NSAID.

This legislation does not grant full recovery of the time lost while Daypro was under review; it does not grant even half of that time. The additional property right protection that would be granted by this bill represents only some of the time lost after the drug applications had been under FDA review. This legislation provides 2 years of added protection as partial compensation for the value lost when Daypro's patents expired while the drug application was pending at the FDA. I believe the figure of 2 years is a fair and equitable resolution of this matter.

Daypro confronted an inordinate and inequitable delay in obtaining FDA approval. No other pharmaceutical that I am aware of has had its entire patent life consumed by an FDA review. I urge that the relief embodied in this legislation be anacted.

Mr. HATCH. Mr. President, today, I rise to cosponsor with Senators SIMON, MOSELEY-BRAUN, BOND, and ASHCROFT, S. 1496, a bill to extend for 2 additional years the exclusive marketing period for the drug oxaprozin.

I am supportive of Senator SIMON'S effort, because unusual, and perhaps unprecedented, administrative delays in review of this pharmaceutical have denied the manufacturer any patent protection. The Food and Drug Administration [FDA] review of oxaprozin consumed the entire 17-year patent term plus another 4 years.

Some history on this issue may be useful at this point.

Oxaprozin is a nonsteroidal, anti-inflammatory drug, or NSAID. It is used to treat arthritis and other ailments. Oxaprozin was first patented by G.D. Searle in 1971. Shortly thereafter, an investigational new drug [IND] application was submitted to FDA.

In August 1982, a new drug application [NDA] was filed, but FDA did not approve the drug until October 29, 1992. In total, over 21 years expired after submission of the IND application and over 10 years elapsed from the filing of the NDA.

As a result of this unusually long, and perhaps unprecedented, FDA regulatory review period, the patent for oxaprozin expired before oxaprozin could be brought to market.

In the 1980s, Congress became concerned that the lengthy FDA pre-marketing regulatory approval system was depriving many companies of a substantial amount of the potential economic value of new drug patents, and thereby decreasing the incentives that lead to new breakthrough medications.

In 1984, Representative Henry Waxman and I worked to secure enactment of the Drug Price Competition and Patent Term Restoration Act, a law that, in part, attempted to add patent term or an exclusive marketing period to partially restore time lost through FDA regulatory review.

Under this 1984 law—sometimes referred to as the ''Hatch-Waxman Act'' or ''Waxman-Hatch'' an administrative procedure was provided to extend certain drug patents or prevent generic copies from entering the marketplace in order to provide compensation for at least some of the time lost as a result of FDA regulatory review.

This legislation, however, did not contemplate extreme outliers such as oxaprozin.

In some respects, oxaprozin presents a classic Catch-22 situation: Administrative patent extensions under Hatch-Waxman were not available until FDA approval was granted, but these administrative extensions could only be granted if the term of the patent had not expired. If a drug was not approved until after the expiration of the patent, no Hatch-Waxman patent extension could be granted, even though such cases represent the most egregious example of the problem Congress was trying to redress in the first place.

In addition to patent extensions, the Hatch-Waxman Act contained marketing exclusivity provisions to address cases such as oxaprozin in which no patent protection remains. The Hatch-Waxman law provided 10 years of marketing exclusivity for pioneer drugs that were approved for marketing between January 1, 1982 and September 23, 1984.

One result of oxaprozin's unduly long FDA review was that it could not qualify for extended patent life under the Hatch-Waxman transition rule. Instead, oxaprozin received only the more limited 5-year period of marketing exclusivity even though its review period at the FDA exceeded all of those drugs that received a 10-year extension.

From 1974 until 1982, the FDA took, on average, only about 2 years to review and approve NSAID product applications. From about 1982, however, there existed a de facto moratorium on the approval of new NSAIDs.

The Congress has examined the reasons behind this moratorium. In 1992, both the Senate and House Judiciary Committees, and House Energy and Commerce Committee, conducted hearings into the FDA delays in the approval of NSAIDs. In addition, the Judiciary Committees requested the GAO to investigate this delay.

These examinations revealed that FDA faced an unusual set of circumstances from 1982 through 1987. As a result of the controversy surrounding four previously approved NSAIDs that raised serious post-marketing safety concerns, the average time taken to approve NSAID NDAs nearly doubled. By concentrating its resources to investigate the causes behind the reported NSAID adverse effects, the FDA directed its manpower away from approval of the pending NSAID NDAs.

Mr. President, 2-weeks ago, the Senate was engaged in a debate that involved the sufficiency of the patent laws to help attract private sector investment into biomedical research. This issue has important ramifications for the public health.

Over the next few months the Senate Judiciary Committee, on which I serve as Chairman, will be examining pharmaceutical patent issues. It will be important for the committee to examine fully the complex interrelationship between the patent laws and the FDA product review system for drugs.

Oxaprozin serves as an important case study of a flawed system in which FDA regulatory delay materially undermines the value of intellectual property. A regulatory review period of 21 years is simply too long. I hope we can all agree that the FDA review period should not exhaust the entire patent term of a drug product.

In light of the general disruption that occurred within the FDA NSAID review division and the particular facts relating to the 21 year FDA review of oxaprozin, the partial relief granted by S. 1496 is justified. I urge my colleagues to support this bill.

By Mr. NICKLES (for himself, Mr. SMITH, Mr. PRYOR, Mr. BOND, Mr. BUMPERS, Mr. INHOFE, Mr. LOTT, Mr. BREAUX, Mr. JOHNSTON, Mr. ABRAHAM, Mr. KEMPTHORNE, Mr. LIEBERMAN, Mr. FAIRCLOTH, Mr. GLENN, and Mr. WARNER):

S. 1497. A bill to amend the Solid Waste Disposal Act to make certain adjustments in the land disposal program to provide needed flexibility, and for other purposes; to the Committee on Environment and Public Works.

THE LAND DISPOSAL PROGRAM FLEXIBILITY ACT OF 1995

Mr. NICKLES. Mr. President, today I am joined by my colleagues Senators SMITH, PRYOR, BOND, BUMPERS, INHOFE, BREAUX, LOTT, JOHNSTON, ABRAHAM, KEMPTHORNE, LIEBERMAN, FAIRCLOTH, GLENN, and WARNER to introduce, the Land Disposal Program Flexibility Act of 1995. This bill represents the culmination of a bipartisan process involving the cooperation of The White House, EPA, and the regulated community. It is proof that the desire for regulatory reform is real, and needed in this country. It is also proof that we can work together to make greater sense out of the regulatory morass when we set our minds to it.

For too long neither Congress which makes the laws, nor EPA which implements them, have really been in charge of environmental protection in this country. The most significant driver in the field of environmental policy has been the courts. In a recent address before the Environmental Law Institute, former EPA Administrator William Ruckleshaus lamented that most of the important environmental decisions of the last quarter century have devolved to the courts.

The situation that has led to the introduction of this bill is a classic case of how the courts, have dominated the making of environmental policy. In 1990, EPA implemented RCRA regulations relating to the treatment of hazardous waste before it can be disposed of on the land. These land disposal restrictions were intended to prevent the placement of untreated waste on the ground—an appropriate concern given the legacy of such practices prior to the enactment of RCRA. EPA also made every effort to implement this regulation taking care to coordinate RCRA with the Clean Water Act and the Safe Drinking Water Act. That, too was as Congress intended.

Along came the courts and they chose to interpret the RCRA statute in such a way as to extend the reach of costly hazardous waste requirements to nonhazardous wastes. This interpretation also ignored the benefits of treatment and disposal systems such as surface impoundments and underground injection wells permitted under the Clean Water and Safe Drinking Water Acts respectively.

As a result, EPA has been forced to propose expensive new regulations that even the Agency believes will provide minimal environmental benefit. Let me quote from EPA's very own preamble to the new proposed rule:

> The risks addressed by this rule, particularly UIC wells, are very small relative to the risks presented by other environmental conditions or situations. In a time of limited resources, common sense dictates that we deal with higher risk activities first, a principle on which EPA, members of the regulated community, and the public can all agree.
>
> Nevertheless, the agency is required to set treatment standards for these relatively low risk wastes and disposal practices during the next two years, although there are other actions and projects with which the Agency could provide greater protection of human health and the environment.

Mr. President, this Senate has been wrestling with the larger question of comprehensive regulatory reform for some months now. The debate on both sides of the aisle has been contentious over the means by which such reforms are achieved. But a common theme throughout that debate has been the nearly universal recognition that the current command and control regulatory system is obsolete, and in need of reform. This bill allows us to turn that theme into reality. Not by amending the underlying RCRA statute in any way, although we agree with the President that further statutory reform is needed, but by merely restoring EPA's original regulatory determination: that a waste that is no longer hazardous need not be regulated as if it was hazardous.

Mr. President, that is why I have joined with Senators SMITH, PRYOR, BOND, BUMPERS, INHOFE, BREAUX, LOTT, JOHNSTON, ABRAHAM, KEMPTHORNE, LIEBERMAN, FAIRCLOTH, GLENN, and WARNER to introduce this bill. I also submit for inclusion in the record a letter from the administration supporting this legislation. The price of not acting soon will mean that industry will incur, by EPA's own estimate, $800 million dollars per year in compliance costs—again for minimal environmental benefit. Mr. President, we have an opportunity here, to provide true regulatory relief, while assuring that effective standards of environmental protection are maintained. We have worked in a bipartisan way to bring this reform forward. I hope that the spirit of cooperation demonstrated on all sides will carry through as we tackle this and other much needed regulatory reforms.

Mr. SMITH. Mr. President, I join my colleague, Senator NICKLES, in introducing the Land Disposal Program Flexibility Act of 1995, and I would like to thank the senior Senator from Oklahoma for the time and effort that he and his staff have been spending on this issue. In addition to a bipartisan coalition of Senators who are cosponsoring this legislation, this bill is also supported by the White House and the Environmental Protection Agency [EPA].

This legislation represents a very simple, yet important modification to the Solid Waste Disposal Act that has the potential to save our society as much as $800 million in annual compliance costs—an expense that the EPA agrees will provide no environmental benefit. As the chairman of the Superfund, Waste Control and Risk Assessment Subcommittee, which has jurisdiction over this legislation, I believe that this bill is a good example of a cooperative, bipartisan effort to correct expensive and needless environmental overregulation.

Under the current land disposal restrictions [LDR's], individuals are generally prohibited from the land disposal of hazardous wastes unless these wastes have first been treated to meet EPA standards. As a result of a 1993 decision by the D.C. Circuit Court, these LDR's would also be extended to nonhazardous wastes managed in wastewater systems that are already regulated under the Clean Water Act or the underground injection control [UIC] program of the Safe Drinking Water Act. The court adopted this position despite the fact that the EPA had previously adopted a rule authorizing the appropriate treatment and disposal of these materials, and despite the fact that the Agency believed that such strict standards are inappropriate.

Simply stated, this legislation would counteract the court decision, and would restore the EPA's original regulatory determination allowing these materials to be safely treated and disposed of in permitted treatment units and injection wells.

One of the issues confronting those who support this legislation is timing. Due to the court decision, the EPA will be forced to impose these needless and expensive requirements if Congress does not act very soon. As the chairman of the subcommittee of jurisdiction, I will work closely with the other interested parties to ensure that this legislation will be addressed in a prompt fashion.

Again, I thank Senator NICKLES for working with me on this issue, and I commend him for his involvement.

Mr. PRYOR. Mr. President, I rise today to join my colleagues, Senators BOND, BUMPERS, INHOFE, and NICKLES, to introduce the Land Disposal Program Flexibility Act of 1995. This bill represents months of work by the EPA, the White House, both Houses of Congress, as well as the regulated community, to come together in a bipartisan manner to implement real regulatory reform.

This legislation makes small adjustments in the current Land Disposal Regulations [LDR] Program under the Resource Conservation Recovery Act [RCRA], to provide more flexibility for the treatment of nonhazardous waste. More importantly, it helps alleviate the type of over-regulation that has been the source of so much controversy among the general public. Our legislation achieves this goal by denying the implementation of a court ordered rule that requires the EPA to treat nonhazardous waste as though it were hazardous waste.

Mr. President, when Congress passed the Resource Conservation and Recovery Act [RCRA] in 1976, it was intended to work as a campanion to other existing environmental laws. However, the court decision previously mentioned,

would create just the opposite of what was intended. It would require the EPA to write a rule that would overlay RCRA requirements on top of existing Clean Water Act treatment standards. The cost of this additional treatment, according to EPA estimates, would be approximately $800 million per year—all to achieve what EPA says is almost no environmental improvement.

What we are doing today with the introduction of the Land Disposal Program Flexibility Act, is correcting this court decision by amending a very narrow portion of the RCRA law. Simply put, we are asking Congress to clarify that the LDR Program does not apply to wastes that are no longer hazardous when managed in Clean Water and Safe Drinking Water Act systems.

I am proud to be an original cosponsor of this bill and I hope my colleagues will support this legislation as it moves through committee to the Senate floor for a vote.

By Ms. SNOWE (for herself, Mr. KERRY, Mr. COHEN, and Mr. KENNEDY):

S. 1498. A bill to authorize appropriations to carry out the Interjurisdictional Fisheries Act of 1986, and for other purposes; to the Committee on Commerce, Science, and Transportation.

THE INTERJURISDICTIONAL FISHERIES AMENDMENTS ACT OF 1995

Ms. SNOWE. Mr. President, today I, along with my colleague on the Commerce Committee, Senator KERRY, am introducing the Interjurisdictional Fisheries Amendments Act of 1995. I am pleased to also have Senators COHEN and KENNEDY joining us as cosponsors in this effort.

Congress passed the Interjurisdictional Fisheries Act in 1986 to promote the management of interjurisdictional fisheries resources throughout their range, and to encourage and promote active State participation in the management of these important resources. The act provides modest funding to the States and interstate marine fishery commissions to assist with research and management activities, with the underlying objective being the development and maintenance of healthy, robust fish stocks. The act also authorizes aid to commercial fishermen who have suffered losses as a result of fishery resource disasters.

The bill that we are introducing today extends the act's authorization through 1998. It reduces the authorized appropriations level for apportionment to the States, maintains the current overall authorization level for the Commerce Department, and provides a small increase in the authorization level for assistance to the interstate fishery management commissions.

This bill also amends section 308(d) of the act, which deals with disaster assistance to commercial fishermen. Earlier this year, the Secretary of Commerce declared fishery resource disasters impacting commercial fishermen in the Northeast, Pacific Northwest, and the Gulf of Mexico, and he committed $53 million in already-appropriated funds to help mitigate the impacts of these disasters. In order to effectively operate these disaster relief programs, however, certain changes must be made in the act's grant-making authority.

The current provision, for example, limits the kind of assistance available under section 308(d) to direct grants to individual fishermen or fishing corporations. But recent analysis of disaster relief strategies has revealed that, in some cases, aid to fishermen could be more efficiently and effectively provided if it is provided indirectly, through States, local governments, or nonprofit organizations, who in turn would operate programs to help fishermen. This bill amends the statute to allow for the provision of both direct and indirect forms of assistance.

The bill also lifts the current $100,000 cap on aid to individual fishermen. This cap makes the operation of a fishing vessel buy-back program, like the one currently planned for the New England groundfish fishery, impossible. The purchase price for many vessels bought out under the program will exceed $100,000, and without a lifting of the cap, few fishermen will participate. Given the ongoing crisis in the New England groundfish industry, we need to move forward with an effective, comprehensive buy-back quickly, and passage of this amendment to section 308(d) is essential for us to do so.

Mr. President, this bill will contribute to the improvement of conditions in interjurisdictional fisheries around the country, and it will assist fishing communities that are suffering the effects of fishery resource disasters. This is a bipartisan bill, and it will not require significant new federal expenditures. I hope that my colleagues will support the bill when the Senate considers it in the next session.

Mr. KERRY. Mr. President, today I join Senators SNOWE, KENNEDY, and COHEN in introducing the Interjurisdictional Fisheries Amendments Act of 1995. This legislation authorizes appropriations for State grants and Department of Commerce programs designed to manage interjurisdictional fisheries, and amends the Interjurisdictional Fisheries Act of 1986 to facilitate the use of available fisheries disaster relief funds.

In 1986, we passed the Interjurisdictional Fisheries Act to support State activities related to the management of fisheries occurring in waters under the jurisdiction of one or more States and the exclusive economic zone [EEZ], and to promote management of these fisheries throughout their range. This model establishes a mechanism for all who have a major interest in managing a fishery extending over several jurisdictions to work together to make key management decisions. It clearly works successfully. We must continue to support such cooperative partnerships.

The bill introduced today also contains important provisions which will clear the way for dispersing previously appropriated economic assistance for fishing disaster relief in New England, the Gulf, and in the Pacific Northwest.

In New England, this assistance will be used to alleviate the economic hardships caused by the collapse of the traditional groundfish fishery. The New England Fishery Management Council has closed significant areas of prime fishing grounds on Georges Bank and is now considering the adoption of stricter fishing restrictions to rebuild the groundfish stocks. Many New England fishermen can no longer draw a living from the sea as they have for years before. They, their families, and their communities face a severe economic crisis. I have supported, and will continue to support, a comprehensive approach to addressing this fishery disaster. The New England Fishery Management Council has a tough job ahead in designing a rebuilding program. While the Council continues to struggle with this issue, I have focused my efforts on providing economic assistance to the fishermen and the fishing communities during this crisis and rebuilding period.

In March 1995, NOAA announced a $2.0 million pilot program to buy groundfish vessels and begin to address the problem of too many fishermen chasing too few fish. The program began in June of 1995, and on October 11, 1995, NOAA announced that it would be able to buy back 13 vessels. Although the $2 million falls far short of the total amount needed for a full-scale buyout in New England, the pilot program answered many questions about the design, implementation, and potential success of an expanded vessel buyout program.

The pilot program has demonstrated that fishing vessel owners are willing to participate in such a program—114 vessel owners applied to participate in the pilot program. If funding was available to accept all 114 offers received—totalling $52 million—groundfish fishing capacity could be decreased by more than 31 percent. This illustrates that such a program could be a successful way to reduce the overcapitalization in the groundfish fleet and may help ease the economic impact of the collapsed groundfish fishery and the strict conservation measures anticipated.

The legislation we are introducing today amends the existing Interjurisdictional Fisheries Act of 1986 to facilitate the development of an expanded buyout program in New England. This would allow some fishermen to voluntarily leave the fishery, thereby reducing excess fishing capacity. As a condition of the program, the bill would require that adequate conservation and management measures be in place to restore the stocks and ensure no new boats enter the New England groundfish fishery. It would also expedite fishery disaster relief programs designed for the Gulf and the Pacific Northwest.

I urge my colleagues to move quickly to pass the Interjurisdictional Fisheries Amendment Act of 1995.

By Mr. HATFIELD:

S. 1499. A bill to amend the Interjurisdictional Fisheries Act of 1986 to provide for direct and indirect assistance for certain persons engaged in commercial fisheries, and for other purposes; to the Committee on Commerce, Science, and Transportation.

THE FISHING FAMILIES RELIEF ACT OF 1995

Mr. HATFIELD. Mr. President, the Pacific Northwest has been presented with a number of significant challenges in the last decade. Most recently, heavy rains and winds in excess of 100 miles per hour ravaged the Oregon coast and the Willamette Valley. Additionally, the timber and fishing industries, which once constituted a substantial portion of Oregon's economy, have been severely restricted in recent years. Many individuals involved in those industries have been forced to find alternative sources of employment.

In 1994, the National Oceanic and Atmospheric Administration [NOAA] and the Pacific Northwest States initiated three programs to mitigate the financial hardship caused by the total closure of the coastal salmon fishing season. These programs were designed to assist the fishers impacted by the closing and include: a permit buyback program—Washington State only; a habitat restoration jobs program; and a data collection and at sea research jobs program. Both jobs programs employed over 100 dislocated fishers while contributing to the improvement of fishery habitat. NOAA has approved the request of the Governors of Oregon and Washington for an additional $13 million to continue these programs for a second year.

The changes in the Interjurisdicitonal Fisheries Act made by the legislation I am introducing today would allow these three programs to continue working for dislocated fishers who are severely limited in their ability to earn a living through commercial fishing. The current language restricts the number of dislocated fishers who have been eligible to participate in these programs. Additionally, fishers may lose the eligibility to participate in the programs due to the uninsured loss determination and the cap on assistance.

Mr. President, this legislation does not seek additional Federal funds for these important assistance programs. However, it does attempt to find ways to spend Federal dollars in a more effective and flexible manner, with broader participation from those the funds are intended to serve. This legislation will also be beneficial for the fishing industries in the Northeast and the Gulf Coast areas. I urge my colleagues to give their full consideration to this attempt to restore economic stability to the fisherman of Oregon and the Pacific Northwest.

ADDITIONAL COSPONSORS

S. 281

At the request of Mr. D'AMATO, the name of the Senator from Connecticut [Mr. LIEBERMAN] was added as a cosponsor of S. 281, a bill to amend title 38, United States Code, to change the date for the beginning of the Vietnam era for the purpose of veterans benefits from August 5, 1964, to December 22, 1961.

S. 1228

At the request of Mr. FEINGOLD, his name was added as a cosponsor of S. 1228, a bill to impose sanctions on foreign persons exporting petroleum products, natural gas, or related technology to Iran.

S. 1266

At the request of Mr. MACK, the name of the Senator from Indiana [Mr. LUGAR] was added as a cosponsor of S. 1266, a bill to require the Board of Governors of the Federal Reserve System to focus on price stability in establishing monetary policy to ensure the stable, long-term purchasing power of the currency, to repeal the Full Employment and Balanced Growth Act of 1978, and for other purposes.

S. 1354

At the request of Mr. BREAUX, the name of the Senator from Alaska [Mr. MURKOWSKI] was added as a cosponsor of S. 1354, a bill to approve and implement the OECD Shipbuilding Trade Agreement.

S. 1426

At the request of Mr. SIMPSON, his name was added as a cosponsor of S. 1426, a bill to eliminate the requirement for unanimous verdicts in Federal court.

S. 1470

At the request of Mr. MCCAIN, the name of the Senator from Pennsylvania [Mr. SANTORUM] was added as a cosponsor of S. 1470, a bill to amend title II of the Social Security Act to provide for increases in the amounts of allowable earnings under the Social Security earnings limit for individuals who have attained retirement age, and for other purposes.

SENATE CONCURRENT RESOLUTION 37—TO MAKE TECHNICAL CHANGES IN THE ENROLLMENT OF H.R. 2539

Mr. EXON submitted the following resolution; which was considered and agreed to:

S. CON. RES. 37

Resolved by the Senate (the House of Representatives concurring), That the Clerk of the House of Representatives, in the enrollment of the bill (H.R. 2539) to amend subtitle IV of title 49, United States Code, to reform economic regulation of transportation, and for other purposes, shall make the following corrections:

In section 11326(b) proposed to be inserted in title 49, United States Code, by section 102, strike "unless the applicant elects to provide the alternative arrangement specified in this subsection. Such alternative" and insert "except that such";

In section 13902(b)(5) proposed to be inserted in title 49, United States Code, by section 103, strike "Any" and insert "Subject to section 14501(a), any".

SENATE RESOLUTION 201—COMMENDING THE CIA'S STATUTORY INSPECTOR GENERAL

Mr. SPECTER (for himself, Mr. KERREY, Mr. GLENN, Mr. BRYAN, Mr. ROBB, Mr. JOHNSTON, Mr. CHAFEE, Mr. BAUCUS, Mr. WARNER, Mr. KERRY, Mr. SHELBY, Mr. GRAHAM, Mr. KYL, Mr. LUGAR, Mr. INHOFE, Mr. BYRD, and Mr. DEWINE) submitted the following resolution; which was considered and agreed to:

S. RES. 201

Whereas, because of its concern with the need for objectivity, authority and independence on the part of the Central Intelligence Agency's Office of Inspector General, the Senate in 1989 included in the Intelligence Authorization Act of Fiscal Year 1990—subsequently enacted into law—a provision establishing an independent, Presidentially-appointed statutory Inspector General at the CIA;

Whereas in November, 1990, The Honorable Frederick P. Hitz was formally sworn in as the CIA's first statutory Inspector General;

Whereas the CIA's statutory Office of Inspector General, under the capable leadership of Frederick P. Hitz, has demonstrated its independence, tenacity, effectiveness and integrity; and

Whereas the work of the CIA Office of Inspector General under Mr. Hitz's leadership has contributed notably to the greater efficiency, effectiveness, integrity and accountability of the Central Intelligence Agency: Now, therefore, be it

Resolved, That the Senate expresses its congratulations to Frederick P. Hitz on his 5-year anniversary as the first statutory CIA Inspector General and expresses its support for the Office of the CIA Inspector General.

SEC. 2. The Secretary of the Senate shall transmit a copy of this resolution to Frederick P. Hitz.

AMENDMENTS SUBMITTED

BUDGET NEGOTIATIONS JOINT RESOLUTION

DASCHLE AMENDMENT NO. 3108

Mr. DASCHLE proposed an amendment to the joint resolution (H.J. Res. 132) affirming that budget negotiations shall be based on the most recent technical and economic assumptions of the Congressional Budget Office and shall achieve a balanced budget by fiscal year 2002 based on those assumptions; as follows:

On page 2, line 2, strike office"; and insert the following: "Office, and the President and the Congress agree that the balance budget must protect future generations, ensure medicare solvency, reform welfare, and provide adequate funding for Medicaid, Education, Agriculture, National Defense, Veterans, and the Environment. Further, the balanced budget shall adopt tax policies to help working families and to stimulate future economic growth."

THE FARM CREDIT SYSTEM REGULATORY RELIEF ACT OF 1995

LUGAR (AND LEAHY) AMENDMENT No. 3109

Mr. SANTORUM (for Mr. LUGAR, for himself and Mr. LEAHY) proposed and amendment to the bill (H.R. 2029) to amend the Farm Credit Act of 1971 to provide regulatory relief; as follows:

Strike all after the enacting clause and insert the following:

SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

(a) SHORT TITLE.—This Act may be cited as the ''Farm Credit System Reform Act of 1996''.

(b) TABLE OF CONTENTS.—The table of contents for this Act is as follows:

Sec. 1. Short title; table of contents.

TITLE I—AGRICULTURAL MORTGAGE SECONDARY MARKET

Sec. 101. Definition of real estate.
Sec. 102. Definition of certified facility.
Sec. 103. Duties of Federal Agricultural Mortgage Corporation.
Sec. 104. Powers of the Corporation.
Sec. 105. Federal reserve banks as depositaries and fiscal agents.
Sec. 106. Certification of agricultural mortgage marketing facilities.
Sec. 107. Guarantee of qualified loans.
Sec. 108. Mandatory reserves and subordinated participation interests eliminated.
Sec. 109. Standards requiring diversified pools.
Sec. 110. Small farms.
Sec. 111. Definition of an affiliate.
Sec. 112. State usury laws superseded.
Sec. 113. Extension of capital transition period.
Sec. 114. Minimum capital level.
Sec. 115. Critical capital level.
Sec. 116. Enforcement levels.
Sec. 117. Recapitalization of the Corporation.
Sec. 118. Liquidation of the Federal Agricultural Mortgage Corporation.

TITLE II—REGULATORY RELIEF

Sec. 201. Compensation of association personnel.
Sec. 202. Use of private mortgage insurance.
Sec. 203. Removal of certain borrower reporting requirement.
Sec. 204. Reform of regulatory limitations on dividend, member business, and voting practices of eligible farmer-owned cooperatives.
Sec. 205. Removal of Federal government certification requirement for certain private sector financings.
Sec. 206. Borrower stock.
Sec. 207. Disclosure relating to adjustable rate loans.
Sec. 208. Borrowers' rights.
Sec. 209. Formation of administrative service entities.
Sec. 210. Joint management agreements.
Sec. 211. Dissemination of quarterly reports.
Sec. 212. Regulatory review.
Sec. 213. Examination of farm credit system institutions.
Sec. 214. Conservatorships and receiverships.
Sec. 215. Farm Credit Insurance Fund operations.
Sec. 216. Examinations by the Farm Credit System Insurance Corporation.
Sec. 217. Powers with respect to troubled insured system banks.
Sec. 218. Oversight and regulatory actions by the Farm Credit System Insurance Corporation.
Sec. 219. Farm Credit System Insurance Corporation Board of Directors.
Sec. 220. Interest rate reduction program.
Sec. 221. Liability for making criminal referrals.

TITLE III—NATIONAL NATURAL RESOURCES CONSERVATION FOUNDATION

Sec. 301. Short title.
Sec. 302. Definitions.
Sec. 303. National Natural Resources Conservation Foundation.
Sec. 304. Composition and operation.
Sec. 305. Officers and employees
Sec. 306. Corporate powers and obligations of the Foundation.
Sec. 307. Administrative services and support.
Sec. 308. Audits and petition of Attorney General for equitable relief.
Sec. 309. Release from liability.
Sec. 310. Authorization of appropriations.

TITLE IV—IMPLEMENTATION AND EFFECTIVE DATE

Sec. 401. Implementation.
Sec. 302. Effective Date.

TITLE I—AGRICULTURAL MORTGAGE SECONDARY MARKET

SEC. 101. DEFINITION OF REAL ESTATE.

Section 8.0(1)(B)(ii) of the Farm Credit Act of 1971 (12 U.S.C. 2279aa(1)(B)(ii)) is amended by striking ''with a purchase price'' and inserting '', excluding the land to which the dwelling is affixed, with a value''.

SEC. 102. DEFINITION OF CERTIFIED FACILITY.

Section 8.0(3) of the Farm Credit Act of 1971 (12 U.S.C. 2279aa(3)) is amended—

(1) in subparagraph (A), by striking ''a secondary marketing agricultural loan'' and inserting ''an agricultural mortgage marketing''; and

(2) in subparagraph (B), by striking '', but only'' and all that follows through ''(9)(B)''.

SEC. 103. DUTIES OF FEDERAL AGRICULTURAL MORTGAGE CORPORATION.

Section 8.1(b) of the Farm Credit Act of 1971 (12 U.S.C. 2279aa–1(b)) is amended—

(1) in paragraph (2), by striking ''and'' at the end;

(2) in paragraph (3), by striking the period at the end and inserting ''; and''; and

(3) by adding at the end the following:

''(4) purchase qualified loans and issue securities representing interests in, or obligations backed by, the qualified loans, guaranteed for the timely repayment of principal and interest.''.

SEC. 104. POWERS OF THE CORPORATION.

Section 8.3(c) of the Farm Credit Act of 1971 (12 U.S.C. 2279aa–3(c)) is amended—

(1) by redesignating paragraphs (13) and (14) as paragraphs (14) and (15), respectively; and

(2) by inserting after paragraph (12) the following:

''(13) To purchase, hold, sell, or assign a qualified loan, to issue a guaranteed security, representing an interest in, or an obligation backed by, the qualified loan, and to perform all the functions and responsibilities of an agricultural mortgage marketing facility operating as a certified facility under this title.''.

SEC. 105. FEDERAL RESERVE BANKS AS DEPOSITARIES AND FISCAL AGENTS.

Section 8.3 of the Farm Credit Act of 1971 (12 U.S.C. 2279aa–3) is amended—

(1) in subsection (d), by striking ''may act as depositories for, or'' and inserting ''shall act as depositories for, and''; and

(2) in subsection (e), by striking ''Secretary of the Treasury may authorize the Corporation to use'' and inserting ''Corporation shall have access to''.

SEC. 106. CERTIFICATION OF AGRICULTURAL MORTGAGE MARKETING FACILITIES.

Section 8.5 of the Farm Credit Act of 1971 (12 U.S.C. 2279aa–5) is amended—

(1) in subsection (a)—

(A) in paragraph (1), by inserting ''(other than the Corporation)'' after ''agricultural mortgage marketing facilities''; and

(B) in paragraph (2), by inserting ''(other than the Corporation)'' after ''agricultural mortgage marketing facility''; and

(2) in subsection (e)(1), by striking ''(other than the Corporation)''.

SEC. 107. GUARANTEE OF QUALIFIED LOANS.

Section 8.6 of the Farm Credit Act of 1971 (12 U.S.C. 2279aa–6) is amended—

(1) in subsection (a)(1)—

(A) by striking ''Corporation shall guarantee'' and inserting the following: ''Corporation

''(A) shall guarantee'';

(B) by striking the period at the end and inserting ''; and''; and

(C) by adding at the end the following:

''(B) may issue a security, guaranteed as to the timely payment of principal and interest, that represents an interest solely in, or an obligation fully backed by, a pool consisting of qualified loans that—

''(i) meet the standards established under section 8.8; and

''(ii) have been purchased and held by the Corporation.'';

(2) in subsection (d)—

(A) by striking paragraph (4); and

(B) by redesignating paragraphs (5), (6), and (7) as paragraphs (4), (5), and (6), respectively; and

(3) in subsection (g)(2), by striking ''section 8.0(9)(B))'' and inserting ''section 8.0(9))''.

SEC. 108. MANDATORY RESERVES AND SUBORDINATED PARTICIPATION INTERESTS ELIMINATED.

(a) GUARANTEE OF QUALIFIED LOANS.—Section 8.6 of the Farm Credit Act of 1971 (12 U.S.C. 2279aa–6) is amended by striking subsection (b).

(b) RESERVES AND SUBORDINATED PARTICIPATION INTERESTS.—Section 8.7 of the Farm Credit Act of 1971 (12 U.S.C. 2279aa–7) is repealed.

(c) CONFORMING AMENDMENTS.—

(1) Section 8.0(9)(B)(i) of the Farm Credit Act of 1971 (12 U.S.C. 2279aa(9)(B)(i)) is amended by striking ''8.7, 8.8,'' and inserting ''8.8''.

(2) Section 8.6(a)(2) of the Farm Credit Act of 1971 (12 U.S.C. 2279aa–6(a)(2)) is amended by striking ''subject to the provisions of subsection (b)''.

SEC. 109. STANDARDS REQUIRING DIVERSIFIED POOLS.

(a) IN GENERAL.—Section 8.6 of the Farm Credit Act of 1971 (12 U.S.C. 2279aa–6) (as amended by section 108) is amended—

(1) by striking subsection (c); and

(2) by redesignating subsections (d) through (g) as subsections (b) through (e), respectively.

(b) CONFORMING AMENDMENTS.—

(1) Section 8.0(9)(B)(i) of the Farm Credit Act of 1971 (12 U.S.C. 2279aa(9)(B)(i)) is amended by striking ''(f)'' and inserting ''(d)''.

(2) Section 8.13(a) of the Farm Credit Act of 1971 (12 U.S.C. 2279aa–13(a)) is amended by striking ''sections 8.6(b) and'' in each place it appears and inserting ''section''.

(3) Section 8.32(b)(1)(C) of the Farm Credit Act of 1971 (12 U.S.C. 2279bb–1(b)(1)(C)) is amended by striking ''under section 8.6(b)(2)''.

(4) Section 8.6(b) of the Farm Credit Act of 1971 (12 U.S.C. 2279aa–6(b)) (as redesignated by subsection (a)(2)) is amended—

(A) by striking paragraph (4) (as redesignated by section 107(2)(B)); and

(B) by redesignating paragraphs (5) and (6) (as redesignated by section 107(2)(B)) as paragraphs (4) and (5), respectively.

SEC. 110. SMALL FARMS.

Section 8.8(e) of the Farm Credit Act of 1971 (12 U.S.C. 2279aa–8(e)) is amended by adding at the end the following: ''The Board shall promote and encourage the inclusion of qualified loans for small farms and family farmers in the agricultural mortgage secondary market.''.

SEC. 111. DEFINITION OF AN AFFILIATE.

Section 8.11(e) of the Farm Credit Act of 1971 (21 U.S.C. 2279aa–11(e)) is amended—

(1) by striking ''a certified facility or''; and

(2) by striking ''paragraphs (3) and (7), respectively, of section 8.0'' and inserting ''section 8.0(7)''.

SEC. 112. STATE USURY LAWS SUPERSEDED.

Section 8.12 of the Farm Credit Act of 1971 (12 U.S.C. 2279aa–12) is amended by striking subsection (d) and inserting the following:

''(d) STATE USURY LAWS SUPERSEDED.—A provision of the Constitution or law of any State shall not apply to an agricultural loan made by an originator or a certified facility in accordance with this title for sale to the Corporation or to a certified facility for inclusion in a pool for which the Corporation has provided, or has committed to provide, a guarantee, if the loan, not later than 180 days after the date the loan was made, is sold to the Corporation or included in a pool for which the Corporation has provided a guarantee, if the provision—

''(1) limits the rate or amount of interest, discount points, finance charges, or other charges that may be charged, taken, received, or reserved by an agricultural lender or a certified facility; or

''(2) limits or prohibits a prepayment penalty (either fixed or declining), yield maintenance, or make-whole payment that may be charged, taken, or received by an agricultural lender or a certified facility in connection with the full or partial payment of the principal amount due on a loan by a borrower in advance of the scheduled date for the payment under the terms of the loan, otherwise known as a prepayment of the loan principal.''.

SEC. 113. EXTENSION OF CAPITAL TRANSITION PERIOD.

Section 8.32 of the Farm Credit Act of 1971 (12 U.S.C. 2279bb–1) is amended—

(1) in the first sentence of subsection (a), by striking ''Not later than the expiration of the 2-year period beginning on December 13, 1991,'' and inserting ''Not sooner than the expiration of the 3-year period beginning on the date of enactment of the Farm Credit System Reform Act of 1996,'';

(2) in the first sentence of subsection (b)(2), by striking ''5-year'' and inserting ''8-year''; and

(3) in subsection (d)—

(A) in the first sentence—

(i) by striking ''The regulations establishing'' and inserting the following:

''(1) IN GENERAL.—The regulations establishing''; and

(ii) by striking ''shall contain'' and inserting the following: ''shall—

''(A) be issued by the Director for public comment in the form of a notice of proposed rulemaking, to be first published after the expiration of the period referred to in subsection (a); and

''(B) contain''; and

(B) in the second sentence, by striking ''The regulations shall'' and inserting the following:

''(2) SPECIFICITY.—The regulations referred to in paragraph (1) shall''.

SEC. 114. MINIMUM CAPITAL LEVEL.

Section 8.33 of the Farm Credit Act of 1971 (12 U.S.C. 2279bb–2) is amended to read as follows:

''SEC. 8.33. MINIMUM CAPITAL LEVEL.

''(a) IN GENERAL.—Except as provided in subsection (b), for purposes of this subtitle, the minimum capital level for the Corporation shall be an amount of core capital equal to the sum of—

''(1) 2.75 percent of the aggregate on-balance sheet assets of the Corporation, as determined in accordance with generally accepted accounting principles; and

''(2) 0.75 percent of the aggregate off-balance sheet obligations of the Corporation, which, for the purposes of this subtitle, shall include—

''(A) the unpaid principal balance of outstanding securities that are guaranteed by the Corporation and backed by pools of qualified loans;

''(B) instruments that are issued or guaranteed by the Corporation and are substantially equivalent to instruments described in subparagraph (A); and

''(C) other off-balance sheet obligations of the Corporation.

''(b) TRANSITION PERIOD.—

''(1) IN GENERAL.—For purposes of this subtitle, the minimum capital level for the Corporation—

''(A) prior to January 1, 1997, shall be the amount of core capital equal to the sum of—

''(i) 0.45 percent of aggregate off-balance sheet obligations of the Corporation;

''(ii) 0.45 percent of designated on-balance sheet assets of the Corporation, as determined under paragraph (2); and

''(iii) 2.50 percent of on-balance sheet assets of the Corporation other than assets designated under paragraph (2);

''(B) during the 1-year period ending December 31, 1997, shall be the amount of core capital equal to the sum of—

''(i) 0.55 percent of aggregate off-balance sheet obligations of the Corporation;

''(ii) 1.20 percent of designated on-balance sheet assets of the Corporation, as determined under paragraph (2); and

''(iii) 2.55 percent of on-balance sheet assets of the Corporation other than assets designated under paragraph (2);

''(C) during the 1-year period ending December 31, 1998, shall be the amount of core capital equal to—

''(i) if the Corporation's core capital is not less than $25,000,000 on January 1, 1998, the sum of—

''(I) 0.65 percent of aggregate off-balance sheet obligations of the Corporation;

''(II) 1.95 percent of designated on-balance sheet assets of the Corporation, as determined under paragraph (2); and

''(III) 2.65 percent of on-balance sheet assets of the Corporation other than assets designated under paragraph (2); or

''(ii) if the Corporation's core capital is less than $25,000,000 on January 1, 1998, the amount determined under subsection (a); and

''(D) on and after January 1, 1999, shall be the amount determined under subsection (a).

''(2) DESIGNATED ON-BALANCE SHEET ASSETS.—For purposes of this subsection, the designated on-balance sheet assets of the Corporation shall be—

''(A) the aggregate on-balance sheet assets of the Corporation acquired under section 8.6(e); and

''(B) the aggregate amount of qualified loans purchased and held by the Corporation under section 8.3(c)(13).''.

SEC. 115. CRITICAL CAPITAL LEVEL.

Section 8.34 of the Farm Credit Act of 1971 (12 U.S.C. 2279bb–3) is amended to read as follows:

''SEC. 8.34. CRITICAL CAPITAL LEVEL.

''For purposes of this subtitle, the critical capital level for the Corporation shall be an amount of core capital equal to 50 percent of the total minimum capital amount determined under section 8.33.''.

SEC. 116. ENFORCEMENT LEVELS.

Section 8.35(e) of the Farm Credit Act of 1971 (12 U.S.C. 2279bb–4(e)) is amended by striking ''during the 30-month period beginning on the date of enactment of this section,'' and inserting ''during the period beginning on December 13, 1991, and ending on the effective date of the risk based capital regulation issued by the Director under section 8.32,''.

SEC. 117. RECAPITALIZATION OF THE CORPORATION.

Title VIII of the Farm Credit Act of 1971 (12 U.S.C. 2279aa et seq.) is amended by adding at the end the following:

''SEC. 8.38. RECAPITALIZATION OF THE CORPORATION.

''(a) MANDATORY RECAPITALIZATION.—The Corporation shall increase the core capital of the Corporation to an amount equal to or greater than $25,000,000, not later than the earlier of—

''(1) the date that is 2 years after the date of enactment of this section; or

''(2) the date that is 180 days after the end of the first calendar quarter that the aggregate on-balance sheet assets of the Corporation, plus the outstanding principal of the off-balance sheet obligations of the Corporation, equal or exceed $2,000,000,000.

''(b) RAISING CORE CAPITAL.—In carrying out this section, the Corporation may issue stock under section 8.4 and otherwise employ any recognized and legitimate means of raising core capital in the power of the Corporation under section 8.3.

''(c) LIMITATION ON GROWTH OF TOTAL ASSETS.—During the 2-year period beginning on the date of enactment of this section, the aggregate on-balance sheet assets of the Corporation plus the outstanding principal of the off-balance sheet obligations of the Corporation may not exceed $3,000,000,000 if the core capital of the Corporation is less than $25,000,000.

''(d) ENFORCEMENT.—If the Corporation fails to carry out subsection (a) by the date required under paragraph (1) or (2) of subsection (a), the Corporation may not purchase a new qualified loan or issue or guarantee a new loan-backed security until the core capital of the Corporation is increased to an amount equal to or greater than $25,000,000.''.

SEC. 118. LIQUIDATION OF THE FEDERAL AGRICULTURAL MORTGAGE CORPORATION.

Title VIII of the Farm Credit Act of 1971 (12 U.S.C. 2279aa et seq.) (as amended by section 117) is amended by adding at the end the following:

''Subtitle C—Receivership, Conservatorship, and Liquidation of the Federal Agricultural Mortgage Corporation

''SEC. 8.41. CONSERVATORSHIP; LIQUIDATION; RECEIVERSHIP.

''(a) VOLUNTARY LIQUIDATION.—The Corporation may voluntarily liquidate only with the consent of, and in accordance with a plan of liquidation approved by, the Farm Credit Administration Board.

''(b) INVOLUNTARY LIQUIDATION.—

''(1) IN GENERAL.—The Farm Credit Administration Board may appoint a conservator or receiver for the Corporation under the circumstances specified in section 4.12(b).

''(2) APPLICATION.—In applying section 4.12(b) to the Corporation under paragraph (1)—

''(A) the Corporation shall also be considered insolvent if the Corporation is unable to pay its debts as they fall due in the ordinary course of business;

''(B) a conservator may also be appointed for the Corporation if the authority of the Corporation to purchase qualified loans or issue or guarantee loan-backed securities is suspended; and

''(C) a receiver may also be appointed for the Corporation if—

''(i)(I) the authority of the Corporation to purchase qualified loans or issue or guarantee loan-backed securities is suspended; or

''(II) the Corporation is classified under section 8.35 as within level III or IV and the alternative actions available under subtitle B are not satisfactory; and

''(ii) the Farm Credit Administration determines that the appointment of a conservator would not be appropriate.

''(3) NO EFFECT ON SUPERVISORY ACTIONS.—The grounds for appointment of a conservator for the Corporation under this subsection shall be in addition to those in section 8.37.

''(c) APPOINTMENT OF CONSERVATOR OR RECEIVER.—

''(1) QUALIFICATIONS.—Notwithstanding section 4.12(b), if a conservator or receiver is appointed for the Corporation, the conservator or receiver shall be—

''(A) the Farm Credit Administration or any other governmental entity or employee, including the Farm Credit System Insurance Corporation; or

''(B) any person that—

''(i) has no claim against, or financial interest in, the Corporation or other basis for a conflict of interest as the conservator or receiver; and

''(ii) has the financial and management expertise necessary to direct the operations and affairs of the Corporation and, if necessary, to liquidate the Corporation.

''(2) COMPENSATION.—

''(A) IN GENERAL.—A conservator or receiver for the Corporation and professional personnel (other than a Federal employee) employed to represent or assist the conservator or receiver may be compensated for activities conducted as, or for, a conservator or receiver.

''(B) LIMIT ON COMPENSATION.—Compensation may not be provided in amounts greater than the compensation paid to employees of the Federal Government for similar services, except that the Farm Credit Administration may provide for compensation at higher rates that are not in excess of rates prevailing in the private sector if the Farm Credit Administration determines that compensation at higher rates is necessary in order to recruit and retain competent personnel.

''(C) CONTRACTUAL ARRANGEMENTS.—The conservator or receiver may contract with any governmental entity, including the Farm Credit System Insurance Corporation, to make personnel, services, and facilities of the entity available to the conservator or receiver on such terms and compensation arrangements as shall be mutually agreed, and each entity may provide the same to the conservator or receiver.

''(3) EXPENSES.—A valid claim for expenses of the conservatorship or receivership (including compensation under paragraph (2)) and a valid claim with respect to a loan made under subsection (f) shall—

''(A) be paid by the conservator or receiver from funds of the Corporation before any other valid claim against the Corporation; and

''(B) may be secured by a lien, on such property of the Corporation as the conservator or receiver may determine, that shall have priority over any other lien.

''(4) LIABILITY.—If the conservator or receiver for the Corporation is not a Federal entity, or an officer or employee of the Federal Government, the conservator or receiver shall not be personally liable for damages in tort or otherwise for an act or omission performed pursuant to and in the course of the conservatorship or receivership, unless the act or omission constitutes gross negligence or any form of intentional tortious conduct or criminal conduct.

''(5) INDEMNIFICATION.—The Farm Credit Administration may allow indemnification of the conservator or receiver from the assets of the conservatorship or receivership on such terms as the Farm Credit Administration considers appropriate.

''(d) JUDICIAL REVIEW OF APPOINTMENT.—

''(1) IN GENERAL.—Notwithstanding subsection (i)(1), not later than 30 days after a conservator or receiver is appointed under subsection (b), the Corporation may bring an action in the United States District Court for the District of Columbia for an order requiring the Farm Credit Administration Board to remove the conservator or receiver. The court shall, on the merits, dismiss the action or direct the Farm Credit Administration Board to remove the conservator or receiver.

''(2) STAY OF OTHER ACTIONS.—On the commencement of an action under paragraph (1), any court having jurisdiction of any other action or enforcement proceeding authorized under this subtitle to which the Corporation is a party shall stay the action or proceeding during the pendency of the action for removal of the conservator or receiver.

''(e) GENERAL POWERS OF CONSERVATOR OR RECEIVER.—The conservator or receiver for the Corporation shall have powers comparable to the powers available to a conservator or receiver appointed pursuant to section 4.12(b).

''(f) BORROWINGS FOR WORKING CAPITAL.—

''(1) IN GENERAL.—If the conservator or receiver of the Corporation determines that it is likely that there will be insufficient funds to pay the ongoing administrative expenses of the conservatorship or receivership or that there will be insufficient liquidity to fund maturing obligations of the conservatorship or receivership, the conservator or receiver may borrow funds in such amounts, from such sources, and at such rates of interest as the conservator or receiver considers necessary or appropriate to meet the administrative expenses or liquidity needs of the conservatorship or receivership.

''(2) WORKING CAPITAL FROM FARM CREDIT BANKS.—A Farm Credit bank may loan funds to the conservator or receiver for a loan authorized under paragraph (1) or, in the event of receivership, a Farm Credit bank may purchase assets of the Corporation.

''(g) AGREEMENTS AGAINST INTERESTS OF CONSERVATOR OR RECEIVER.—No agreement that tends to diminish or defeat the right, title, or interest of the conservator or receiver for the Corporation in any asset acquired by the conservator or receiver as conservator or receiver for the Corporation shall be valid against the conservator or receiver unless the agreement—

''(1) is in writing;

''(2) is executed by the Corporation and any person claiming an adverse interest under the agreement, including the obligor, contemporaneously with the acquisition of the asset by the Corporation;

''(3) is approved by the Board or an appropriate committee of the Board, which approval shall be reflected in the minutes of the Board or committee; and

''(4) has been, continuously, from the time of the agreement's execution, an official record of the Corporation.

''(h) REPORT TO THE CONGRESS.—On a determination by the receiver for the Corporation that there are insufficient assets of the receivership to pay all valid claims against the receivership, the receiver shall submit to the Secretary of the Treasury, the Committee on Agriculture of the House of Representatives, and the Committee on Agriculture, Nutrition, and Forestry of the Senate a report on the financial condition of the receivership.

''(i) TERMINATION OF AUTHORITIES.—

''(1) CORPORATION.—The charter of the Corporation shall be canceled, and the authority provided to the Corporation by this title shall terminate, on such date as the Farm Credit Administration Board determines is appropriate following the placement of the Corporation in receivership, but not later than the conclusion of the receivership and discharge of the receiver.

''(2) OVERSIGHT.—The Office of Secondary Market Oversight established under section 8.11 shall be abolished, and section 8.11(a) and subtitle B shall have no force or effect, on such date as the Farm Credit Administration Board determines is appropriate following the placement of the Corporation in receivership, but not later than the conclusion of the receivership and discharge of the receiver.''.

TITLE II—REGULATORY RELIEF

SEC. 201. COMPENSATION OF ASSOCIATION PERSONNEL.

Section 1.5(13) of the Farm Credit Act of 1971 (12 U.S.C. 2013(13)) is amended by striking '', and the appointment and compensation of the chief executive officer thereof,''.

SEC. 202. USE OF PRIVATE MORTGAGE INSURANCE.

(a) IN GENERAL.—Section 1.10(a)(1) of the Farm Credit Act of 1971 (12 U.S.C. 2018(a)(1)) is amended by adding at the end the following:

''(D) PRIVATE MORTGAGE INSURANCE.—A loan on which private mortgage insurance is obtained may exceed 85 percent of the appraised value of the real estate security to the extent that the loan amount in excess of 85 percent is covered by the insurance.''.

(b) CONFORMING AMENDMENT.—Section 1.10(a)(1)(A) of the Farm Credit Act of 1971 (12 U.S.C. 2018(a)(1)(A)) is amended by striking ''paragraphs (2) and (3)'' and inserting ''subparagraphs (B), (C), and (D)''.

SEC. 203. REMOVAL OF CERTAIN BORROWER REPORTING REQUIREMENT.

Section 1.10(a) of the Farm Credit Act of 1971 (12 U.S.C. 2018(a)) is amended by striking paragraph (5).

SEC. 204. REFORM OF REGULATORY LIMITATIONS ON DIVIDEND, MEMBER BUSINESS, AND VOTING PRACTICES OF ELIGIBLE FARMER-OWNED COOPERATIVES.

(a) IN GENERAL.—Section 3.8(a) of the Farm Credit Act of 1971 (12 U.S.C. 2129(a)) is amended by adding at the end the following: ''Any such association that has received a loan from a bank for cooperatives shall, without regard to the requirements of paragraphs (1) through (4), continue to be eligible for so long as more than 50 percent (or such higher percentage as is established by the bank board) of the voting control of the association is held by farmers, producers or harvesters of aquatic products, or eligible cooperative associations.''.

(b) CONFORMING AMENDMENT.—Section 3.8(b)(1)(D) of the Farm Credit Act of 1971 (12 U.S.C. 2129(b)(1)(D)) is amended by striking ''and (4) of subsection (a)'' and inserting ''and (4), or under the last sentence, of subsection (a)''.

SEC. 205. REMOVAL OF FEDERAL GOVERNMENT CERTIFICATION REQUIREMENT FOR CERTAIN PRIVATE SECTOR FINANCINGS.

Section 3.8(b)(1)(A) of the Farm Credit Act of 1971 (12 U.S.C. 2129(b)(1)(A)) is amended—

(1) by striking ''have been certified by the Administrator of the Rural Electrification Administration to be eligible for such'' and inserting ''are eligible under the Rural Electrification Act of 1936 (7 U.S.C. 901 et seq.) for''; and

(2) by striking ''loan guarantee, and'' and inserting ''loan guarantee from the Administration or the Bank (or a successor of the Administration or the Bank), and''.

SEC. 206. BORROWER STOCK.

Section 4.3A of the Farm Credit Act of 1971 (12 U.S.C. 2154a) is amended—

(1) by redesignating subsections (f) and (g) as subsections (g) and (h), respectively; and

(2) by inserting after subsection (e) the following:

''(f) LOANS DESIGNATED FOR SALE OR SOLD INTO THE SECONDARY MARKET.—

''(1) IN GENERAL.—Subject to paragraph (2) and notwithstanding any other provision of this section, the bylaws adopted by a bank or association under subsection (b) may provide—

''(A) in the case of a loan made on or after the date of enactment of this paragraph that is designated, at the time the loan is made, for sale into a secondary market, that no voting stock or participation certificate purchase requirement shall apply to the borrower for the loan; and

''(B) in the case of a loan made before the date of enactment of this paragraph that is sold into a secondary market, that all outstanding voting stock or participation certificates held by the borrower with respect to the loan shall, subject to subsection (d)(1), be retired.

''(2) APPLICABILITY.—Notwithstanding any other provision of this section, in the case of a loan sold to a secondary market under title VIII, paragraph (1) shall apply regardless of whether the bank or association retains a subordinated participation interest in a loan or pool of loans or contributes to a cash reserve.

''(3) EXCEPTION.—

''(A) IN GENERAL.—Subject to subparagraph (B) and notwithstanding any other provision of this section, if a loan designated for sale under paragraph (1)(A) is not sold into a secondary market during the 180-day period that begins on the date of the designation, the voting stock or participation certificate purchase requirement that would otherwise apply to the loan in the absence of a bylaw provision described in paragraph (1)(A) shall be effective.

''(B) RETIREMENT.—The bylaws adopted by a bank or association under subsection (b) may provide that if a loan described in subparagraph (A) is sold into a secondary market after the end of the 180-day period described in the subparagraph, all outstanding voting stock or participation certificates held by the borrower with respect to the loan shall, subject to subsection (d)(1), be retired.''.

SEC. 207. DISCLOSURE RELATING TO ADJUSTABLE RATE LOANS.

Section 4.13(a)(4) of the Farm Credit Act of 1971 (12 U.S.C. 2199(a)(4)) is amended by inserting before the semicolon at the end the following: '', and notice to the borrower of a change in the interest rate applicable to the loan of the borrower may be made within a reasonable time after the effective date of an increase or decrease in the interest rate''.

SEC. 208. BORROWERS' RIGHTS.

(a) DEFINITION OF LOAN.—Section 4.14A(a)(5) of the Farm Credit Act of 1971 (12 U.S.C. 2202a(a)(5)) is amended—

(1) by striking ''(5) LOAN.—The'' and inserting the following:

''(5) LOAN.—

''(A) IN GENERAL.—Subject to subparagraph (B), the''; and

(2) by adding at the end the following:

''(B) EXCLUSION FOR LOANS DESIGNATED FOR SALE INTO SECONDARY MARKET.—

''(i) IN GENERAL.—Except as provided in clause (ii), the term 'loan' does not include a loan made on or after the date of enactment of this subparagraph that is designated, at the time the loan is made, for sale into a secondary market.

''(ii) UNSOLD LOANS.—

''(I) IN GENERAL.—Except as provided in subclause (II), if a loan designated for sale under clause (i) is not sold into a secondary market during the 180-day period that begins on the date of the designation, the provisions of this section and sections 4.14, 4.14B, 4.14C, 4.14D, and 4.36 that would otherwise apply to the loan in the absence of the exclusion described in clause (i) shall become effective with respect to the loan.

''(II) LATER SALE.—If a loan described in subclause (I) is sold into a secondary market after the end of the 180-day period described in subclause (I), subclause (I) shall not apply with respect to the loan beginning on the date of the sale.''.

(b) BORROWERS' RIGHTS FOR POOLED LOANS.—The first sentence of section 8.9(b) of the Farm Credit Act of 1971 (12 U.S.C. 2279aa–9(b)) is amended by inserting ''(as defined in section 4.14A(a)(5))'' after ''application for a loan''.

SEC. 209. FORMATION OF ADMINISTRATIVE SERVICE ENTITIES.

Part E of title IV of the Farm Credit Act of 1971 is amended by inserting after section 4.28 (12 U.S.C. 2214) the following:

''SEC. 4.28A. DEFINITION OF BANK.

''In this part, the term 'bank' includes each association operating under title II.''.

SEC. 210. JOINT MANAGEMENT AGREEMENTS.

The first sentence of section 5.17(a)(2)(A) of the Farm Credit Act of 1971 (12 U.S.C. 2252(a)(2)(A)) is amended by striking ''or management agreements''.

SEC. 211. DISSEMINATION OF QUARTERLY REPORTS.

Section 5.17(a)(8) of the Farm Credit Act of 1971 (12 U.S.C. 2252(a)(8)) is amended by inserting after ''except that'' the following: ''the requirements of the Farm Credit Administration governing the dissemination to stockholders of quarterly reports of System institutions may not be more burdensome or costly than the requirements applicable to national banks, and''.

SEC. 212. REGULATORY REVIEW.

(a) FINDINGS.—Congress finds that—

(1) the Farm Credit Administration, in the role of the Administration as an arms-length safety and soundness regulator, has made considerable progress in reducing the regulatory burden on Farm Credit System institutions;

(2) the efforts of the Farm Credit Administration described in paragraph (1) have resulted in cost savings for Farm Credit System institutions; and

(3) the cost savings described in paragraph (2) ultimately benefit the farmers, ranchers, agricultural cooperatives, and rural residents of the United States.

(b) CONTINUATION OF REGULATORY REVIEW.—The Farm Credit Administration shall continue the comprehensive review of regulations governing the Farm Credit System to identify and eliminate, consistent with law, safety, and soundness, all regulations that are unnecessary, unduly burdensome or costly, or not based on law.

SEC. 213. EXAMINATION OF FARM CREDIT SYSTEM INSTITUTIONS.

The first sentence of section 5.19(a) of the Farm Credit Act of 1971 (12 U.S.C. 2254(a)) is amended by striking ''each year'' and inserting ''during each 18-month period''.

SEC. 214. CONSERVATORSHIPS AND RECEIVERSHIPS.

(a) DEFINITIONS.—Section 5.51 of the Farm Credit Act of 1971 (12 U.S.C. 2277a) is amended—

(1) by striking paragraph (5); and

(2) by redesignating paragraph (6) as paragraph (5).

(b) GENERAL CORPORATE POWERS.—Section 5.58 of the Farm Credit Act of 1971 (12 U.S.C. 2277a–7) is amended by striking paragraph (9) and inserting the following:

''(9) CONSERVATOR OR RECEIVER.—The Corporation may act as a conservator or receiver.''.

SEC. 215. FARM CREDIT INSURANCE FUND OPERATIONS.

(a) ADJUSTMENT OF PREMIUMS.—

(1) IN GENERAL.—Section 5.55(a) of the Farm Credit Act of 1971 (12 U.S.C. 2277a–4(a)) is amended—

(A) in paragraph (1), by striking ''Until the aggregate of amounts in the Farm Credit Insurance Fund exceeds the secure base amount, the annual premium due from any insured System bank for any calendar year'' and inserting the following: ''If at the end of any calendar year the aggregate of amounts in the Farm Credit Insurance Fund does not exceed the secure base amount, subject to paragraph (2), the annual premium due from any insured System bank for the calendar year'';

(B) by redesignating paragraph (2) as paragraph (3); and

(C) by inserting after paragraph (1) the following:

''(2) REDUCED PREMIUMS.—The Corporation, in the sole discretion of the Corporation, may reduce by a percentage uniformly applied to all insured System banks the annual premium due from each insured System bank during any calendar year, as determined under paragraph (1).''.

(2) CONFORMING AMENDMENTS.—

(A) Section 5.55(b) of the Farm Credit Act of 1971 (12 U.S.C. 2277a–4(b)) is amended—

(i) by striking ''Insurance Fund'' each place it appears and inserting ''Farm Credit Insurance Fund'';

(ii) by striking ''for the following calendar year''; and

(iii) by striking ''subsection (a)'' and inserting ''subsection (a)(1)''.

(B) Section 5.56(a) of the Farm Credit Act of 1971 (12 U.S.C. 2277a–5(a)) is amended by striking ''section 5.55(a)(2)'' each place it appears in paragraphs (2) and (3) and inserting ''section 5.55(a)(3)''.

(b) ALLOCATION TO INSURED SYSTEM BANKS AND OTHER SYSTEM INSTITUTIONS OF EXCESS AMOUNTS IN THE FARM CREDIT INSURANCE FUND.—Section 5.55 of the Farm Credit Act of 1971 (12 U.S.C. 2277a–4) is amended by adding at the end the following:

''(e) ALLOCATION TO SYSTEM INSTITUTIONS OF EXCESS RESERVES.—

''(1) ESTABLISHMENT OF ALLOCATED INSURANCE RESERVES ACCOUNTS.—The Corporation shall establish an Allocated Insurance Reserves Account in the Farm Credit Insurance Fund—

''(A) for each insured System bank; and

''(B) subject to paragraph (6)(C), for all holders, in the aggregate, of Financial Assistance Corporation stock.

''(2) TREATMENT.—Amounts in any Allocated Insurance Reserves Account shall be considered to be part of the Farm Credit Insurance Fund.

''(3) ANNUAL ALLOCATIONS.—If, at the end of any calendar year, the aggregate of the amounts in the Farm Credit Insurance Fund exceeds the average secure base amount for the calendar year (as calculated on an average daily balance basis), the Corporation shall allocate to the Allocated Insurance Reserves Accounts the excess amount less the amount that the Corporation, in its sole discretion, determines to be the sum of the estimated operating expenses and estimated insurance obligations of the Corporation for the immediately succeeding calendar year.

''(4) ALLOCATION FORMULA.—From the total amount required to be allocated at the end of a calendar year under paragraph (3)—

''(A) 10 percent of the total amount shall be credited to the Allocated Insurance Reserves Account established under paragraph (1)(B), subject to paragraph (6)(C); and

''(B) there shall be credited to the Allocated Insurance Reserves Account of each insured System bank an amount that bears the

same ratio to the total amount (less any amount credited under subparagraph (A)) as the average principal outstanding for the 3-year period ending on the end of the calendar year on loans made by the bank that are in accrual status bears to the average principal outstanding for the 3-year period ending on the end of the calendar year on loans made by all insured System banks that are in accrual status (excluding, in each case, the guaranteed portions of government-guaranteed loans described in subsection (a)(1)(C)).

''(5) USE OF FUNDS IN ALLOCATED INSURANCE RESERVES ACCOUNTS.—To the extent that the sum of the operating expenses of the Corporation and the insurance obligations of the Corporation for a calendar year exceeds the sum of operating expenses and insurance obligations determined under paragraph (3) for the calendar year, the Corporation shall cover the expenses and obligations by—

''(A) reducing each Allocated Insurance Reserves Account by the same proportion; and

''(B) expending the amounts obtained under subparagraph (A) before expending other amounts in the Fund.

''(6) OTHER DISPOSITION OF ACCOUNT FUNDS.—

''(A) IN GENERAL.—As soon as practicable during each calendar year beginning more than 8 years after the date on which the aggregate of the amounts in the Farm Credit Insurance Fund exceeds the secure base amount, but not earlier than January 1, 2005, the Corporation may—

''(i) subject to subparagraphs (D) and (F), pay to each insured System bank, in a manner determined by the Corporation, an amount equal to the lesser of—

''(I) 20 percent of the balance in the insured System bank's Allocated Insurance Reserves Account as of the preceding December 31; or

''(II) 20 percent of the balance in the bank's Allocated Insurance Reserves Account on the date of the payment; and

''(ii) subject to subparagraphs (C), (E), and (F), pay to each System bank and association holding Financial Assistance Corporation stock a proportionate share, determined by dividing the number of shares of Financial Assistance Corporation stock held by the institution by the total number of shares of Financial Assistance Corporation stock outstanding, of the lesser of—

''(I) 20 percent of the balance in the Allocated Insurance Reserves Account established under paragraph (1)(B) as of the preceding December 31; or

''(II) 20 percent of the balance in the Allocated Insurance Reserves Account established under paragraph (1)(B) on the date of the payment.

''(B) AUTHORITY TO ELIMINATE OR REDUCE PAYMENTS.—The Corporation may eliminate or reduce payments during a calendar year under subparagraph (A) if the Corporation determines, in its sole discretion, that the payments, or other circumstances that might require use of the Farm Credit Insurance Fund, could cause the amount in the Farm Credit Insurance Fund during the calendar year to be less than the secure base amount.

''(C) REIMBURSEMENT FOR FINANCIAL ASSISTANCE CORPORATION STOCK.—

''(i) SUFFICIENT FUNDING.—Notwithstanding paragraph (4)(A), on provision by the Corporation for the accumulation in the Account established under paragraph (1) of funds in an amount equal to $56,000,000 (in addition to the amounts described in subparagraph (F)(ii)), the Corporation shall not allocate any further funds to the Account except to replenish the Account if funds are diminished below $56,000,000 by the Corporation under paragraph (5).

''(ii) WIND DOWN AND TERMINATION.—

''(I) FINAL DISBURSEMENTS.—On disbursement of $53,000,000 (in addition to the amounts described in subparagraph (F)(ii)) from the Allocated Insurance Reserves Account, the Corporation shall disburse the remaining amounts in the Account, as determined under subparagraph (A)(ii), without regard to the percentage limitations in subclauses (I) and (II) of subparagraph (A)(ii).

''(II) TERMINATION OF ACCOUNT.—On disbursement of $56,000,000 (in addition to the amounts described in subparagraph (F)(ii)) from the Allocated Insurance Reserves Account, the Corporation shall close the Account established under paragraph (1)(B) and transfer any remaining funds in the Account to the remaining Allocated Insurance Reserves Accounts in accordance with paragraph (4)(B) for the calendar year in which the transfer occurs.

''(D) DISTRIBUTION OF PAYMENTS RECEIVED.—Not later than 60 days after receipt of a payment made under subparagraph (A)(i), each insured System bank, in consultation with affiliated associations of the insured System bank, and taking into account the direct or indirect payment of insurance premiums by the associations, shall develop and implement an equitable plan to distribute payments received under subparagraph (A)(i) among the bank and associations of the bank.

''(E) EXCEPTION FOR PREVIOUSLY REIMBURSED ASSOCIATIONS.—For purposes of subparagraph (A)(ii), in any Farm Credit district in which the funding bank has reimbursed 1 or more affiliated associations of the bank for the previously unreimbursed portion of the Financial Assistance Corporation stock held by the associations, the funding bank shall be deemed to be the holder of the shares of Financial Assistance Corporation stock for which the funding bank has provided the reimbursement.

''(F) INITIAL PAYMENT.—Notwithstanding subparagraph (A), the initial payment made to each payee under subparagraph (A) shall be in such amount determined by the Corporation to be equal to the sum of—

''(i) the total of the amounts that would have been paid if payments under subparagraph (A) had been authorized to begin, under the same terms and conditions, in the first calendar year beginning more than 5 years after the date on which the aggregate of the amounts in the Farm Credit Insurance Fund exceeds the secure base amount and to continue through the 2 immediately subsequent years;

''(ii) interest earned on any amounts that would have been paid as described in clause (i) from the date on which the payments would have been paid as described in clause (i); and

''(iii) the payment to be made in the initial year described in subparagraph (A), based on the amount in each account after subtracting the amounts to be paid under clauses (i) and (ii).''

(c) TECHNICAL AMENDMENTS.—Section 5.55(d) of the Farm Credit Act of 1971 (12 U.S.C. 2277a–4(d)) is amended—

(1) in the matter preceding paragraph (1)—

(A) by striking ''subsections (a) and (c)'' and inserting ''subsections (a), (c), and (e)''; and

(B) by striking ''a Farm Credit Bank'' and inserting ''an insured System bank''; and

(2) in paragraphs (1), (2), and (3), by striking ''Farm Credit Bank'' each place it appears and inserting ''insured System bank''.

SEC. 216. EXAMINATIONS BY THE FARM CREDIT SYSTEM INSURANCE CORPORATION.

Section 5.59(b)(1)(A) of the Farm Credit Act of 1971 (12 U.S.C. 2277a–8(b)(1)(A)) is amended by adding at the end the following: ''Notwithstanding any other provision of this Act, on cancellation of the charter of a System institution, the Corporation shall have authority to examine the system institution in receivership. An examination shall be performed at such intervals as the Corporation shall determine.''.

SEC. 217. POWERS WITH RESPECT TO TROUBLED INSURED SYSTEM BANKS.

(a) LEAST-COST RESOLUTION.—Section 5.61(a)(3) of the Farm Credit Act of 1971 (12 U.S.C. 2277a–10(a)) is amended—

(1) by redesignating subparagraph (B) as subparagraph (F); and

(2) by striking subparagraph (A) and inserting the following:

''(A) LEAST-COST RESOLUTION.—Assistance may not be provided to an insured System bank under this subsection unless the means of providing the assistance is the least costly means of providing the assistance by the Farm Credit Insurance Fund of all possible alternatives available to the Corporation, including liquidation of the bank (including paying the insured obligations issued on behalf of the bank). Before making a least-cost determination under this subparagraph, the Corporation shall accord such other insured System banks as the Corporation determines to be appropriate the opportunity to submit information relating to the determination.

''(B) DETERMINING LEAST COSTLY APPROACH.—In determining the least costly alternative under subparagraph (A), the Corporation shall—

''(i) evaluate alternatives on a present-value basis, using a realistic discount rate;

''(ii) document the evaluation and the assumptions on which the evaluation is based, including any assumptions with regard to interest rates, asset recovery rates, asset holding costs, and payment of contingent liabilities; and

''(iii) retain the documentation for not less than 5 years.

''(C) TIME OF DETERMINATION.—

''(i) GENERAL RULE.—For purposes of this subsection, the determination of the costs of providing any assistance under any provision of this section with respect to any insured System bank shall be made as of the date on which the Corporation makes the determination to provide the assistance to the institution under this section.

''(ii) RULE FOR LIQUIDATIONS.—For purposes of this subsection, the determination of the costs of liquidation of any insured System bank shall be made as of the earliest of—

''(I) the date on which a conservator is appointed for the insured System bank;

''(II) the date on which a receiver is appointed for the insured System bank; or

''(III) the date on which the Corporation makes any determination to provide any assistance under this section with respect to the insured System bank.

''(D) RULE FOR STAND-ALONE ASSISTANCE.—Before providing any assistance under paragraph (1), the Corporation shall evaluate the adequacy of managerial resources of the insured System bank. The continued service of any director or senior ranking officer who serves in a policymaking role for the assisted insured System bank, as determined by the Corporation, shall be subject to approval by the Corporation as a condition of assistance.

''(E) DISCRETIONARY DETERMINATIONS.—Any determination that the Corporation makes under this paragraph shall be in the sole discretion of the Corporation.''.

(b) CONFORMING AMENDMENTS.—Section 5.61(a) of the Farm Credit Act of 1971 (12 U.S.C. 2277a–10(a)) is amended—

(1) in paragraph (1) by striking ''IN GENERAL.—'' and inserting ''STAND-ALONE ASSISTANCE.—''; and

(2) in paragraph (2)—

(A) by striking ''ENUMERATED POWERS.—'' and inserting ''FACILITATION OF MERGERS OR CONSOLIDATION.—''; and

(B) in subparagraph (A) by striking ''FACILITATION OF MERGERS OR CONSOLIDATION.—'' and inserting ''IN GENERAL.—''.

SEC. 218. OVERSIGHT AND REGULATORY ACTIONS BY THE FARM CREDIT SYSTEM INSURANCE CORPORATION.

The Farm Credit Act of 1971 is amended by inserting after section 5.61 (12 U.S.C. 2279a–10) the following:

''SEC. 5.61A. OVERSIGHT ACTIONS BY THE CORPORATION.

''(a) DEFINITIONS.—In this section, the term 'institution' means—

''(1) an insured System bank; and

''(2) a production credit association or other association making loans under section 7.6 with a direct loan payable to the funding bank of the association that comprises 20 percent or more of the funding bank's total loan volume net of nonaccrual loans.

''(b) CONSULTATION REGARDING PARTICIPATION OF UNDERCAPITALIZED BANKS IN ISSUANCE OF INSURED OBLIGATIONS.—The Farm Credit Administration shall consult with the Corporation prior to approving an insured obligation that is to be issued by or on behalf of, or participated in by, any insured System bank that fails to meet the minimum level for any capital requirement established by the Farm Credit Administration for the bank.

''(c) CONSULTATION REGARDING APPLICATIONS FOR MERGERS AND RESTRUCTURINGS.—

''(1) CORPORATION TO RECEIVE COPY OF TRANSACTION APPLICATIONS.—On receiving an application for a merger or restructuring of an institution, the Farm Credit Administration shall forward a copy of the application to the Corporation.

''(2) CONSULTATION REQUIRED.—If the proposed merger or restructuring involves an institution that fails to meet the minimum level for any capital requirement established by the Farm Credit Administration applicable to the institution, the Farm Credit Administration shall allow 30 days within which the Corporation may submit the views and recommendations of the Corporation, including any conditions for approval. In determining whether to approve or disapprove any proposed merger or restructuring, the Farm Credit Administration shall give due consideration to the views and recommendations of the Corporation.

''SEC. 5.61B. AUTHORITY TO REGULATE GOLDEN PARACHUTE AND INDEMNIFICATION PAYMENTS.

''(a) DEFINITIONS.—In this section:

''(1) GOLDEN PARACHUTE PAYMENT.—The term 'golden parachute payment'—

''(A) means a payment (or any agreement to make a payment) in the nature of compensation by any Farm Credit System institution (including the Federal Agricultural Mortgage Corporation and any conservator or receiver for the Federal Agricultural Mortgage Corporation) for the benefit of any institution-related party under an obligation of the institution that—

''(i) is contingent on the termination of the party's relationship with the institution; and

''(ii) is received on or after the date on which—

''(I) the institution is insolvent;

''(II) a conservator or receiver is appointed for the institution;

''(III) the institution has been assigned by the Farm Credit Administration a composite CAMEL rating of 4 or 5 under the Farm Credit Administration Rating System, or an equivalent rating; or

''(IV) the Corporation otherwise determines that the institution is in a troubled condition (as defined in regulations issued by the Corporation); and

''(B) includes a payment that would be a golden parachute payment but for the fact that the payment was made before the date referred to in subparagraph (A)(ii) if the payment was made in contemplation of the occurrence of an event described in any subclause of subparagraph (A); but

''(C) does not include—

''(i) a payment made under a retirement plan that is qualified (or is intended to be qualified) under section 401 of the Internal Revenue Code of 1986 or other nondiscriminatory benefit plan;

''(ii) a payment made under a bona fide supplemental executive retirement plan, deferred compensation plan, or other arrangement that the Corporation determines, by regulation or order, to be permissible; or

''(iii) a payment made by reason of the death or disability of an institution-related party.

''(2) INDEMNIFICATION PAYMENT.—The term 'indemnification payment' means a payment (or any agreement to make a payment) by any Farm Credit System institution for the benefit of any person who is or was an institution-related party, to pay or reimburse the person for any liability or legal expense with regard to any administrative proceeding or civil action instituted by the Farm Credit Administration that results in a final order under which the person—

''(A) is assessed a civil money penalty; or

''(B) is removed or prohibited from participating in the conduct of the affairs of the institution.

''(3) INSTITUTION-RELATED PARTY.—The term 'institution-related party' means—

''(A) a director, officer, employee, or agent for a Farm Credit System institution;

''(B) a stockholder (other than another Farm Credit System institution), consultant, joint venture partner, or any other person determined by the Farm Credit Administration to be a participant in the conduct of the affairs of a Farm Credit System institution; and

''(C) an independent contractor (including any attorney, appraiser, or accountant) that knowingly or recklessly participates in any violation of any law or regulation, any breach of fiduciary duty, or any unsafe or unsound practice that caused or is likely to cause more than a minimal financial loss to, or a significant adverse effect on, the Farm Credit System institution.

''(4) LIABILITY OR LEGAL EXPENSE.—The term 'liability or legal expense' means—

''(A) a legal or other professional expense incurred in connection with any claim, proceeding, or action;

''(B) the amount of, and any cost incurred in connection with, any settlement of any claim, proceeding, or action; and

''(C) the amount of, and any cost incurred in connection with, any judgment or penalty imposed with respect to any claim, proceeding, or action.

''(5) PAYMENT.—The term 'payment' means—

''(A) a direct or indirect transfer of any funds or any asset; and

''(B) any segregation of any funds or assets for the purpose of making, or under an agreement to make, any payment after the date on which the funds or assets are segregated, without regard to whether the obligation to make the payment is contingent on—

''(i) the determination, after that date, of the liability for the payment of the amount; or

''(ii) the liquidation, after that date, of the amount of the payment.

''(b) PROHIBITION.—The Corporation may prohibit or limit, by regulation or order, any golden parachute payment or indemnification payment by a Farm Credit System institution (including the Federal Agricultural Mortgage Corporation) in troubled condition (as defined in regulations issued by the Corporation).

''(c) FACTORS TO BE TAKEN INTO ACCOUNT.—The Corporation shall prescribe, by regulation, the factors to be considered by the Corporation in taking any action under subsection (b). The factors may include—

''(1) whether there is a reasonable basis to believe that an institution-related party has committed any fraudulent act or omission, breach of trust or fiduciary duty, or insider abuse with regard to the Farm Credit System institution involved that has had a material effect on the financial condition of the institution;

''(2) whether there is a reasonable basis to believe that the institution-related party is substantially responsible for the insolvency of the Farm Credit System institution, the appointment of a conservator or receiver for the institution, or the institution's troubled condition (as defined in regulations prescribed by the Corporation);

''(3) whether there is a reasonable basis to believe that the institution-related party has materially violated any applicable law or regulation that has had a material effect on the financial condition of the institution;

''(4) whether there is a reasonable basis to believe that the institution-related party has violated or conspired to violate—

''(A) section 215, 657, 1006, 1014, or 1344 of title 18, United States Code; or

''(B) section 1341 or 1343 of title 18, United States Code, affecting a Farm Credit System institution;

''(5) whether the institution-related party was in a position of managerial or fiduciary responsibility; and

''(6) the length of time that the party was related to the Farm Credit System institution and the degree to which—

''(A) the payment reasonably reflects compensation earned over the period of employment; and

''(B) the compensation represents a reasonable payment for services rendered.

''(d) CERTAIN PAYMENTS PROHIBITED.—No Farm Credit System institution may prepay the salary or any liability or legal expense of any institution-related party if the payment is made—

''(1) in contemplation of the insolvency of the institution or after the commission of an act of insolvency; and

''(2) with a view to, or with the result of—

''(A) preventing the proper application of the assets of the institution to creditors; or

''(B) preferring 1 creditor over another creditor.

''(e) RULE OF CONSTRUCTION.—Nothing in this section—

''(1) prohibits any Farm Credit System institution from purchasing any commercial insurance policy or fidelity bond, so long as the insurance policy or bond does not cover any legal or liability expense of an institution described in subsection (a)(2); or

''(2) limits the powers, functions, or responsibilities of the Farm Credit Administration.''.

SEC. 219. FARM CREDIT SYSTEM INSURANCE CORPORATION BOARD OF DIRECTORS.

Section 201 of the Farm Credit Banks and Associations Safety and Soundness Act of 1992 (106 Stat. 4104) is repealed.

SEC. 220. INTEREST RATE REDUCTION PROGRAM.

Section 351(a) of the Consolidated Farm and Rural Development Act (7 U.S.C. 1999) is amended—

(A) by striking ''SEC. 351. (a) The'' and inserting the following:

''SEC. 351. INTEREST RATE REDUCTION PROGRAM.

''(a) ESTABLISHMENT OF PROGRAM.—

''(1) IN GENERAL.—The''; and

(B) by adding at the end the following:

''(2) TERMINATION OF AUTHORITY.—The authority provided by this subsection shall terminate on September 30, 2002.''.

SEC. 221. LIABILITY FOR MAKING CRIMINAL REFERRALS.

(a) IN GENERAL.—Any institution of the Farm Credit System, or any director, officer, employee, or agent of a Farm Credit System institution, that discloses to a Government authority information proffered in good faith that may be relevant to a possible violation of any law or regulation shall not be liable to any person under any law of the United States or any State—

(1) for the disclosure; or

(2) for any failure to notify the person involved in the possible violation.

(b) NO PROHIBITION ON DISCLOSURE.—Any institution of the Farm Credit System, or any director, officer, employee, or agent of a Farm Credit System institution, may disclose information to a Government authority that may be relevant to a possible violation of any law or regulation.

TITLE III—NATIONAL NATURAL RESOURCES CONSERVATION FOUNDATION

SEC. 301. SHORT TITLE.

This title may be cited as the ''National Natural Resources Conservation Foundation Act''.

SEC. 302. DEFINITIONS.

In this title (unless the context otherwise requires):

(1) BOARD.—The term ''Board'' means the Board of Trustees established under section 304.

(2) DEPARTMENT.—The term ''Department'' means the United States Department of Agriculture.

(3) FOUNDATION.—The term ''Foundation'' means the National Natural Resources Conservation Foundation established by section 303(a).

(4) SECRETARY.—The term ''Secretary'' means the Secretary of Agriculture.

SEC. 303. NATIONAL NATURAL RESOURCES CONSERVATION FOUNDATION.

(a) ESTABLISHMENT.—A National Natural Resources Conservation Foundation is established as a charitable and nonprofit corporation for charitable, scientific, and educational purposes specified in subsection (b). The Foundation is not an agency or instrumentality of the United States.

(b) PURPOSES.—The purposes of the Foundation are to—

(1) promote innovative solutions to the problems associated with the conservation of natural resources on private lands, particularly with respect to agriculture and soil and water conservation;

(2) promote voluntary partnerships between government and private interests in the conservation of natural resources;

(3) conduct research and undertake educational activities, conduct and support demonstration projects, and make grants to State and local agencies and nonprofit organizations;

(4) provide such other leadership and support as may be necessary to address conservation challenges, such as the prevention of excessive soil erosion, enhancement of soil and water quality, and the protection of wetlands, wildlife habitat, and strategically important farmland subject to urban conversion and fragmentation;

(5) encourage, accept, and administer private gifts of money and real and personal property for the benefit of, or in connection with, the conservation and related activities and services of the Department, particularly the Natural Resources Conservation Service;

(6) undertake, conduct, and encourage educational, technical, and other assistance, and other activities, that support the conservation and related programs administered by the Department (other than activities carried out on National Forest System lands), particularly the Natural Resources Conservation Service, except that the Foundation may not enforce or administer a regulation of the Department; and

(7) raise private funds to promote the purposes of the Foundation.

(c) LIMITATIONS AND CONFLICTS OF INTERESTS.—

(1) POLITICAL ACTIVITIES.—The Foundation shall not participate or intervene in a political campaign on behalf of any candidate for public office.

(2) CONFLICTS OF INTEREST.—No director, officer, or employee of the Foundation shall participate, directly or indirectly, in the consideration or determination of any question before the Foundation affecting—

(A) the financial interests of the director, officer, or employee; or

(B) the interests of any corporation, partnership, entity, organization, or other person in which the director, officer, or employee—

(i) is an officer, director, or trustee; or

(ii) has any direct or indirect financial interest.

(3) LEGISLATION OR GOVERNMENT ACTION OR POLICY.—No funds of the Foundation may be used in any manner for the purpose of influencing legislation or government action or policy.

(4) LITIGATION.—No funds of the Foundation may be used to bring or join an action against the United States.

(d) TAX EXEMPT STATUS.—

(1) 1996 TAXABLE YEAR.—In the case of the 1996 taxable year, the Foundation shall be treated as organized and operated exclusively for charitable purposes for purposes of section 501(c)(3) of the Internal Revenue Code of 1986.

(2) 1997 AND SUBSEQUENT TAXABLE YEARS.—In the case of the 1997 and subsequent taxable years, the Foundation shall be required to maintain the tax exempt status of the Foundation in the manner prescribed by the Secretary of the Treasury for similar tax exempt organizations.

SEC. 304. COMPOSITION AND OPERATION.

(a) COMPOSITION.—The Foundation shall be administered by a Board of Trustees that shall consist of 9 voting members, each of whom shall be a United States citizen and not a Federal officer. The Board shall be composed of—

(1) individuals with expertise in agricultural conservation policy matters;

(2) a representative of private sector organizations with a demonstrable interest in natural resources conservation;

(3) a representative of statewide conservation organizations;

(4) a representative of soil and water conservation districts;

(5) a representative of organizations outside the Federal – Government that are dedicated to natural resources conservation education; and

(6) a farmer or rancher.

(b) NONGOVERNMENTAL EMPLOYEES.—Service as a member of the Board shall not constitute employment by, or the holding of, an office of the United States for the purposes of any Federal law.

(c) MEMBERSHIP.—

(1) INITIAL MEMBERS.—The Secretary shall appoint 9 persons who meet the criteria established under subsection (a) as the initial members of the Board and designate 1 of the members as the initial chairperson for a 2-year term.

(2) TERMS OF OFFICE.—

(A) IN GENERAL.—A member of the Board shall serve for a term of 3 years, except that the members appointed to the initial Board shall serve, proportionately, for terms of 1, 2, and 3 years, as determined by the Secretary.

(B) LIMITATION ON TERMS.—No individual may serve more than 2 consecutive 3-year terms as a member.

(3) SUBSEQUENT MEMBERS.—The initial members of the Board shall adopt procedures in the constitution of the Foundation for the nomination and selection of subsequent members of the Board. The procedures shall require that each member, at a minimum, meets the criteria established under subsection (a) and shall provide for the selection of an individual, who is not a Federal officer or a member of the Board, to be provided with the power to select subsequent members of the Board.

(d) CHAIRPERSON.—After the appointment of an initial chairperson under subsection (c)(1), each succeeding chairperson of the Board shall be elected by the members of the Board for a 2-year term.

(e) VACANCIES.—A vacancy on the Board shall be filled by the Board not later than 60 days after the occurrence of the vacancy.

(f) COMPENSATION.—A member of the Board shall receive no compensation from the Foundation for the service of the member on the Board.

(g) TRAVEL EXPENSES.—While away from the home or regular place of business of a member of the Board in the performance of services for the Board, the member shall be allowed travel expenses paid by the Foundation, including per diem in lieu of subsistence, at the same rate as a person employed intermittently in the Government service would be allowed under section 5703 of title 5, United States Code.

SEC. 305. OFFICERS AND EMPLOYEES

(a) IN GENERAL.—The Board may—

(1) appoint, hire, and discharge the officers and employees of the Foundation, other than the appointment of the initial Executive Director of the Foundation;

(2) adopt a constitution and bylaws for the Foundation that are consistent with the purposes of the Foundation and this title; and

(3) undertake any other activities that may be necessary to carry out this title.

(b) OFFICERS AND EMPLOYEES.—

(1) APPOINTMENT AND HIRING.—An officer or employee of the Foundation—

(A) shall not, by virtue of the appointment or employment of the officer or employee, be considered a Federal employee for any purpose, including the provisions of title 5, United States Code, governing appointments in the competitive service, except that such an individual may participate in the Federal employee retirement system as if the individual were a Federal employee; and

(B) may not be paid by the Foundation a salary in excess of $125,000 per year.

(2) EXECUTIVE DIRECTOR.—

(A) INITIAL DIRECTOR.—The Secretary shall appoint an individual to serve as the initial Executive Director of the Foundation who shall serve, at the direction of the Board, as the chief operating officer of the Foundation.

(B) SUBSEQUENT DIRECTORS.—The Board shall appoint each subsequent Executive Director of the Foundation who shall serve, at the direction of the Board, as the chief operating officer of the Foundation.

(C) QUALIFICATIONS.—The Executive Director shall be knowledgeable and experienced in matters relating to natural resources conservation.

SEC. 306. CORPORATE POWERS AND OBLIGATIONS OF THE FOUNDATION.

(a) IN GENERAL.—The Foundation—

(1) may conduct business throughout the United States and the territories and possessions of the United States; and

(2) shall at all times maintain a designated agent who is authorized to accept service of process for the Foundation, so that the serving of notice to, or service of process on, the agent, or mailed to the business address of the agent, shall be considered as service on or notice to the Foundation.

(b) SEAL.—The Foundation shall have an official seal selected by the Board that shall be judicially noticed.

(c) POWERS.—To carry out the purposes of the Foundation under section 303(b), the Foundation shall have, in addition to the powers otherwise provided under this title, the usual powers of a corporation, including the power—

(1) to accept, receive, solicit, hold, administer, and use any gift, devise, or bequest, either absolutely or in trust, of real or personal property or any income from, or other interest in, the gift, devise, or bequest;

(2) to acquire by purchase or exchange any real or personal property or interest in property;

(3) unless otherwise required by instrument of transfer, to sell, donate, lease, invest, reinvest, retain, or otherwise dispose of any property or income from property;

(4) to borrow money from private sources and issue bonds, debentures, or other debt instruments, subject to section 309, except that the aggregate amount of the borrowing and debt instruments outstanding at any time may not exceed $1,000,000;

(5) to sue and be sued, and complain and defend itself, in any court of competent jurisdiction, except that a member of the Board shall not be personally liable for an action in the performance of services for the Board, except for gross negligence;

(6) to enter into a contract or other agreement with an agency of State or local government, educational institution, or other private organization or person and to make such payments as may be necessary to carry out the functions of the Foundation; and

(7) to do any and all acts that are necessary to carry out the purposes of the Foundation.

(d) INTEREST IN PROPERTY.—

(1) IN GENERAL.—The Foundation may acquire, hold, and dispose of lands, waters, or other interests in real property by donation, gift, devise, purchase, or exchange.

(2) INTERESTS IN REAL PROPERTY.—For purposes of this title, an interest in real property shall be treated, among other things, as including an easement or other right for the preservation, conservation, protection, or enhancement of agricultural, natural, scenic, historic, scientific, educational, inspirational, or recreational resources.

(3) GIFTS.—A gift, devise, or bequest may be accepted by the Foundation even though the gift, devise, or bequest is encumbered, restricted, or subject to a beneficial interest of a private person if any current or future interest in the gift, devise, or bequest is for the benefit of the Foundation.

SEC. 307. ADMINISTRATIVE SERVICES AND SUPPORT.

The Secretary may provide, without reimbursement, personnel, facilities, and other administrative services of the Department to the Foundation.

SEC. 308. AUDITS AND PETITION OF ATTORNEY GENERAL FOR EQUITABLE RELIEF.

(a) AUDITS.—

(1) IN GENERAL.—The accounts of the Foundation shall be audited in accordance with Public Law 88–504 (36 U.S.C. 1101 et seq.), including an audit of lobbying and litigation activities carried out by the Foundation.

(2) CONFORMING AMENDMENT.—The first section of Public Law 88–504 (36 U.S.C. 1101) is amended by adding at the end the following:

''(77) The National Natural Resources Conservation Foundation.''.

(b) RELIEF WITH RESPECT TO CERTAIN FOUNDATION ACTS OR FAILURE TO ACT.—The Attorney General may petition in the United States District Court for the District of Columbia for such equitable relief as may be necessary or appropriate, if the Foundation—

(1) engages in, or threatens to engage in, any act, practice, or policy that is inconsistent with this title; or

(2) refuses, fails, neglects, or threatens to refuse, fail, or neglect, to discharge the obligations of the Foundation under this title.

SEC. 309. RELEASE FROM LIABILITY.

(a) IN GENERAL.—The United States shall not be liable for any debt, default, act, or omission of the Foundation. The full faith and credit of the United States shall not extend to the Foundation.

(b) STATEMENT.—An obligation issued by the Foundation, and a document offering an obligation, shall include a prominent statement that the obligation is not directly or indirectly guaranteed, in whole or in part, by the United States (or an agency or instrumentality of the United States).

SEC. 310. AUTHORIZATION OF APPROPRIATIONS.

There are authorized to be appropriated to the Department to be made available to the Foundation such sums as are necessary for each of fiscal years 1997 through 1999 to initially establish and carry out activities of the Foundation.

TITLE IV—IMPLEMENTATION AND EFFECTIVE DATE

SEC. 401. IMPLEMENTATION.

The Secretary of Agriculture and the Farm Credit Administration shall promulgate regulations and take other required actions to implement the provisions of this Act not later than 90 days after the effective date of this Act.

SEC. 402. EFFECTIVE DATE.

Except as otherwise provided in this Act, this Act and the amendments made by this Act shall become effective on the date of enactment.

Amend the title so as to read: ''An Act to amend the Farm Credit Act of 1971 to provide regulatory relief, and for other purposes.''.

AUTHORITY FOR COMMITTEES TO MEET

COMMITTEE ON ENERGY AND NATURAL RESOURCES

Mr. GRAMS. Mr. President, I ask unanimous consent that the Committee on Energy and Natural Resources be granted permission to meet during the session of the Senate on Thursday, December 21, 1995, for purposes of conducting a full committee business meeting which is scheduled to begin at 9:30 a.m. The purpose of this meeting is to consider pending calendar business.

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

COMMITTEE ON FOREIGN RELATIONS

Mr. GRAMS. Mr. President, I ask unanimous consent that the Committee on Foreign Relations be authorized to meet during the session of the Senate on Thursday, December 21, 1995, immediately following the first rollcall vote occurring after 2 p.m.; if no vote has occurred between 2 p.m. and 4 p.m., the meeting will be held at 4 p.m.

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

COMMITTEE ON THE JUDICIARY

Mr. GRAMS. Mr. President, I ask unanimous consent that the Committee on the Judiciary be authorized to hold a business meeting during the session of the Senate on Thursday, December 21, 1995 at 10 a.m. in SD–226.

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

COMMITTEE ON THE JUDICIARY

Mr. GRAMS. Mr. President, I ask unanimous consent that the Committee on the Judiciary be authorized to meet during the session of the Senate on Thursday, December 21, 1995, at 2 p.m., in room 226 Senate Dirksen Office Building to consider nominations.

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

ADDITIONAL STATEMENTS

PENSION INCOME TAXATION LIMITATION

• Mr. D'AMATO. Mr. President, I am pleased to support this bill and would like to submit this statement for the RECORD and to clarify that the language contained in the proposed legislation adds to the types of retirement income eligible for exemption. This language clearly intends to exempt from tax nonqualified deferred compensation that constitutes legitimate retirement income. Because it affects retirement income, only income from qualified retirement plans and nonqualified retirement plans that are paid out over at least 10 years, or from a mirror-type nonqualified plan after termination of employment, is exempt from State taxation.

The language does not prohibit States from imposing an income tax on non-residents' regular wages or compensation. Cash bonuses or other compensation arrangements that defer the receipt of salary, bonuses, and other types of wage-related compensation that are not paid out over at least 10 years or from a mirror-type nonqualified retirement plan are not exempt from State taxation. One example would be if a salary is earned in a State by an individual, whether a resident or nonresident, but is voluntarily deferred for a few years until the individual exits the state, and then is paid over in a lump sum, even while the individual is still employed by the company, that kind of payment should not qualify for exemption from nonresident taxation of pensions. It is the intent of this bill to permit the States to continue to tax this income, while protecting from taxation those deferred payments that are for retirement income, paid from plans designed for that purpose.•

HENRY KNOTT, SR.

• Mr. SARBANES. Mr. President, I am proud to join with the Baltimore community and the friends of education throughout Maryland in honoring the memory of Henry Knott, Sr., an exemplary family man and a great philanthropist. Mr. Knott was an extraordinary citizen whose public generosity

ranks him with the great names of Baltimore and Maryland philanthropy.

Henry Knott who died recently at the age of 84, began his working days in the 1920's as a bricklayer in his father's construction business. This first and humble job would lay the foundation to a celebrated career in real estate and development over the course of seven decades. The achievement of his distinguished building career is reflected in apartment buildings, residences, and commercial centers which are located in Baltimore and its surrounding communities.

What singles out Henry Knott is that he translated his success with bricks and mortar into extraordinary philanthropy by graciously donating huge amounts of his personal wealth to Maryland educational institutions, including his alma mater Loyola College, and also to many local hospitals. A modest philanthropist, Mr. Knott was one who deeply respected the value of a quality education.

Henry Knott was also a man who practiced what he preached. A devout communicant of the Roman Catholic Church, he and his wife of over 67 years, Marion Burr Knott, raised a wonderful family of 12 children, 51 grandchildren, and 55 great grandchildren.

I extend my most sincere sympathies to his wife Marion, their children, and to all of the family and friends of Henry Knott, Sr. Mr. President, I ask that an article from the Baltimore Sun that pays tribute to Mr. Knott be printed in the RECORD.

The article follows:

[From the Baltimore Sun, Nov. 27, 1995]

HENRY KNOTT, SR. DIES; PHILANTHROPIST WAS 89

CONSTRUCTION TYCOON GAVE FORTUNES TO HOSPITALS, SCHOOLS

(By Marcia Myers and David Folkenflik)

Henry J. Knott Sr., the hard-driving multimillionaire developer renowned for his prodigious philanthropy, died yesterday at Johns Hopkins Hospital after a brief illness. He was 89.

Mr. Knott, who had entered the hospital recently for surgery, later contracted pneumonia, which was listed as the cause of death.

He started work as a bricklayer with his father's construction company in the 1920s but rose through business as a brick contractor and made his fortune developing real estate. Much of that fortune he gave to Maryland colleges, schools and hospitals, with gifts that particularly linked his name to Loyola College, Hopkins Hospital and the state's Roman Catholic schools.

Those who knew Mr. Knott attributed his success to his lifelong industriousness.

''His interest was work. He was a workaholic,'' said Joseph M. Knott, Mr. Knott's youngest brother and godson. Hobbies held less attraction, Joseph Knott said, ''He wasn't interested in golf. He never belonged to any of the country clubs. He said he couldn't afford it.''

There were few things Henry Knott could not afford during his adult life. His personal wealth, estimated at $150 million in 1987, included major holdings in the Arundel Corp. (before its sale the following year to Florida Rock Industries for $88 million), Henry A. Knott Home Builders and Knott Enterprises.

Mr. Knott's companies built thousands of homes and businesses in Baltimore, including apartment buildings, rowhouses and shopping centers that dot the metropolitan area from Essex to Lansdowne and from Kingsville to Catonsville.

The reach of his family was almost as wide as that of his businesses. Mr. Knott and his wife of 67 years, Marion Burke Knott, raised 12 children. At his death, Mr. Knott left 51 grandchildren and 55 great-grandchildren.

''He had three very intense interests: his family, the Catholic Church and his work,'' said Rick O. Berndt, a lawyer for the Archdiocese of Baltimore who knew Mr. Knott for almost 30 years.

Cardinal William H. Keeler was visiting with the Knott family last night.

Through a spokesman, he said, ''We mourn the passing of Henry Knott, whose deep faith and extraordinary charity will long be remembered. I pray that God may comfort his dear wife, Marion, and all his family. Catholic education in Maryland at every level has benefited from the vision and generosity of Henry Knott.''

Mr. Knott gave millions to charity, primarily Catholic educational institutions such as Loyola College, his alma mater; the College of Notre Dame of Maryland; Mount St. Mary's College, Emmitsburg; and the University of Notre Dame, South Bend, Ind. By 1988, the Knotts' charitable contributions had exceeded $140 million.

''He was highly disciplined and unbelievably focused about whatever he was doing. You could not distract him,'' said Mr. Berndt, who was a 26-year-old fledgling attorney when he met Mr. Knott.

''I was very idealistic and had many thoughts about how the world should work,'' Mr. Berndt recalled. ''Mr. Knott was one of the ones who regularly brought me down to earth. He was great at the art of what was possible.''

In 1988, Mr. Knott and his wife created a $26 million fund to benefit 31 local educational, health and cultural institutions.

Among the recipients were the Johns Hopkins Oncology Center, which received $5 million, and the Baltimore Symphony Orchestra, which was given $1 million. Four Baltimore hospitals, St. Joseph, Mercy, St. Agnes and Bon Secours, each received $1 million to establish an income fund to provide medical care for the poor.

SCHAEFER'S SORROW

''I talked to Mr. Knott's son the other day. He told me that Mr. Knott would not get out of this one,'' former Gov. William Donald Schaefer said. ''I had a real, great sorrow overcome me. Mr. Knott was truly one of the great men of our times, perhaps of all times. He was one of the great pillars of Baltimore.''

Mr. Knott's largess seemed at odds with his public persona as a gruff, demanding businessman. Yet associates insisted that he was, in private, the antithesis of that image.

Peter G. Angelos, Orioles owner and former city councilman, knew Mr. Knott for more than 25 years and took issue with what he characterized as a public impression of Mr. Knott as ''a hard-nosed businessman bent on accumulating most of the money in Maryland.''

Rather, Mr. Angelos said, he came to know Mr. Knott as ''the very gentle person he really is,'' and as an individual who, in private conversation, was fond of discussing broad intellectual subjects, often quoting Plato or Aristotle to make his point.

''He's made a lot of money because he drives a hard bargain, but an honest bargain,'' Mr. Angelos said.

Mr. Knott was among the first to sign on when Mr. Angelos pulled together local investors to buy the Baltimore Orioles in 1993.

''He expects a lot from most people, but he expects the most from himself,'' said Mr. Angelos.

The late Rev. Joseph A. Sellinger, S.J., president of Loyola College, once characterized Mr. Knott as a ''pussy cat'' inside a gruff exterior.

Mr. Knott's own summation of his talent for accumulating money and then giving it away was made in four short sentences quoted in a Baltimore magazine profile in 1987.

''It's like catching fish,'' he said. ''You get up early. You fill the boat up with fish. And then you give them all away before they all start to rot.''

The Rev. Harold E. Ridley Jr., president of Loyola, said that Mr. Knott maintained a becoming modesty in not seeking credit for his gifts. ''I think that is what made him such an extraordinary individual: His legendary generosity was tempered by an even greater humility,'' Father Ridley said

The Knott family lived in a large house on Guilford's Greenway during the years in which the 12 children were growing up. Friends jokingly called the home ''the Stork Club''—partly after the posh New York restaurant of the period, but mostly because of the children.

As word spread of the dynamic household, Mrs. Knott became the subject of newspaper feature articles in which she explained how she managed her day, getting the children through breakfast and off to school, darning socks and mediating squabbles among a very energetic brood.

''My family is my club life and outside interests,'' she said in a 1952 interview.

Meanwhile, Mr. Knott built houses, apartment buildings and shopping centers, acquiring a reputation as a can-do contractor.

In addition to his building ventures, he became active in a broad range of business and civic activities. He served on Maryland's Advisory Committee on Higher Education in 1964, he became chairman and CEO of the Arundel Corp. and its largest stockholder in 1967 and he headed former Gov. Marvin Mandel's re-election committee in 1974.

MR. KNOTT'S FAMILY

In addition to his wife, Mr. Knott is survived by his children: Patricia K. Smyth, Alice K. Voelkel, Margaret K. Riehl, Henry J. Knott Jr., Catherine K. Wies, Rose Marie K. Porter, Lindsay K. Harris, Francis X. Knott, James F. Knott, Martin G. Knott, and Mary Stuart K. Rodgers, all of Baltimore; and Marion K. McIntyre, of Del Ray Beach, Fla.; brothers, John L. Knott, the Rev. Francis X. Knott, S.J., and Joseph M. Knott, all of Baltimore; 51 grandchildren and 55 great-grandchildren.

Visiting hours will be 2 p.m. to 4 p.m. and 7 p.m. to 9 p.m. today and tomorrow at St. Mary's Seminary, 5400 Roland Ave, with a funeral Mass at 11 a.m. Wednesday at the Cathedral of Mary Our Queen, 5200 N. Charles St.

Burial will follow at the New Catholic Cemetery.

Memorial contributions may be made to Loyola College, Loyola High School, Johns Hopkins Hospital, or the College of Notre Dame of Maryland.●

FIFTH ANNIVERSARY OF THE MITSUBISHI ELECTRIC AMERICA FOUNDATION

● Mr. SIMON. Mr. President, I want to congratulate the Mitsubishi Electric America Foundation on the occasion of its fifth anniversary.

The Mitsubishi Electric America Foundation [MEAF] is endowed with

$15 million by the Mitsubishi Electric Corp. of Japan and its American subsidiaries. Its mission is to contribute to society by assisting young Americans with disabilities to lead full and productive lives. The foundation fulfills this mission by supporting education and other programs aimed at enhancing the independence, productivity and community inclusion of young people with disabilities. During its first 5 years the foundation has received more than 1,000 funding requests and awarded nearly $2 million in grants to benefit American children and youth with disabilities.

The foundation is based in Washington, DC and works primarily at the national level but also collaborates with principal Mitsubishi Electric America [MEA] facilities to have an impact at the local level. Philanthropy committees at MEA companies have made many generous contributions of money, electronics products, and volunteer support to nonprofit organizations in communities across the country.

In my home state of Illinois, for example, Mitsubishi Electric Industrial Controls, Inc., and Mitsubishi Electronics America, Inc. maintain active volunteer committees through which dedicated employees serve their communities in the Chicago suburbs. Through its matching grant program, the foundation supplements the companies' donations to local organizations helping young people with disabilities.

The story behind the foundation's creation gives insight into the sponsoring corporation. At the 1990 meeting of the presidents of the North American Mitsubishi Electric America group companies, former MEA president Takeshi Sakurai presented his goal of encouraging the companies to reciprocate the good will and hospitality of the communities in which the more than 4,000 MEA employees live and work.

Focusing on the challenges and barriers that exist for people with disabilities, Mr. Sakurai urged the corporation to help ensure that young Americans with disabilities have full access to competitive employment, integrated education, independent living options, and recreational opportunities in their communities. With the establishment of a foundation, he declared, the companies and employees could contribute to this critical need through the donation of funds, products, and volunteer time. Following Mr. Sakurai's presentation, many of the senior executives around the table made personal donations, which eventually formed part of the initial endowment of the Mitsubishi Electric America Foundation.

Takeshi Sakurai became the first board president of the foundation, and with the board of directors worked to strengthen support for the foundation's work within the corporation, develop strategies for its outreach to the disability community, and institutionalize philanthropy within the corporate culture of MEA companies. Through the efforts of its board, the foundation has helped to educate its sponsoring corporations about the importance of good corporate citizenship and on the critical issues facing people with disabilities. The 12-member board includes Mitsubishi Electric America company presidents, the foundation's executive director, representatives from the parent corporation in Japan, and two MEA employees who are nominated by their peers to serve 18-month terms.

Mitsubishi Electric Corp.'s investments in the foundation have paid unexpected dividends by influencing the sponsoring corporation back in Japan. Responding to the success of the foundation, Mitsubishi Electric Corp. has expanded its philanthropic activities in Japan and around the world; many of these efforts are aimed at people with disabilities.

The Socio-Roots Fund, which was established by the corporation in 1992 to match employee donations, awarded the yen equivalent of $450,000 to organizations assisting youths with disabilities in Japan in 1994. The corporation's Nakatsugawa Works facility now offers sign language classes to its employees. The corporation also donated the yen equivalent of $180,000 to 75 schools, organizations and projects serving people with disabilities throughout Japan. A second Mitsubishi Electric Foundation was established in Thailand to provide promising students who are in need of financial assistance with the means to complete their education; in June, 1993, this foundation awarded its first full scholarships to 30 engineering students.

The foundation has received several awards for its achievements in grantmaking, some of which clearly demonstrate the foundation's impact on the MEA companies. For example, the foundation was honored with the prestigious Leadership Award from the Dole Foundation for Employment of People with Disabilities. My colleague from Kansas, Senator BOB DOLE, presented the award in recognition of the foundation's accomplishments and also cited Mitsubishi Electric America as a model for other corporations in integrating disability awareness into corporate policies.

The MEA foundation and Marriott foundation for People with Disabilities jointly received the Council for Exceptional Children's 1992–93 Employer of the Year Award, in recognition of their successful replication of the ''Bridges . . . From School to Work'' transition program, which helps prepare youth with disabilities in Washington, DC for employment after high school.

In 1994, Mitsubishi Electric America was named one of the top 100 U.S. employers by CAREERS and the disABLED, a leading magazine in the disability field, based on a reader survey that asked readers to name the top three companies or government agencies for whom they would most like to work or that they believed would provide a positive working environment for people with disabilities.

These public acknowledgements are a fitting tribute to the Mitsubishi Electric Corp.'s investments in our Nation, but I would like to add my own personal thanks to the Mitsubishi Electric America foundation, Mitsubishi Electric Corp., and the Mitsubishi Electric America group companies for their generosity.

I congratulate the staff, officers, board of directors, and advisory committee members who have helped position this foundation as a leader in supporting innovative programs for young people with disabilities. I hope the foundation will continue its successful work for many years to come.●

IN MEMORIAM, PAN AM 103

● Mr. MOYNIHAN. Mr. President, I rise today to note with solemnity the anniversary of the bombing of Pan Am flight 103 over Lockerbie, Scotland. It is now 7 years since that infamous act which claimed the lives of 270 people. All the more vile because its perpetrators still have not been brought to trial.

Despite a regime of international sanctions, the Libyan government refuses to extradite the indicted terrorists. A state which harbors outlaws must, of necessity, remain an outlaw state. The United States and our allies ought never to waver in our commitment to the rule of law and the measures necessary to enforce it.

On November 3, I joined the families of the victims and President Clinton at Arlington National Cemetery for the dedication of a memorial cairn. On that occasion the President reminded us that ''we must never, never relax our efforts until the criminals are brought to justice.'' I emphatically concur.

Mr. President, I yield the floor.●

ARNOLD SHAPIRO

● Mrs. FEINSTEIN. Mr. President, recent studies have indicated that the violent crime rates are decreasing in many cities, but that there is a disturbing rise of violent crimes being committed by teen-agers.

I think there is no more important issue facing this Congress than violence. Congress must take steps to reduce violent acts—in the home, in the workplace, and on our streets —that occur with numbing frequency in America.

I have been particularly troubled by the content of many programs that air on television networks in this country. Ultra-violent acts appear almost around the clock. While I have spoken out frequently about the problem of television violence, I also wanted to take a moment to praise an upcoming television documentary that details

the positive steps taken by many companies to help troubled and disadvantaged kids.

''Everybody's Business: America's Children,'' a network documentary produced by the Oscar- and Emmy-Award winning Arnold Shapiro, will air this Saturday, December 23 from 8 p.m. to 9 p.m.

This program showcases the volunteer and funding efforts made possible by many American companies and corporations to help troubled and disadvantaged kids. Katie Couric is the host of this special which praises many companies for providing mentoring programs and community support efforts to support our children.

During this holiday season, it is particularly refreshing to see a network television program which promotes the good deeds of American companies.

As we look ahead into the coming year, it is my hope that more television programs will give this type of positive reinforcement to America's companies that make an investment in our youth.

It also gives me pleasure to note the program is produced by one of Los Angeles's leading producers, Arnold Shapiro. He is well known for his quality programs and documentaries, including ''Scared Straight'' and ''Scared Straight: Exposing and Ending Child Abuse.'' He recently won the Peabody Award for his CBS children's special, ''Break the Silence: Kids Against Child Abuse.''

Arnold Shapiro's brand of television—straight forward, informative and educational—is exactly the type of programming I hope to see more of on network television in the coming years.●

ISRAEL ''IZZY'' COHEN

● Mr. SARBANES. Mr. President, I rise today to pay tribute to a celebrated member of the Maryland business community, Mr. Israel ''Izzy'' Cohen, who recently passed away at the age of 83. As the chairman of Giant Food, Inc. Izzy Cohen managed one of Maryland's and the Capital area's most successful corporations—and he accomplished this task with deep respect for his employees and a commitment to his community.

Izzy Cohen's warm personality, devotion to customers and Giant employees is legendary. These were the talents that earned him the nomination of generations of employees and patrons. Under his leadership, Giant Foods pioneered in consumer information and involvement. His commitment to community was also reflected in his strong support of the educational television program, ''It's Academic,'' and in his many other fundraising activities. One notable example is Computers for Kids where customers save their Giant receipts and schools collect them for money for classroom computers and equipment. Thousands of children across the State of Maryland have benefited from Izzy Cohen's patronage of these programs.

Izzy Cohen was truly an accomplished leader in commerce, and one of those outstanding citizens who by example and action evoked the very best in all of us. I extend my most sincere sympathies to all the family and friends of Izzy Cohen. Mr. President, I ask that the following articles from the Washington Post that pay tribute to Izzy Cohen be printed in the RECORD.

The articles follow:

[From the Washington Post, Nov. 24, 1995]

ISRAEL COHEN, CHAIRMAN OF GIANT FOOD, DIES AT 83 CANCER CLIAMS PIONEER IN SUPERMARKET INDUSTRY

(By Claudia Levy)

Israel Cohen, the Giant Food Inc. chairman who built his company into the largest regional grocery store chain in the nation, died late Wednesday at his home in Washington at the age of 83. He had non-Hodg'kin's lymphoma, a form of cancer.

A pioneer in an industry where razor-thin profit margins quickly separate the winners from the losers, ''Izzy'' Cohen was the principal architect in the rise of Giant from a single store on Georgia Avenue to what many analysts say is the premier regional supermarket chain in the nation.

Washington area consumers today spend 44.8 cents of every grocery dollar at Giant, largely because of Cohen's business savvy.

Cohen was one of the wealthiest people in the Washington area and an important member of the local business community. Yet he remained a very private person, talking little about himself or his personal life, and worked in relative obscurity.

But ''as a retailer he had no fear,'' said business consultant Sheldon ''Bud'' Fantle, former chairman of People's Drug Stores Inc. ''All of his ideas were before the fact. He was a leader.''

Cohen commended a tight-knit organization that now includes 164 stores, largely in suburban neighborhoods, from New Jersey to Northern Virginia. Its headquarters is in Landover in Prince George's County, and 107 of its stores are in the Washington area. Giant has more than 26,000 employees and annual sales of $3.7 billion.

The Giant real estate division, GFS Realty Inc., owns or manages 27 shopping centers in the Washington area. Giant also owns a bakery, a dairy, an ice cream plant, a soft-drink plant, a plastic milk container manufacturing plant and other food-processing businesses.

Under Cohen, Giant advertised heavily in newspapers and was quick to employ such marketing innovations as bulk sales, in-store pharmacies and products labeled with Giant's private brand names. It hired former White House counselor Esther Peterson as its first consumer adviser, promoted her heavily and listened seriously to the customers. Giant was the first chain in the country to install computer price scanners at checkouts, now standard in the industry.

''This is the best businessman in Washington in his time,'' said Donald E. Graham, chairman of The Washington Post Co. and publisher of The Post. ''He built a great company in a completely personal way. Everyone in Giant down to the cashiers knew who they worked for and they knew it because every week of his life he visited some Giant store. He didn't just visit, he spent time,'' stopping to help customers if needed.

Cohen made it a point to promote from within, to the extent of training company employees for sophisticated technical jobs, Graham said. ''Every year, Giant relentlessly worked to gain slivers of market shares,'' building it to the largest in the country, Graham said.

Fantle said Cohen ''was always two or three steps ahead of his competition.'' Fantle's drug stores went head to head with Giant's in-house pharmacies.

For years Giant has had the highest profit margins among Washington area supermarkets—3 percent in an industry where the national average is 1 percent. Much of that margin came from the profit of his drugstore operations and the fact that Giant Food was a ''vertically integrated'' company that manufactured everything from milk cartons to ice cream and soda for its private brands.

Cohen would say this was a result of having ''smart persons to make decisions around here,'' Graham said, ''But everybody else would give him the credit.''

Fantle said ''He ran a bright, clean store with good values. And certainly he had the knack of advertising. . . .''

When Cohen's longtime partners in Giant, members of the Lehrman family, agreed to sell their share in the corporation to a British supermarket chain in 1994, control of Giant remained with Cohen, who owned half the voting stock and controlled four of the seven seats on the board of directors.

Giant announced yesterday that four senior officers and Cohen's sister, Lillian Cohen Solomon, will now vote his stock and manage Giant.

Cohen had controlled the company since 1964, when his father, company cofounder Nehemiah Meir ''N.M.'' Cohen, retired. For a period, Washington attorney Joseph B. Danzansky was chairman, a compromise choice resulting from a dispute between Giant's founding families. But it was a titular post, and Cohen ran the operation.

Israel Cohen was born in Rishon-Le-Zion, Palestine, where his father was a rabbi and teacher in a one-room school. The Cohen family settled in Lancaster, Pa., when Israel Cohen was 9.

N.M. Cohen at first operated a kosher butcher shop. In the mid-1930s, he went into partnership in Washington with Samuel Lehrman, a Harrisburg, Pa., food distributor, to begin a self-service grocery store of the sort coming into vogue in California.

They selected Washington because they believed that federal employees would form a reliable customer base. The first store opened in the midst of a snowstorm on Feb. 6, 1936, on Georgia Avenue at Park Road NW. Issy Cohen worked at the store along with his brother, Manny, stocking shelves and driving the company's truck.

Izzy Cohen served in the Army during World War II and after the war began to rise through administrative positions in the Giant company, patterning his understated business style after his father, who retired in 1964.

Izzy Cohen took a year off in the 1950s to recover from tuberculosis, which he had contracted in the Army, and used the time to become a master bridge player. He was known to fellow tournament players for his ''poker'' face, a card player's best asset. He owned a condominium in Miami, where he often went to play cards, and a stable of horses at Laurel Race Course.

Cohen set about expanding the Giant empire despite increased competition, which in recent years has included warehouse grocery firms and others. One key to its success, Cohen told stockholders, was ''having our people fully understand both the nature of what is a competitive war and what their role is in the fight.''

On his visits to stores, Cohen would pitch in to bag groceries when the checkout lines were getting too long, Giant President Pete L. Manos recalled yesterday. Cohen would point out that the unshelled peanut bin needed a scoop or that a sign was wrong, Manos said. He'd stop to talk to customers

and would inspect the produce rooms and meat lockers for cleanliness, Manos said.

When it was known that he was going to visit a store, some employees whose shifts were over ''would wait around to shake his hand,'' Manos said.

''It goes back to the early days of the company,'' Manos said. ''At Giant, we've always felt like we're a family, and Izzy was the patriarch of the family. People looked forward to seeing him.''

In the stores, he greeted employees by their first names—all Giant workers wear name badges—and insisted on being called Izzy. ''Mr. Cohen is my father's name,'' he used to say, refusing to answer to it.

Years ago, there was an executive dining room at Giant headquarters, which Cohen closed because he wanted executives to mingle with other employees, Manos said.

Cohen had been estranged for many years from his wife, Barbara, when she died in 1994. Their two children were not involved in the business.

Cohen avoided social functions, living a quiet life in his parents' old house in the Forest Hills section of Northwest Washington. He was close with his brother Manny, who died several years ago, and his sister Lillian, who lives next door. Together, they founded a charitable foundation and named it for their father. Giant Food also operates a charitable foundation.

Izzy Cohen was chauffeured to work nearly every day in his Cadillac. He would visit stores during the week and on weekends. ''You have to have a place to go in the morning,'' he told Washington Post Staff Writer Kara Swisher in 1994.

Survivors include his children, Peter Cohen of Altamonte Springs, Fla., and Dana Cohen Ellis of McLean; his sister and two grandchildren.

[From the Washington Post, Nov. 24, 1995]

APPRECIATION IZZY COHEN: FIERCE COMPETITOR, INSTINCTIVE RETAILER, EAGER INNOVATOR

(By Frank Swoboda and Kara Swisher)

Izzy Cohen's closest friends and toughest business competitors say the same thing about him: He was a hell of a grocer.

Cohen, the chairman of Giant Food Inc. who died Wednesday at the age of 83, didn't disagree. ''I might not be the best corporate executive,'' Cohen once told his shareholders, ''but I consider myself one of the best grocers in the business.'' That's about as far as he went when it came to public talk about his business philosophy and the strategies he followed to build Giant from one store to 164, with 107 of them in the Washington area where Giant dominates.

Cohen never talked much about his personal life, either. Though a multimillionaire, with estimates of his wealth rising as high as $400 million, he led a relatively solitary existence, living in the house in which he grew up, next door to his sister, Lillian Cohen Solomon. He was a rare recluse in a society that has come to lionize wealth and business success.

In many ways Cohen was the embodiment of a generation of old-time Washington area entrepreneurs who treated their employees like family and kept their personal lives low-key and private.

Even some Giant executives who worked for him for decades knew little about his background. But those who knew him well describe him as a sometimes gruff but generally uncomplicated man, whose unwavering and single-minded devotion was the business he inherited from his father.

His ambition also came with a price, however, driving him apart from his wife and children. Although he never divorced, Cohen and his wife had been separated for nearly 40 years at the time of her death two years ago.

His sole passions outside of work were bridge and horse racing. He was a master bridge player whose partners included such luminaries of the game as good blood lines but none particularly successful. His stable at Laurel racetrack, with its gold chandeliers and air-conditioned stalls, was a model for the racing industry.

Longtime friend and racing companion David Finkelstein tells of going to the track every weekend with Cohen. On the way they would stop at the nearest Giant and buy sandwiches and then take their brown bag lunch to their adjoining boxes. Though Finkelstein also was in food distribution, Cohen never talked business with him on the weekends.

The two men also owned apartments at the Jockey Club in Miami, where they would go to watch horse races in the cold winter months. Cohen sometimes bought an entire row of seats at the track so he wouldn't be crowded.

On the few occasions when Cohen brought guests to the track, Finkelstein said, he would place a bet on every horse in every race for every guest. At the end of each race, he would then be able to present his guests with a winning ticket.

But the real focus of Cohen's life was the grocery business, where he was a fierce competitor and a constant innovator who seized on computer scanning, in-store pharmacies, private-label products, unit pricing, salad bars and other advances to push Giant to the top of the area's grocery business.

Before Giant put pharmacies in its supermarkets, the Washington market was dominated by three drugstore chains: Drug Fair, Dart Drug and Peoples. Today, all three are gone and Giant is the dominant player.

Before there were automated teller machines, Izzy Cohen tried putting bank branches in his stores. For a brief time he even took Giant into the carwash, dry cleaning, rug and pants cleaning businesses.

''Izzy was the most instinctive guy in terms of food retailing,'' said Jeff Metzger, publisher of Food World, a Columbia-based trade publication. ''He had an uncanny ability to read the right signs, whether it meant putting a store in the right place or adding on another cash register or understanding that consumers came first.''

Kenneth Herman, a longtime Cohen competitor whose family started the Lanham-based Shoppers Food Warehouse Corp. chain, agreed.

''He developed one of the finest grocery chains in the country, because of his keen insights about a retail business that is fast-changing,'' Herman said. ''He was truly a merchant's merchant.''

Izzy Cohen earned his MBA in the grocery business working behind the counter, starting as a stock clerk and driver for his father. In the years since, he worked in every department at Giant except data processing.

Tom McNutt, president of Local 400 of the United Food and Commercial Workers union, which represents Giant employees, tells of being called by Cohen and asked to come right over to the Giant store in Landover, near McNutt's office and Giant's headquarters. When McNutt got to the store, he found Izzy in the produce department—arguing with a store manager and a Giant executive over the proper placement of a display sign. Cohen wanted McNutt's opinion.

His decision to seek McNutt's opinion also underscored his close relationships with the unions representing his employees. Some critics have accused Giant of seeking labor peace at any price, and Giant employees are among the best paid in the industry.

Over the years, Cohen gained a reputation as a fierce competitor, once telling an interviewer that ''We consider everyone a competitor, including 7 Eleven.'' Shoppers Food Warehouse's Herman remembered Cohen as a ''very tough competitor, but fair.''

''He was a tiger,'' Finkelstein said recalling how Giant drove both Shop Rite and Kroger Co. out of the Washington market in the early 1960s in a series of brutal price wars.

Although he was a loner, Cohen did not try to hide from either his employees or his customers. He ate regularly in the company's cafeteria, which featured the same salad bar and deli fare he offered his customers, and personally helped customers during visits to Giant's stores.

But Izzy Cohen's life was best summed up by his friend Finkelstein who described him as ''a lonely, frustrated, caring person'' and an ''unbelievable friend.''

[From the Washington Post, Nov. 25, 1995]

EDITORIAL—ISRAEL COHEN

Israel Cohen spent his life building a business that, more than most, directly touches the lives of the people who live in this region. He always spoke of himself as a grocer. As chief strategist and chairman of Giant Food Inc., he was a major force in the transformation of the grocery industry over the past generation.

Born in Palestine, Mr. Cohen came to this country as a child and learned the business working in his father's store on Georgia Avenue—one of the first self-service stores in the country. In the years in which he built the Giant chain, the retail market for food charged radically. Customers' demands for diversity of choices expanded enormously, requiring steadily larger stores. The standards of food purity and cleanliness rose rapidly, and the consumer movement became a major force in the country. Grocery retailing has always been highly competitive, and many other chains disappeared as expensive specialty shops cut into the top end of the market while, at the discount end, warehouse stores flourished by offering bulk sales.

Mr. Cohen survived and prospered through innovation. He brought drustores into Giant's supermarkets, and they now dominate the retail drug business in this area. He experimented endlessly and successfully with vertical integration, producing some of the goods for his stores' shelves and selling them under private labels to cut costs. He installed salad bars, and his stores were the first in the country to use scanners to speed up the lines at the checkout counters.

In a city that loves glitz and notoriety, he chose to live inconspicuously. In a world that encourages highly publicized philanthropy, he usually kept his generosity out of sight. He developed a multibillion dollar company and tried to run it as a family business in which people called each other—including the chairman—by their first names. Long ago he closed the executive dining room at the company's headquarters in Landover because he thought that the people who used it could spend their time better lunching with the other employees.

Some kinds of success are useful, and others are not. Mr. Cohen's career was a strong example of the first kind and, more than useful, it was also constructive. Over the years, Izzy Cohen made countless friends. He also made contributions to the community he lived in, and these will survive and continue to do credit to the vital man who died at the age of 83 at his home here in Washington on Wednesday.●

THE REAL CHINESE THREAT

● Mr. SIMON. Mr. President, this past summer's military exercises by China

near Taiwan were part of a worrisome trend in East Asia—Chinese military expansion. China has been rapidly modernizing its armed forces, allegedly transferring missiles to Pakistan, flexing its muscle in the South China Sea, and continuing to test nuclear weapons under ground. Such actions raise concerns for regional stability, and for our interests in promoting economic prosperity and democracy in the region.

In the following article from the New York Times Magazine, Nicholas Kristof points out the growing Chinese power in East Asia and the increasing displays of nationalism. He concludes that United States policy should pay more attention to China's military expansion and the potential threats it brings. This seems to me like a good place to start.

I ask that the article be printed in the RECORD.

The article follows:

[From the New York Times Magazine, Aug. 27, 1995]

THE REAL CHINESE THREAT

(By Nicholas D. Kristof)

Almost no one noticed, but this summer the Pentagon drew a line in the sand. Washington committed itself to using American military force, it necessary, to keep international shipping lanes open in the South China Sea.

International, at least, in American eyes. But Beijing's maps put the entire area within China's territorial waters. If a stronger China eventually tries to enforce its national law, which governs shipping in the area, then American forces could be called upon to confront a China that has developed enormously since its troops battled ours to a stalemate in Korea.

The underlying problem is the oldest one in diplomacy: how the international community can manage the ambitions of a rising power—and there has never been a rising power quite like China. It has 1.2 billion people; it has a nuclear arsenal; it has an army of 3.2 million, the world's largest; and now it has what may be the world's fastest-growing military budget.

For now, China's conventional forces are no match for America's. One of my Chinese friends, the son of a general, attended a meeting in which a group of senior Chinese military officials reviewed films of the American air war against Iraq. ''They sat around the room, moaning about China's lack of preparation, asking what we could possibly do to modernize,'' he reported. ''I felt like piping us and saying there was one thing we could do: go capitalist.''

Yet given the rate at which China is pouring money into its armed forces, the situation may eventually be different. The United States Naval War College conducted computer simulations last year and again this year of battles in Asia between China and the United States in the year 2010. To everyone's surprise, China defeated the United States in both. It is said that the Central Intelligence Agency recently conducted its own simulation of such a battle, set in the year 2005, and China won that, too.

Simulations don't prove anything. Still, China and Vietnam have both showed, in Korea and Vietnam, how much damage even a backward army can do, particularly when fighting on its own turf. And unlike Vietnam, China has nuclear warheads aimed at the United States. (The United States has stopped targeting China with nuclear missiles, but China has refused to stop targeting America.) China is also believed to be developing biological warfare agents.

In Asia, there is now a real fear about what the rise of China will mean. ''The immense presence of China is itself a threat— whether the Chinese are conscious of it or not—that certainly Japan cannot deal with alone,'' Morihiro Hosokawa, the former Prime Minister, said recently.

In the United States, the expression ''containment'' is applied increasingly to China. The Administration's position is that it wants to engage China, rather than contain it, but that if necessary in the future it can switch to a containment policy. ''We're not näive,'' Winston Lord, the Assistant Secretary of State for East Asian and Pacific Affairs, told a congressional committee in June. ''We cannot predict what kind of power China will be in the 21st century. God forbid, we may have to turn with others to a policy of containment. I would hope not.''

In the meantime, there is growing alarm in Washington and other capitals at China's military spending and policies. While most countries in the world have been cutting back, China has raised its published military budget by 75 percent since 1988, after adjusting for inflation. And the published budget vastly understates reality. It does not even include weapons procurement. The real figure is probably something like $20 billion, which, when adjusted for purchasing power, may buy as much as $100 billion defense budget in the West.

Most disturbing, China is pouring money into those activities that allow it to project power beyond its traditional borders. In particular, it is building a blue-water navy and developing an air-to-air refueling capability. China is also becoming more aggressive in the South China Sea and even in the Indian Ocean—far from its traditional sphere of influence.

All of this notwithstanding, it would be a mistake to think that China is somehow a ferocious aggressor. It is not. It shows no interest in seizing areas that it never controlled, like Nepal or Indonesia, and its claims to disputed areas like some islands in the South China Sea do have some merit to them. The risk of conflict arises in part because of stirrings of Chinese nationalism. Nobody believes in Communism anymore, so the Communist Party is trying to use nationalism as the new glue. To some extent, it is working. In five years of living and traveling in China, I met innumerable ordinary people who didn't give two yuan for Communism but who argued passionately that China needed to reclaim its territories.

Just a couple of weeks ago, I was chatting with an elderly woman from Shanghai—not a Communist by any means—and I asked her what she thought of Mao. ''You know what his biggest mistake was?'' she asked, and I thought of the Great Leap Forward, which led to the deaths of 30 million people. ''It was giving up Mongolia. That's our land, that's part of China! And he allowed Stalin to take it. What we need to do is get Mongolia back.''

I can't say that this woman is representative, although I have occasionally heard other Chinese say they want to recover Mongolia, which is now an independent country. But I have heard many Chinese say that they want their navy to control the entire South China Sea, to seize the Diaoyu Islands from Japan, even to recover Taiwan.

Moreover, the likely successor to the present regime in Beijing is not a democracy but a military government. President Jiang Zemin is terrified of a coup d'etat—he has appeared before military units behind a bulletproof shield. If the generals take over in the years following Deng Xiaoping's death, they may be more aggressive than any Communists.

The placid waters and palmlined islets of the South China Sea may be the site of Asia's next war. The Government in China refuses to clarify whether it claims the entire South China Sea or just the islands in the sea. But in any case, some of the islands are also claimed by five other countries.

China erected a permanent fortress on a reef near the Philippines earlier this year, leading to a tense confrontation at sea between naval vessels for the two sides. Now Americans are training Philippine naval commandos. And Vietnam and China are jostling each other over rival oil exploration programs, by American oil companies, in the disputed area.

The worst nightmare in Asia is a Chinese invasion of Taiwan. China regards Taiwan as a renegade province, while many Taiwanese now hope for a country of their own. The authorities in Beijing repeatedly warn that they reserve the right to use force to recover Taiwan. China underlined its threats in July when it conducted missile tests in the open sea 80 miles from Taiwan, forcing the closure of fisheries and the diversion of commercial flights. The Taiwan stock market promptly plunged 6.8 percent amid jitters about a Chinese attack.

In any case, the possibility of clashes in the Taiwan Strait may be increasing rather than decreasing. For now, it is not clear that China would win if it attacked Taiwan, but the odds will change as China upgrades its forces. It is impossible to imagine that an island of 20 million could indefinitely defend itself against a country of 1.2 billion.

There is, in short, a potential Chinese threat and that drives the question: How should America deal with it?

The first step is simply to acknowledge that threat and to pay far more attention to China. America also needs to expand conversations with Chinese leaders, even if that means boosting their legitimacy at times. President Clinton has been reluctant to meet with President Jiang because of Chinese human rights abuses and other problems. But it would be more effective to invite Jiang to Washington and have him listen to hundreds of demonstrators screaming outside his hotel all night. This would convey not only America's willingness to discuss problems but also the seriousness with which Americans take China's misconduct.

Washington's aim in such talks should be to promote American interests, and that is not necessarily the same as creating a good relationship with China. There is no reason to provoke a dispute just for the sake of being surly. But the White House has to be willing to risk a dispute when China tests its resolve. For example, China has repeatedly promised not to sell M–11 missiles, which are capable of carrying nuclear warheads, to Pakistan. Each time China makes such a formal pledge, Washington claims credit for a major breakthrough. And each time, China has apparently gone ahead and sold M–11's to Pakistan anyway.

These days, the Administration is reluctant to acknowledge what appears to be the latest sale—despite satellite evidence and the best judgments of intelligence analysts—because it is reluctant to worsen relations. The lesson Beijing draws from this is that it can continue violating its pledges as long as it acts greatly offended when someone complains. It would be better to risk a deeper chill in relations than to keep on backing down.

America also needs to work with Asian countries to apply joint restraints on China. The Asian group of Southeast Asian countries, for example, has become increasingly effective in pressuring China to go slow in

the South China Sea. And whatever the risks of confrontation, I think the United States was right to declare its willingness to use military force to escort shipping in the South China Sea. If China were to interfere with those shipping lanes—blocking the flow of oil to Japan, for example—the global economy would be thrown into crisis.

Americans also need to use the right historical model. China is not bent on international conquest. Beijing may wish to dominate the region, but it does not wish to raise the Chinese flag over Jakarta or Tokyo. Rather, it is like Germany in the run-up to World War I, yearning for greater importance and testing to see what it can get away with. There could be a major war with China, but if so, it will be because of ignorance and miscalculation—in substantial part on the western rim of the Pacific.●

MEASURE READ FOR FIRST TIME—S. 1500

Mr. SANTORUM. Mr. President, I understand S. 1500, introduced today by Senator BROWN, is at the desk and I ask for its first reading.

The PRESIDING OFFICER. The Senator is correct. The clerk will read the bill for the first time.

The bill clerk read as follows:

A bill (S. 1500) to establish the Cache La Poudre River National Water Heritage Area in the State of Colorado, and for other purposes.

Mr. SANTORUM. Mr. President, I now ask for its second reading, and I object to my own request on behalf of Senators on the Democratic side of the aisle.

The PRESIDING OFFICER. An objection is heard.

INTELLIGENCE AUTHORIZATION ACT FOR FISCAL YEAR 1996—CONFERENCE REPORT

Mr. SANTORUM. Mr. President, I ask unanimous consent that the Senate proceed to the conference report accompanying H.R. 1655, the intelligence authorization bill.

The PRESIDING OFFICER. The report will be stated.

The bill clerk read as follows:

The committee of conference on the disagreeing votes of the two Houses on the amendment of the Senate to the bill (H.R. 1655) to authorize appropriations for fiscal year 1996 for intelligence and intelligence-related activities of the United States Government, the Community Management Account, and the Central Intelligence Agency Retirement and Disability System, and for other purposes, having met, after full and free conference, have agreed to recommend and do recommend to their respective Houses this report, signed by a majority of the conferees.

The PRESIDING OFFICER. Without objection, the Senate will proceed to the consideration of the conference report.

(The conference report is printed in the House proceedings of the RECORD of December 20, 1995.)

Mr. SPECTER. Mr. President, I am pleased today to present to the Senate the conference report on the Intelligence Authorization Act for fiscal year 1996. This legislation addresses a number of critical issues identified through the oversight process and lays the groundwork for legislation the committee plans to introduce early next year to ensure the intelligence community is organized to effectively address the Nation's critical intelligence needs today and in to the future.

Getting this authorization bill to this point in the process has not been easy, but it would have been impossible were it not for the unflagging efforts and cooperation of the vice chairman, Senator ROBERT KERREY. It has been a pleasure working with the Senator from Nebraska over the past year and I look forward to a productive year ahead. In addition, I want to commend our colleagues on the House Permanent Select Committee on Intelligence, particularly Chairman LARRY COMBEST and the ranking minority member, NORMAN DICKS, for their cooperation and willingness to work with us to produce this bill. We had some tough issues to address and their good faith and determination to seek areas of agreement were critical to the success of our efforts. Finally, I want to recognize the other members of the Senate Select Committee on Intelligence, some of whom have served on this committee for quite some time over the years and whose expertise, interest, and insights have served the committee and its chairman well.

The conference report and statement of managers you have before you today contains a number of significant provisions. Several of the sections address counterintelligence issues highlighted by the Aldrich Ames case. For example, the bill closes a loophole that allowed an employee convicted of espionage to receive money the U.S. Government contributed to his or her thrift savings plan, even though the money contributed to the plan by the employee was forfeited. Similarly, the bill allows a spouse who fully cooperates in an espionage investigation to receive spousal pension benefits, thus removing a disincentive provided by current law. Perhaps most significant in this regard is the provision that will allow the Federal Bureau of Investigation to obtain certain limited information from credit bureaus as part of a duly authorized counterintelligence or international terrorism investigation. Following the money trail is a critical part of these kinds of investigations. The FBI has the authority under current law to look at bank account information of individuals who are part of such an investigation. In order to use this authority, however, the FBI must identify the banks at which the individual maintains accounts. This is often done today through the intrusive and laborious process of going through that individual's trash. This provision allows the FBI to get that information, along with basic identifying information, from a consumer credit report if it meets certain specified requirements. Access to the entire consumer credit report still will require a court order.

This conference report also contains a number of provisions that reflect the changes wrought by the end of the cold war and the reexamination of the role and mission of the intelligence community [IC]. One of the key issues in this context is personnel. The committee has been concerned for some time now that the IC has not done an adequate job of removing poor performers, creating headroom for those who excel, and ensuring that the community has the right mix of skills to accomplish its current and future missions. It is particularly critical that the IC carefully manage the significant downsizing it is currently experiencing. This report calls on the DCI to develop personnel procedures for the committee to consider that include elements for termination based on relative performance and on tie in class.

Another trend in the IC in the post-cold-war environment is the declassification of secrets about which there are no longer national security concerns. The conference report contains significantly greater flexibility for the DCI and we have been assured that the funds now authorized for this activity are adequate to ensure that declassification will proceed expeditiously without sacrificing the care needed to weed out the true secrets.

The conference report also contains the provision from the Senate bill requiring a report on the financial management of the National Reconnaissance Organization. Like so much of the IC budget—about 85 percent, in fact—the NRO budget is under the Department of Defense rather than the Director of Central Intelligence. From what we have learned to date about the problems with NRO accounting practices and management, this bifurcated chain of authority contributed to a situation in which no one adequately supervised the use, for example, of prior year, or carry forward, funds. This committee will continue to monitor NRO's financial management situation until it is satisfied that controls are in place and there is full accountability.

The budget for the IC remains classified, but I can tell you that the funding authorized in the conference report, which incorporates a classified annex, is slightly below last year's level and the administration's request. This is the sixth straight year the budget has been reduced, for a cumulative reduction of 17 percent. The conference did recommend a reallocation of funding to emphasize areas of critical importance. For example, notwithstanding the rhetorical priority placed on critical intelligence topics such as proliferation, terrorism, and counternarcotics, the committee identified areas where insufficient funds have been programmed for new capabilities, or where activities are funded in the name of high-priority targets which make little or no contribution to the issue. In the classified annex accompanying the report,

the conferees recommend a number of initiatives to enhance U.S. capabilities in the areas of proliferation, terrorism, and counternarcotics. Similarly, the IC's capabilities for processing information have lagged behind the collection capabilities and the conference report attempts to address that by shifting funds.

In conclusion, I want to acknowledge the work of the staff of the committee in putting this legislation together and in assisting the committee in its day-to-day oversight of this Nation's intelligence activities. I urge my colleagues to support this bill.

Mr. KERREY. Mr. President, I join with the chairman in strongly recommending that the Senate adopt this conference report on the fiscal year 1996 Intelligence Authorization Act.

This bill continues the efforts of this committee to ensure that the intelligence community is making the changes necessary to adapt to today's world. As our troops enter Bosnia for their peacekeeping mission and policymakers work to ensure there continues to be a peace to keep, we are reminded once again of the importance of a flexible, efficient, and effective intelligence capability to support both national and military needs. It is a very different world from that which challenged the intelligence community during most of its post World War II existence. This conference report reflects the changing role and mission of intelligence. To ensure we can meet the growing demand for timely, actionable intelligence, for example, this bill shifts greater resources into the processing of intelligence, which has failed to keep pace with the collection of information. Similarly, as the threats from proliferation of weapons of mass destruction, international terrorism, organized crime, and international narcotics trafficking take on ever greater importance, the committee has included budgetary recommendations to increase funding in these areas.

The conference report includes all of the provisions contained in the Senate bill, although several of the provisions reflect some changes. In addition, the conference report includes a provision specifying that the Director of Central Intelligence can use up to $25 million for declassifying records over 25 years old, pursuant to a recent Executive order. The House bill had imposed a much tighter limit on the availability of funds for this purpose. The conferees agreed to a revised provision that will allow the DCI to begin this process in a manner that is more likely to produce timely results without compromising national security.

This year has seen great controversy concerning the intelligence community. Some of the problems we are all familiar with include the CIA's relationship with assets in Guatemala who may have participated in or covered up murders, the continuing damage caused by Aldrich Ames' treachery, CIA's withholding from its customers the full details of source information on Soviet and Russian reports, and the National Reconnaissance office's accumulation of funds in forward funding accounts vastly in excess of what they require. These failures and mistakes remind us all of the need for vigilant oversight of intelligence activities, a responsibility which Chairman Specter and I and our colleagues on the committee take very seriously.

These controversies also remind us that intelligence is becoming less of a secret business; there is a conscious process of declassification now ongoing, which is healthy; the actions of our Government should be as transparent as possible, consistent with protecting the lives of the Nation and our people. But there is also a tendency to attack necessary secrecy by means of leaks as if, with the demise of the Soviet Union, the need to protect sources and methods has evaporated and the leaking and publication of classified information is therefore harmless. Mr. President, terrorism, the spread of nuclear and chemical weapons in the world, the Russian and Chinese nuclear forces, international crime and drug trafficking, the intentions of factions in Bosnia to attack our troops—these are not harmless threats, and it is most harmful to reveal the American intelligence sources and techniques employed against those threats. In our oversight tasks we walk a fine line between correcting problems and deficiencies and telling the public as much as we can about the, on the one hand, and protecting necessary secrets, on the other.

This has been a challenging year for the intelligence community. In the midst of significant downsizing, questions about its mission, and what seemed at times to be daily revelations of scandals, the intelligence professionals continued to collect, analyze, and disseminate information to meet the needs of policymakers and the military. All of us can take pride in the quality and dedication of the Americans serving their country in the intelligence community, and I hope the headlines of the moment will not dissuade dedicated, talented young patriots from seeking careers in intelligence. In the coming months the committee will be making decisions about legislation to ensure that the intelligence community is structured to maximize the effectiveness of the efforts of these hard working men and women. The bill before you today is a significant step in that direction and I urge your support.

Mr. PRESSLER. Mr. President, I want to take a moment prior to Senate enactment of the conference report to H.R. 1655, the Intelligence Authorization bill to express my views regarding several provisions that I fear could weaken U.S. sanctions laws and weapons non-proliferation policy.

The proliferation of weapons of mass destruction is the leading security issue facing the United States and its allies. The President himself said so in a speech last year. There is a direct connection between the imposition of sanctions under U.S. and international laws and the volume of weapons trafficking. Strong enforcement of sanctions laws is a critical element of U.S. and international non-proliferation policy. The likelihood of punishment must be high. The commitment of our nation as the principle leader in international non-proliferation efforts must be taken seriously. Our resolve must be unquestioned. To do otherwise would send the worst signal, particularly to terrorist states and rogue groups. In that kind of environment, the very security of the United States may be in question.

It is for that reason that I must express my concerns with H.R. 1655, and more to the point, section 303 of the bill, which would create a new Title IX in the National Security Act. This new title would give the President unprecedented authority to stay the imposition of sanctions related to the proliferation of weapons of mass destruction, their delivery systems, as well as other advanced conventional, chemical or biological weapons. This waiver authority could be exercised if the President determines that the imposition of sanctions ''would seriously risk the compromise of an ongoing criminal investigation directly related to the activities giving rise to the sanction or an intelligence source or method directly related to the activities giving rise to the sanction.''

I am very concerned that with this provision, diplomatic and political pressure may make it impossible for the United States to do the right thing and sanction major offenders.

For the last several years, the proliferation of weapons of mass destruction and the delivery systems of such weapons appears to be intensifying. All this year, we have heard reports that the People's Republic of China has engaged in the proliferation of ballistic missile systems to Pakistan and possibly even Iran—activities that would be sanctionable under the Missile Technology Control Regime, MTCR. China also is reported to be actively involved in the expansion of Pakistan's nuclear program, as well as Iran's drive for nuclear technology.

The fact that all of this reported activity can occur without as much as a threat of sanctions from the United States has led me to believe that we may need to make our sanctions laws tougher. In fact, I am the author of a law that gives the President presumptive authority to impose sanctions against parties that export questionable materials to terrorist countries. This law, which went into effect last year, was designed to give the President the ability to impose sanctions in cases where he simply had reason to believe that weapons of mass destruction or their means of delivery had fallen in the hands of terrorist countries. He need not wait for actual proof. If he

waited, it may be too late. Equally important, the law compels the sanctioned country to come forward to demonstrate that no violation actually took place.

This law, in short, broadens the President's authority to enforce non-proliferation policy. The conference report to H.R. 1655 goes in the opposite direction—it broadens the President's authority to weaken non-proliferation policy.

Mr. President, I recognize that the trafficking of weapons of mass destruction and their related delivery systems takes place out of sight. I also very much respect that fact that intelligence sources and methods designed to monitor a nation's weapons activities are almost always, if not entirely, at risk of discovery. The consequences of such discovery certainly are life-threatening to say the least. Virtually all prosecutions and sanctions are developed from intelligence sources and methods. Therefore, I am very concerned that the conference report would provide the President with a very tempting waiver option—an option that would give the President the opportunity to make a political decision to forego prosecution or to avoid imposition of sanctions, but base it on ''sources and methods.'' In other words, the President would have the opportunity to place political expediency or other factors above our nation's non-proliferation laws. I believe that kind of discretion is a serious mistake.

I raised these concerns to the distinguished Chairman of the Intelligence Committee, Senator SPECTER. I know a number of my colleagues in the House and the Senate expressed similar views. Both the final bill language and the joint explanatory statement of the conference committee attempt to address these concerns. First, the conferees required that Title IX would be in effect for just one year. This limitation was placed to afford the Congress the opportunity to monitor closely the use of this new authority. Second, the conferees make clear that this authority is to be used for its stated purpose—to preserve sources and methods, as well as ongoing criminal investigations when seriously at risk—and ''not as a pretext for some other reason not to impose sanctions such as economic or foreign policy reasons.''

I appreciate the effort made by the conferees to restrict the President's ability to exercise this waiver authority to the purposes stated in the legislation. I also appreciate the conferees' insistence that this provision only be in effect for one year. Despite these efforts, I still believe we are setting a dangerous precedent and opening a Pandora's box that could be difficult to close.

Consider two facts: first, intelligence sources and methods are virtually the only means that allow a President to proceed with sanctions; and second, only the President is in the best position to determine whether or not a source or method is at risk if sanctions are imposed.

These facts lead this senator to conclude that the new Title IX is based on a flawed premise—that Congress has the ability to ensure that the President will not abuse this new discretionary authority to waive sanctions. I say it is flawed because only the President is in a position to determine whether or not a source or method is at risk. This risk determination is subjective—a judgement call. And, again, given that the basis for sanctions comes from sources and methods, the President is given the latitude to consider numerous economic, political or foreign policy implications, but on paper base his conclusion on sources and methods. What methods and resources do we in Congress have to second guess the President should he make a ''sources and methods'' risk determination? Would the Congress even want to second guess the President, given the fact that doing so could be even more dangerous to that intelligence source or method?

The fact is our sources and methods are almost always at risk, to say the least, but until today, our priority always has been the enforcement of our non-proliferation laws.

I am hopeful that in the next year, Congress will closely monitor the President's use of this waiver authority. I urge my colleagues not just to consider the President's ability to comply with the conditions set by the conferees, but also our own ability to ensure that these conditions are in fact followed by the President.

As the world's sole superpower, all nations concerned with the threat of nuclear proliferation look to the United States to lead by example. Vigorous U.S. enforcement of nuclear non-proliferation laws and agreements is crucial to the security of all people. I am very concerned that the conference report sets a bad precedent that could undermine vigorous enforcement in the year ahead, and even beyond if Congress allows the law to continue. I intend to follow this matter very closely in the year ahead. It is my hope that tough, consistent enforcement of our non-proliferation laws will not be sacrificed.

Mr. SANTORUM. Mr. President, I ask unanimous consent that the conference report be deemed agreed to; that the motion to reconsider be laid on the table; and that a statement on behalf of Senator SPECTER be placed at the appropriate place in the RECORD.

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

So the conference was deemed agreed to.

COMMENDING THE CIA'S STATUTORY INSPECTOR GENERAL

Mr. SANTORUM. I ask unanimous consent that the Senate proceed to the immediate consideration of Senate Resolution 201 submitted earlier today by Senator SPECTER and Senator KERREY.

The PRESIDING OFFICER. The clerk will report.

The bill clerk read as follows:

A resolution (S. Res. 201) commending the CIA's statutory Inspector General on his 5-year anniversary in office.

The Senate proceeded to consider the resolution.

Mr. WARNER. Mr. President, it is with great pleasure that I join my former colleagues on the Senate Intelligence Committee in co-sponsoring a resolution commending the fine work of the CIA's Inspector General, Fred Hitz, and congratulating Fred on his 5-year anniversary as the first Senate-confirmed Inspector General at the CIA. I had the honor of working with Fred's father many years ago, and I would like to say that Fred is admirably carrying on his family's very fine tradition of public service.

During the majority of my tenure on the Intelligence Committee and, in particular, during my service as Vice Chairman of the Committee from 1993 until January of this year, I enjoyed the benefit of Fred Hitz's wise counsel. Fred's integrity, objectivity, and fine investigative skills have served the CIA well as the Agency has confronted a number of serious problems in recent years.

Of special note, the Inspector General's comprehensive investigation of the Aldrich Ames spy case provided the Intelligence Committee, and indeed, the Nation, with the details of Ames 9-years of treachery, and insight into the problems at the CIA which allowed Ames' activities to go undetected for so long. The Committee relied heavily on the fine work performed by Fred Hitz's office in making its recommendations for how to correct the problems which the Ames case brought to light. Hopefully, the combined efforts of the CIA's IG and the Senate Intelligence Committee will serve to severely lessen the likelihood that this nation will be faced with another Ames case in the future.

Under Fred Hitz's leadership, the CIA's Inspector General's office has become an effective, objective and independent institution upon which the Members of Congress have come to rely.

I congratulate Fred on reaching this milestone in his illustrious career, and I look forward to many more years of working together on intelligence issues which are so vital to the national security of the United States.

Mr. SPECTER. Mr. President, I rise to introduce a resolution on behalf of myself, Senator KERREY of Nebraska, Senator GLENN, Senator BRYAN, Senator ROBB, Senator JOHNSTON, Senator CHAFEE, Senator BAUCUS, Senator WARNER, Senator KERRY of Massachusetts, Senator SHELBY, Senator GRAHAM of Florida, Senator KYL, Senator LUGAR, Senator INHOFE, Senator BYRD, and Senator DEWINE commending the Central Intelligence Agency's statutory Inspector General on his 5-year anniversary in office.

Mr. President, the CIA's statutory inspector general is an issue that is near and dear to me, particularly since it was at my initiative that this office was established. I, along with a good number of my Senate colleagues who served both on the Iran-Contra Committee and the Senate Select Committee on Intelligence, had voiced concern with the need for objectivity, authority, and independence on the part of the CIA's Office of Inspector General. And, working in close collaboration with my colleague Senator GLENN, we crafted a provision that in 1989 was included in the Intelligence Authorization Act of fiscal year 1990—subsequently enacted into law—to establish an independent, Presidentially appointed statutory inspector general at the CIA. In November, 1990, the Honorable Frederick P. Hitz was formally sworn in as the CIA's first statutory inspector general.

As chairman of the Senate Select Committee on Intelligence, I am pleased to report to my colleagues that in the 5 years since Fred Hitz was sworn in as the CIA IG, the committee has noted a vast improvement in the effectiveness and objectivity of that office. This has been due in no small measure to the capable leadership of Fred Hitz. While the committee has not always agreed with the judgments of the CIA inspector general's office, the CIA IG has been fearless in taking on difficult and controversial issues such as BCCI, BNL, the Aldrich Ames case, and CIA activities in Guatemala—just to name a few. And the work of Fred Hitz's shop has been an invaluable supplement to our committee's intelligence oversight role.

Mr. President, there was fierce resistance to the creation of a statutory inspector general at the Central Intelligence Agency, and there continues to be strong resentment of an independent IG in certain quarters of the CIA to this day.

This should come as no surprise. It is hard to think of another Federal agency in the U.S. Government more institutionally resistant to having an independent inspector general than the CIA. Accordingly, I believe that any CIA IG worth his or her salt would be about as popular as Fred Hitz currently is with some of his present and former CIA colleagues. It is a mark of his tenacity and integrity that Fred and his office continue to tackle the IG's mission of serving as an independent fact-finder and, when necessary, a critic of CIA programs and operations.

Mr. President, the statutory CIA inspector general has made the Central Intelligence Agency more accountable to the American people. I and my Senate colleagues wish to acknowledge and commend the fine work of this office, and congratulate Fred Hitz on his 5-year anniversary as the first statutory CIA inspector general.

Mr. KERREY. Mr. President, I rise to join my distinguished chairman, Senator SPECTER, in introducing this resolution to acknowledge the important role of the Central Intelligence Agency's statutory inspector general's office and noting the excellent work of Fred Hitz—the first CIA statutory IG who has recently celebrated his 5-year anniversary in this challenging position.

There was, to say the least, some skepticism about the wisdom of creating the statutory IG office at the CIA. Indeed, no one should be surprised that there was little support in the Agency for the creation of a statutory inspector general office. But fortunately, Senator SPECTER and Senator GLENN and others convinced the Senate to support this idea, and the office was created. Yet even after enactment, there was still resistance to an independent fact-finder within the Agency, and some of its persists even today.

The CIA has a proud but insular culture which tends to resist the scrutiny of an independent examiner. Also, because CIA operates in secret and undertakes—at the request and direction of policymakers—activities which the United States must deny, the additional oversight of an independent IG is essential. To perform this oversight effectively and honestly means to occasionally render strong criticism. Those who are criticized are sometimes offended. Their response to criticism ranges from the stoic silence we associate with CIA, to both attributable and anonymous counter-criticism of Mr. Hitz.

Mr. President, criticism of the IG by past and present CIA employees suggests to me that Mr. Hitz has been doing his job in the spirit Congress intended. I do not claim, nor would Mr. Hitz claim, that he has done his job perfectly. Few of us attain such a level of performance. I and some other members of the Intelligence Committee have not always agreed with his conclusions in particular investigations. But I would claim the CIA is a stronger, more effective organization today because he has been a strong, independent IG, as Congress envisioned.

Congress' own oversight of intelligence activities would be much more difficult without the insights provided by an independent IG. At the same time, an independent IG must not contribute to a climate in which CIA is afraid to take risks when vital U.S. interests are at stake. An independent IG must not create an internal empire of inspectors which has the same chilling effect on creative action in Government that excessive regulation has on business. Like the congressional oversight committees, a good IG must ensure that the Agency acts in accordance with U.S. law and U.S. values without inhibiting the Agency's ability to act boldly.

From what I see from the vantage point of the Intelligence Committee, Fred Hitz has been that kind of IG. I congratulate him on his completion of 5 years of service and I congratulate my colleagues who 5 years ago envisioned what we now agree is a very necessary job.

Mr. SANTORUM. I ask unanimous consent that the resolution be agreed to, the preamble be agreed to, the motion to reconsider be laid upon the table and any statements be placed in the appropriate place in the RECORD.

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

The resolution (S. Res. 201) was agreed to.

The preamble was agreed to.

The resolution, with its preamble, reads as follows:

S. RES. 201

Whereas, because of its concern with the need for objectivity, authority and independence on the part of the Central Intelligence Agency's Office of Inspector General, the Senate in 1989 included in the Intelligence Authorization Act of Fiscal Year 1990—subsequently enacted into law—a provision establishing an independent, Presidentially-appointed statutory Inspector General at the CIA;

Whereas in November, 1990, The Honorable Frederick P. Hitz was formally sworn in as the CIA's first statutory Inspector General;

Whereas the CIA's statutory Office of Inspector General, under the capable leadership of Frederick P. Hitz, has demonstrated its independence, tenacity, effectiveness and integrity; and

Whereas the work of the CIA Office of Inspector General under Mr. Hitz's leadership has contributed notably to the greater efficiency, effectiveness, integrity and accountability of the Central Intelligence Agency: Now, therefore, be it

Resolved, That the Senate expresses its congratulations to Frederick P. Hitz on his 5-year anniversary as the first statutory CIA Inspector General and expresses its support for the Office of the CIA Inspector General.

SEC. 2. The Secretary of the Senate shall transmit a copy of this resolution to Frederick P. Hitz.

MEASURES INDEFINITELY POSTPONED—S. 1315 AND S. 1388

Mr. SANTORUM. Mr. President, I ask unanimous consent that Calendar No. 287, S. 1315, and Calendar No. 288, S. 1388, be indefinitely postponed.

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

FARM CREDIT SYSTEM REFORM ACT OF 1996

Mr. SANTORUM. I ask unanimous consent that the Committee on Agriculture be discharged from further consideration of H.R. 2029 and that the Senate proceed to its immediate consideration.

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

The clerk will report.

The legislative clerk read as follows:

A bill (H.R. 2029) to amend the Farm Credit Act of 1971 to provide regulatory relief.

The PRESIDING OFFICER. Is there objection to the immediate consideration of the bill?

There being no objection, the Senate proceeded to consider the bill.

AMENDMENT NO. 3109

(Purpose: To provide a complete substitute.)

Mr. SANTORUM. Mr. President, I send a substitute amendment to the

desk and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report.

The bill clerk read as follows:

The Senator from Pennsylvania [Mr. SANTORUM], for Mr. LUGAR for himself and Mr. LEAHY, proposes an amendment numbered 3109.

Mr. SANTORUM. I ask unanimous consent that the reading of the amendment be dispensed with.

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

(The text of the amendment is printed in today's RECORD under ''Amendments Submitted.'')

Mr. LUGAR. Mr. President, I rise in support of H.R. 2029, the Farm Credit System Reform Act of 1996. The bill makes changes to the authorizing legislation for the Federal Agricultural Mortgage Corporation [Farmer Mac] to afford it a final opportunity to establish a successful secondary market for agricultural loans. Its future is seriously threatened and without this corrective legislation, the benefits it offers farmers, ranchers, and rural homeowners may be lost. Farmer Mac was established to encourage a stable and highly competitive lending environment for rural America, an environment that must be preserved.

The bill also provides changes to the underlying statute for the cooperative Farm Credit System [FCS] to provide relief from outdated and unnecessary regulations. These changes will give FCS more flexibility in its operations and allow it to provide competitive loan rates and improved service. The bill also extends the U.S. Department of Agriculture's interest rate reduction production on guaranteed farm loans. This program is an important tool used to transfer direct loan borrowers to guaranteed loans, eventually leading to borrower graduation from Federal support. Finally, the bill will authorize a new foundation to facilitate creative solutions to soil and water conservation problems. This foundation will be funded primarily through private donations.

Farmer Mac is responsible for providing farmers, ranchers, and rural homeowners with access to a stable and competitive supply of credit for mortgage loans. It is a privately owned and operated corporation created by Congress in 1988. Farmer Mac is known as a Government sponsored enterprise, similar to Sallie Mae and Fannie Mae, which employ private capital to establish business operations charged with specific responsibilities to carry out public policy. Farmer Mac, which began operations after the enactment of the Agricultural Credit Act of 1987, raised $21 million in private capital from banks, insurance companies, and Farm Credit institutions to fund the development and operation of a secondary market. No Federal funds were invested in the original capitalization of Farmer Mac and no Federal funds have ever been appropriated to support any facet of its operation. In fact, Farmer Mac pays the Farm Credit Administration annual assessments to cover the cost to the Government of regulating the secondary market.

Farmer Mac must make a profit to support its operations or its capital base will eventually be exhausted. Should the capital base erode—it is currently down to about $11 million—the original investors would lose their investments and the secondary market would terminate. Termination of Farmer Mac would deny rural Americans access to competitive long-term fixed rate mortgages at a time when budget reductions and changes in Government housing and agricultural policy will place increased pressure on farmers, ranchers, and rural homeowners to reduce expenses to remain competitive.

The successful Fannie Mae and Freddie Mac residential mortgage secondary markets were used as the structural design for Farmer Mac. However, certain distinctions were made that have become obstacles to Farmer Mac's success: First, the requirement that Farmer Mac operate its program through poolers, and Second, the requirement that every Farmer Mac loan be backed by a minimum 10-percent subordinated participation interest. The bill repeals both of these obstacles. Nine poolers have been certified since 1990. However, the poolers have only submitted six pools of qualified loans, totaling $790 million, for guarantee under the program. The limited participation has prevented the program from generating enough income to support its cost of operation. Under H.R. 2029, Farmer Mac will now be permitted to purchase and pool loans itself, and the 10-percent cash reserve requirement is eliminated. The removal of these impediments will make Farmer Mac's structure essentially identical to other successful GSE's.

In addition, the legislation: extends the time period before the Farm Credit Administration may promulgate risk-based capital regulations to 3 years after the date of enactment; provides a time triggered transition period to increased minimum and critical capital requirements; requires Farmer Mac to increase its core capital to at least $25 million within 2 years or curtail its operation; and provides procedures for the Farm Credit Administration to liquidate Farmer Mac's operation in the event it fails to establish a successful secondary market.

It has become apparent that after almost 6 years of operation, Farmer Mac's statutory structure will not work. This important piece of legislation gives Farmer Mac everything it needs to succeed for the sake of rural Americans.

The bill also removes undue regulatory burden placed on the Farm Credit System and provides the System greater flexibility in its operations to offer its borrowers competitive loan rates and improved service.

This portion of the legislation provides that FCS borrower stock and borrower rights requirements do not apply for 180 days to loans designated for sale to the secondary market; allows FCS associations to form administrative entities; provides for rebating to System banks excess amounts in the Farm Credit System Insurance Fund after 8 years of interest earnings accumulate on top of the System's secure capital base; provides procedures for allocating to System banks and to other institutions holding Financial Assistance Corporation [FAC] stock excess amounts in the Farm Credit System Insurance Fund until $56 million is repaid; provides authority to prohibit or limit golden parachute payments to System executives; and repeals the requirement for establishing a new board of directors for the Farm Credit System Insurance Corporation and retains the current board structure.

The FAC stock provisions lay to rest a long standing controversy in the Farm Credit System. Beginning in 1984, the System came upon hard times due to the credit crisis in farming and System associations were required to purchase FAC stock for the amount of unallocated retained earnings exceeding 13 percent of their total assets to assist in rescuing the floundering system. The associations which had a high level of capital in relation to their loan volume were affected most. Many associations believe that they and their borrowers were required by the Agricultural Credit Act of 1987 to carry a disproportionate share of the System's self-help burden. The substantial depletion of capital resulting from the assessment caused associations to increase interest rates to their customers. The assessment was challenged by 21 production credit associations shortly after the enactment of the 1987 legislation. However, the U.S. Court of Appeals affirmed the authority of Congress to impose the assessment in June 1992. Legislation in 1988 and 1989 permitted the return of $121 million to the FAC stockholders of the more than $177 million collected from System institutions.

Many in Congress believe that the assessments and mandatory purchase of FAC stock represented a commitment to the future of the Farm Credit System. It was the inherent responsibility of System institutions to join the Federal Government to bail out the System in exchange for continued agency status for their debt securities. The compromise included in this bill permits the repayment of $56 million to the remaining FAC stockholders and terminates the Financial Assistance Corporation trust upon full repayment of that sum. I support this compromise and I am pleased that this controversy has been amicably resolved.

Preserving and making more efficient a system that provides rural America access to stable and competitive credit is of the utmost importance. Farmer Mac can make an important

contribution to this goal. This legislation is a final congressional effort to make Farmer Mac viable. Legislative restrictions may have hobbled the institution until now. If the new authorities do not prove sufficient, it will be time to declare Farmer Mac a failed experiment. The bill before us provides for orderly procedures in this event.

I urge my colleagues to support this important piece of legislation.

Mr. LEAHY. I rise at this time to engage the gentleman from Indiana, the chairman of the committee, in a colloquy.

Mr. LUGAR. I would be pleased to engage the Senator in a colloquy.

Mr. LEAHY. It is my understanding that the legislation before us today includes provisions designed to provide relief to institutions of the Farm Credit System from the paperwork, costs, and other burdens associated with unnecessary and archaic regulatory requirements placed on such institutions under current law. It is also my understanding that similar legislation to provide regulatory relief to the commercial banking industry is also under consideration by the Congress.

Mr. LUGAR. The Senator is correct.

Mr. LEAHY. It is also my understanding that the legislation before the Senate includes amendments to title VIII of the Farm Credit Act of 1971 to modernize, expand, and make other improvements in the Federal charter and authorities of the Federal Agricultural Mortgage Corporation so that this entity, commonly known as Farmer Mac, can better provide credit to agricultural borrowers through commercial banks and other lenders.

Mr. LUGAR. The Senator is correct.

Mr. LEAHY. It is my further understanding that this legislation includes an agreed-upon compromise to address once and for all the issue of the return of the remaining 32 percent of the one-time self-help contributions paid by Farm Credit Systems banks and associations to help capitalize the Financial Assistance Corporation. The institutions that were assessed these contributions were designated as holders of stock in the Financial Assistance Corporation, commonly referred to as FAC stock. Is it not true that this stock, in and of itself, has no value, and that the holders of this stock have no legal claim, either now or in future, against any party in association with this stock, beyond any that may arise as a result of the specific provisions of the bill before us today?

Mr. LUGAR. The Senator's understanding is absolutely correct.

Mr. LEAHY. I am disappointed that the bill before us today does not include amendments to the remaining titles of the Farm Credit Act of 1971 to provide similar modernization, expansion, and improvements to the Federal charter and other authorities of the remaining institutions of the Farm Credit System. These banks and associations of the Farm Credit System provide a needed source of credit to the farmers, ranchers, their associations, and cooperatives across rural America. The System also provides financing for agricultural exports, rural water and waste, and other rural enterprises. Does the chairman have any plans to comprehensively review the authorities of these other institutions regulated under the Farm Credit Act of 1971 with an eye toward providing for the similar modernization, expansion and improvement of their Federal charter and other authorities?

Mr. LUGAR. Yes, it is my intention next year to work with the gentleman from Vermont and other interested Members to conduct a comprehensive review by the Committee on Agriculture, Nutrition, and Forestry of the authorities of the institutions regulated under the Farm Credit Act of 1971, other than Farmer Mac, consistent with the jurisdiction of the committee. The stated goal of this review will be to develop legislation to provide for the modernization, expansion, and improvement of their Federal charter and other authorities of the institutions of the Farm Credit System. Such legislation, if warranted by our review, could provide for enhanced agricultural, business, and rural development financing across the United States.

Mr. LEAHY. I thank the Senator for his cooperation on the bill before us today and look forward to working with him next year on the important Farm Credit System modernization legislation he has just described.

Mr. SANTORUM. Mr. President, I ask unanimous consent that the amendment be agreed to and the bill be deemed read a third time and passed, and the motion to reconsider be laid upon the table.

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

So the amendment (No. 3109) was agreed to.

So the bill (H.R. 2029) was deemed read the third time and passed.

So the title was amended so as to read: An Act to amend the Farm Credit Act of 1971 to provide regulatory relief, and for other purposes.

MEASURE READ THE FIRST TIME—HOUSE JOINT RESOLUTION 134

Mr. SANTORUM. I inquire of the Chair if the Senate has received from the House House Joint Resolution 134?

The PRESIDING OFFICER. It has been received.

Mr. SANTORUM. I ask the joint resolution be read for the first time.

The PRESIDING OFFICER. The clerk will report.

The bill clerk read as follows:

A joint resolution (H.J. Res. 134) making further continuing appropriations for the fiscal year 1996, and for other purposes.

Mr. SANTORUM. I now ask for its second reading and object to my own request on behalf of Senators on the Democratic side of the aisle.

The PRESIDING OFFICER. The bill will be read a second time on the next legislative day.

ORDERS FOR FRIDAY, DECEMBER 22, 1995

Mr. SANTORUM. I ask unanimous consent that when the Senate completes its business today it stand in adjournment until the hour of 10:15 a.m. on Friday, December 22, that following the prayer, the Journal of proceedings be deemed approved to date, no resolutions come over under the rule, the call of the calendar be dispensed with, the morning hour be deemed to have expired, and the time for the two leaders be reserved for their use later in the day.

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

PROGRAM

Mr. SANTORUM. At 10:15 a.m. the Senate will begin 30 minutes for closing debate on the veto message to be followed by 30 minutes for closing debate on the welfare conference report. Two back-to-back votes will occur beginning at 11:15 on both issues. Following the two back-to-back votes, the Senate will begin the START II treaty. The Senate could also be asked to consider available appropriations bills, other conference reports, and other items due for action. Rollcall votes are therefore expected throughout the session of the Senate on Friday.

POSTPONEMENT OF CLOTURE VOTE

Mr. SANTORUM. Mr. President, I further ask unanimous consent that the cloture vote scheduled for today be postponed to occur at a time to be determined by the two leaders on Friday.

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

ORDER FOR ADJOURNMENT

Mr. SANTORUM. If there is no further business to come before the Senate, I now ask that the Senate stand in adjournment under the previous order, following the remarks of the Senator from Pennsylvania.

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

PERSONAL RESPONSIBILITY AND WORK ACT OF 1995—CONFERENCE REPORT

The Senate continued with consideration of the conference report.

Mr. SANTORUM. Mr. President, again I want to restate my admiration for the Senator from Delaware and for the members of the Finance Committee staff for their tremendous work in this legislation and for hastily preparing Members for this debate this evening that was not expected until tomorrow.

I want to also thank Senator CHAFEE, who really worked diligently during the conference between the House and the Senate on behalf of points that the

Senate stood very strongly in support of—things like the maintenance of efforts provision, which there was a lot of concern on both sides of the aisle, and child care funding and the SSI provisions. Those three points could have, I think, caused significant problems had we not held very closely to what the Senate provisions were, and I think we have done that in all three cases. I think Senator CHAFEE should be commended for his work.

I also want to congratulate Senator DOMENICI for not just his work on the welfare reform bill, but in all the conferences that he had to deal with and his action on the welfare issue when Senator CHAFEE helped the resolution of the bill move toward the Senate bill. That is probably one of the most important things I wanted to stress about this bill.

It may sound like you are lauding yourself here, but in a sense the Senate did a very good job of arguing for its positions in the welfare conference. I think most folks who look at this from the outside will see that, of the two bills that went in, the one bill that came out looks a heck of a lot more like the Senate bill than it does the House bill. I think that is a wise course to take.

The Senate bill is a more moderate bill, but it is still a very dramatic reform and one that I think will set this country on a proper course of putting the ladder back down, all the way down, to allow even those at the lower social strata of our country today and income strata of our country today, to climb that ladder up to opportunity and success and change the entire dynamics of welfare from one that is looked upon by those now who are in the system and who pay for the system disparagingly.

Welfare is not a word, when it is uttered, that is given any kind of respect. Nobody says the word ''welfare'' and thinks, ''Wow, what a great system.'' Or, ''Gee, this is something that is really necessary, that works.''

That is sad. It is sad for the people who have to pay the taxes to finance it. It is also sad for the people who find themselves caught in it, to be stigmatized by this system that has failed. It may not have failed them particularly. In fact, many people have gotten onto the welfare rolls and come off stronger and better. But those cases happen not as often as we would like to see. We would like to see the changing of the stigma of welfare to a program that, when you look at it, you can be proud of it. When you see your dollars invested in it, you see dollars invested in a system that truly does help people and that is marked with more successes than failures.

While there have been successes, they simply do not match up. I think we can look at the overall decline in our poor communities as evidence of that.

I want to debunk a couple of myths here to begin with, and then go into the specifics of the legislation, because as I said before, the point I wanted to make here, more than anything else, is if you were someone who voted for H.R. 4 when it passed the Senate, you have to do a pretty good stretch to vote against this conference report. You have to think up a lot of reasons that, frankly, do not exist to vote against this conference report. Because the bills are very similar and, in fact, there were things adopted in the conference report that even moved more toward the Democratic side of the aisle than were in the original Senate-passed bill.

That is why I am somewhat at a loss and I am hopeful—I should not say that. I am not hopeful. I would like to think that the President, when he takes a second look at this legislation in its entirety and matches it up with H.R. 4 that passed the Senate, which he said he would sign, that again he would have a big stretch to find some fatal flaw in the conference report that did not exist in the bill that he said he would sign.

Let me debunk a couple of myths. No. 1, that we are cutting welfare. We are not cutting welfare. This is the same idea that is being perpetrated on the American public with ''We are cutting Medicare.'' We are not cutting Medicare, Medicare increases over 7 percent a year for 7 years. It is a mantra that comes out. I do not even think about it. It spews forward because we are constantly defending the ''cuts in Medicare.'' We will be charged with cutting welfare, leaving people homeless and not providing support.

I refer my colleagues to this chart, which shows that welfare spending from 1996 to the year 2000 will go up under current law at 56 percent, that is 5.8 percent per year. That is almost three times the rate of inflation. Under the Republican bill, this bill that some will label draconian and mean-spirited and not caring about children and all the way—it goes up 34 percent over the next 7 years, or 4 percent a year, almost twice the rate of inflation.

So you do not think that the increase is based on an increase in the amount of people going on welfare programs, you will see that the per capita increase in welfare spending—what we are spending on what is estimated to be the welfare population —also goes up over the next several years and continues to go up. That is in spite of the fact that we have a very sharp disagreement between the Congressional Budget Office, whose numbers this is based upon, and the Department of Health and Human Services, as to what the welfare caseload will be over the next several years.

These numbers are based on the Congressional Budget Office, which suggests that the welfare caseload will, in fact, remain constant over the next 7 years. Even though with changes in SSI, with other changes in AFDC, with the block-granting, with the work requirements, we have seen a dramatic drop in States that have implemented these kinds of work requirements—Wisconsin and Michigan, for example—in welfare caseload. CBO does not account for that. They say it is going to be constant.

The Department of Health and Human Services, by the way, suggests that the welfare caseload over the next 7 years will drop by 50 percent. This is getting ridiculed for one thing but getting scored for the other. You get ridiculed by the White House for cutting welfare rolls by 50 percent over the next 7 years and therefore cutting off children and women and all these things, yet for the purposes of determining how much money you are spending per child the Congressional Budget Office says that welfare caseload is going to remain constant. So you lose on both ends in this situation, which is unfortunate for this debate.

But I think it points out that there is certainly room to believe that welfare caseload will go down, and with the programs that we have in place, the block granted programs with finite dollars, that the spending per family will actually increase more than this, that there will be more money for States to do the things that those on the other side, who oppose this bill, want—because there are many who voted for the original Senate bill who say there is not enough money for child care or there is not enough money for work.

As I suggested to the Senator from Massachusetts, we are not cutting child care in this bill. We are increasing child care above what is in current law, as we should. We are requiring work, which we have not heretofore. So we are increasing child care almost $2 billion over the next 7 years to compensate for those who will have to work to receive welfare benefits.

I will remind Members here that, under the current provisions in this bill, no one will be required to work unless the State opts out of this formula for 2 years. So, most of the child care burden and the participation rate starts out at, I believe, 30 percent and phases up to only 50 percent of the entire caseload. So we are not saying ''everybody this year.'' In fact, under the bill the block grant scheme does not go into effect until October of 1996. That is a change from the Senate bill. As I said, there are certain things in the bill that will be attractive to the other side of the aisle. One of them is that the block grant does not go into effect immediately, as it would have under the Senate bill. It does not go into effect until October 1. So we keep the Federal entitlement for another three quarters of a fiscal year. And it does not go into effect until October 1. So that is a plus, I would think, for some Members on the other side.

The child care money that is there, and the work money that is there, we believe is more than sufficient to cover the anticipated caseload given the participation rates, the delay in people having to work, and the delay in the program itself, of 2 years, before anyone even in the program has to work.

That is why, with respect to child care, we have backloaded the money. The reason we backload the money is because that is when more people will be required to work and that is when they, the States, will need the money for day care. We think that is a logical way to accomplish it. Some would suggest that we are skimping a little bit in the early years. The Senator from Massachusetts thinks that is wrong. I think that is a very wise allocation of resources on the part of the proponents of this legislation.

With respect to the work requirements, we have cut work requirements. One of the things that many Members on the other side of the aisle supported in this bill and were a bit dismayed about with the original Finance Committee bill was that it did not have tough work requirements. We have those same tough work requirements in this bill.

We believe with the evidence of other States, Michigan as I said, before, Wisconsin, and others, that caseload does decline when you require work. Many people who would otherwise get on the rolls who know that they have to go to work opt to go to work instead of getting on the rolls. We have seen that happen.

We believe there will be more than enough money. Again, we do something that we think is very important. We allow for fungibility. We allow for flexibility of States to move money from one area to another where the States determine where their greatest need is, with the exception of child care because we have seen that is a very crucial item. So we do not allow that money to be used for other purposes. We in a sense have a one-way battle. Money can come in for more child care but no more money than was originally dedicated for child care can go out. Again, it is a concession to the other side of the aisle for their paramount, and I think legitimate, concern for child care.

Another thing we did different than the Senate bill, I think many Members on the other side of the aisle would appreciate, is we separate child care out into a separate block grant. In the original Senate bill it was included with the other block grants. There was some concern about the long-term integrity of that fund if it was included. So we have now separated out child care as a separate block grant unto itself which again is something that many Members on the other side of the aisle wanted. As I said before, we put more money in child care.

The Senate bill that passed here had $15.8 billion in child care for 5 years. Our bill had $16.3 billion for 5 years—more money in 5 years, and more money for 7 years; $5 billion more; again, almost $2 billion more than current law.

Another big thing that the other side of the aisle took sort of a last stand on was the idea of maintenance of effort, maintaining the States' contribution to their welfare program—the fear that some would argue, its legitimacy. But I side with them. I think there is legitimate fear here that States would race to the bottom. They would take the Federal dollars, eliminate the State contribution, and really squeeze their welfare program down to just where the Federal dollar is contributing and no State contribution.

What we have said is in the Senate bill that passed that States would maintain 80 percent of their effort for 5 years. The Senator from Louisiana, Senator BREAUX, called for an amendment that increased it to 90 percent. The reason he said that is because he was afraid in going to conference with the House, which had a zero maintenance of effort provision—they did not have any maintenance of effort provision—that we had to get to 90 percent simply to go to conference so we can bargain because we probably only would end up with a 45 percent—halfway, or 50 percent—maintenance of effort. We came out of the conference not with 50 percent, 60 percent, or 70 percent, but a 75-percent maintenance of effort which was the original request of those who were working on the provision here in the Senate in the first place. They only went to 80 because they wanted a negotiated position. It succeeded. They ended up with 75 which is what they wanted in the first place. So maintenance of effort is as Members wanted it in the Senate bill.

So, again the two major provisions that caused acrimony in dealing with this bill—child care and maintenance of effort—one was solved in conference to the benefit and even more generous than came out of the benefit, again the Senate bill. The other is exactly where the Senate wanted it in the first place, 75 percent over the term of the bill.

So, again I wonder where the problem is or may be found for Members on the big issues because on the big issues, on the real hot buttons, we are in sync with where the Senate was when the bill passed. All the same requirements are there. The 50-percent participation standard by the year 2000, something the other side wanted and we wanted; no family can stay on more than 2 years.

Remember, ending welfare as we know it, requiring work after a period of time, and then cutting off benefits after a period of time, something candidate Clinton campaigned on when he ran in 1992 as the new Democrat, is in this bill as passed by the Senate.

We allow States to exempt families with children under 1 year of age from working, something that was advocated by the Democrats and kept in in the conference. States that are successful in moving families into work can reduce their own spending. We do allow for flexibility. But the more people you get into work the lower you can reduce your maintenance of effort because you have obviously accomplished the goal of the program, which was to get people working.

As far as money is concerned, a lot of concern about growth funds and contingency funds, loan funds—the loan fund is the same as it passed the Senate. The contingency fund is the same as it passed the Senate. And the population growth fund is roughly the same as passed the Senate. The transferability of funds is the same as passed the Senate. And, again with the exemption of the child care block grant which you cannot touch, the same as passed the Senate. The State option on unwed teen parents, the illegitimacy provision, the same as passed the Senate, a very contentious issue, one that was fought here on the Senate floor, one that was demanded by the House. They had to have the illegitimacy provision as the Senator from North Carolina stated, Senator FAIRCLOTH. They conceded to the Senate position to allow an option to the States to do that. The one concession that we gave—and it is a minor one—is on the family cap provision which is, once you have gotten onto the welfare role, any additional children you have while on welfare you do not get additional dollars for additional children. Several States have implemented that program. What we have said in this bill is that there is an opt out.

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

Mr. SANTORUM. I ask unanimous consent for an additional 10 minutes.

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

Mr. SANTORUM. I thank the Chair for his indulgence.

We allow the States to opt out of the requirement of a family cap. That may sound tough. We say that you have to have a family cap provision in your welfare. But you can pass legislation in your legislature signed by the Governor that would remove you from that requirement. In actuality, what this provision does, since, as a result of the Brown amendment legislatures and Governors have to pass bills to implement and spend this money, what we in a sense require is a vote on this provision in the legislature. Since the legislature is going to act anyway, all we say here is that the legislature has to make a decision whether to allow a family cap or not, and, if they say no family cap, the family cap goes out. If they want it, it goes in. All we do is force the decision. That is hardly a burdensome addition to this legislation.

We have all sorts of terrific reforms on child support enforcement and maternity establishment and absentee parents. All were in the Senate bill. All were heartily supported by both sides of the aisle. All are in the conference report.

Nutrition programs—in the Senate bill we had a block grant option for States for food stamps. That was not very popular on the Democratic side of the aisle. Many Members did not like the option for food stamps that passed the Senate and objected to it. We have

reduced the opportunity for States to get into a block grant by putting up very stringent accountability requirements for fraud and error rates, tough error rates than frankly most States will be able to meet. So the open ended allowance for block granting food stamps has been really drawn back;

Again, it is something that moves to the Democrat side of the aisle on this bill.

In return for that, the House did not want to block grant the food stamps, but they wanted to block grant nutritional programs for schools, a hotly debated topic. So what we did there is allow a seven-State demonstration project for block granting school lunch programs, a very narrow block granted program with very tough requirement on the State.

We added back, I might add, in response to the Senator from Massachusetts, who said that we dramatically reduced nutrition funding—and, again, this is where maybe the haste in bringing this bill to the floor resulted in faulty information getting into the hands of Senators. We added back $1.5 billion to nutrition programs, the exact amount that many Senators who had been negotiating on this welfare bill on the Democratic side of the aisle asked for—$1.5 billion was asked for; $1.5 billion was put in the nutritional programs.

SSI. This was an interesting area of debate for me because I have worked on this issue now for close to 4 years and was a very contentious issue when Congressman MCCRERY from Louisiana and Congressman KLECZKA from Wisconsin and I broached this situation in the Ways and Means Committee, and we have come a long way since then. In fact, we came so far that the SSI provisions that are included in this bill were the same SSI provisions that were included in the Democratic alternative welfare bill. There was not an amendment in the Chamber discussing the reduction of the number of children, drug addicts, alcoholics who qualify for SSI.

I have heard in some of the reports, criticisms from some now saying that we cut children off SSI. I would just suggest that the same children that are removed from the SSI rolls under this bill were the same children that were removed from SSI under the bill that I believe every Member of the other side of the aisle voted for, their own substitute—same language.

So there is no argument there, I do not believe, unless there is a newfound argument. Very legitimate change in the SSI Program due to a court decision which we have discussed on the floor many times. We have, in fact, loosened the provisions in this bill from the provision that passed the Senate just a few months ago.

We said with respect to noncitizens in SSI that they would never be eligible for SSI until they had worked 40 quarters and would be eligible through the Social Security System. We now allow for people who are noncitizens, legal noncitizens to qualify for SSI benefits if they become a citizen.

So citizenship, something many Members on the Democratic side of the aisle voted for in an amendment that was here that was narrowly defeated in the Chamber, we have now conceded the point that they lost here on the Senate floor and loosened the eligibility requirements for SSI, another reason we have moved more toward them as opposed to away from them in this bill.

One thing that we did add is we added to the SSI requirement for legal noncitizens—I should not say requirement, the SSI ineligibility for legal noncitizens, the State has an option as it did in the original bill to eliminate cash welfare, Medicaid and title 20 services if they so desire.

If you look at probably the last argument that Members of the other side will have in searching for reasons not to vote for this legislation, it will be that we end the tie between welfare, people on AFDC and Medicaid. For the clarification of Members, if you qualify for AFDC, you automatically as a result of your eligibility for AFDC become eligible for an array of benefits—food stamps, Medicaid, potentially housing.

What we have done, since we are block granting Medicaid to the States, we are going to say to the States that they will be able to determine eligibility for their program. And that includes whether they want to make people who are on AFDC eligible for their program.

Obviously, most Governors will tell you that they will. But even if they do not, which I think is unlikely, but even if they do not, the Congressional Budget Office has scored this provision, this decoupling of AFDC and Medicaid, have scored this provision on the following assumption: that all the children who now are on AFDC and qualify for AFDC will qualify for Medicaid under some other provision in law other than AFDC.

So all of the children that are now qualified under AFDC will qualify anyway under some other avenue, and it is so scored. So when you hear the comments over here that all these children will be cut off of health care, not true, not according to the Congressional Budget Office and not according to at least many of the Governors' understanding of the current law.

And again according to the Congressional Budget Office, slightly over half of the women in this program will automatically qualify for Medicaid from some other avenue other than AFDC. The rest will have to qualify under the new State standards. And as I said before, and I think Senator HUTCHISON from Texas said it very well, even though the Governor from Texas went to Yale and not the University of Texas or Penn State, I am sure the Governor of Texas and Governor of Pennsylvania have concern for their citizens and mothers trying to raise children in very difficult circumstances and recognize the need for the State to provide adequate medical attention. And to suggest otherwise I think goes back to the days of thinking of Southern Governors standing in front of the courthouse not letting people in because of the color of their skin. Those days are gone, and I would think that hearkening back to those kinds of days in this kind of debate does not lift the content of the debate to a credible level.

That is it. Those are the differences between H.R. 4, as passed by the Senate, and H.R. 4 as before us now, hardly startling differences that would send people rushing to the exits to get away from this horribly transformed piece of legislation.

This piece of legislation was crafted to pass the Senate with a margin very similar to the margin that passed originally, with those who would examine the content of this legislation and vote for it on its merits not because of pressure from the White House due to an expected veto.

On the merits, this bill matches up very well with what passed just a very short time ago. On the merits, this is a bill that all of us can be proud of, that is going to change the dynamic for millions of citizens to put that ladder all the way down, to create opportunities for everyone in America to climb that ladder, as my grandfather and my father did, who lived in a company town, Tire Hill, PA, right at the mouth of a coal mine, got paid in stamps to use at the company store, and in one generation, in one generation in America lived to see their son in this Chamber. That is the greatness of America. That is what this whole welfare reform bill is all about. I can tell you because I was in those discussions. I have been in those discussions on the House floor 2 years ago. I was in those discussions here during the Senate debate, in the back rooms where we worked on all the details of this bill; we crafted the compromises, every step of the way from the original introduction of the House bill 2 years ago to the final compromise in the conference.

I can tell you with a straight face that when we made decisions on what to put in this legislation, not just the principal, but the sole reason for changing the welfare system from what it is to what I hope it will be was not the dollars that were saved but the people it would help and the lives that would change for the better.

This is not about balancing the budget. This is about creating opportunity and changing the face of America, changing the word ''welfare'' from that disparaged term to one that we can all be proud of, that we can all say, yes, America can work to help everybody reach up for more.

Mr. President, I yield the floor.

ADJOURNMENT UNTIL 10:15 A.M. TOMORROW

The PRESIDING OFFICER. Under the previous order, the Senate stands adjourned until 10:15 a.m., December 22.

Thereupon, the Senate, at 9:56 p.m., adjourned until Friday, December 22, 1995, at 10:15 a.m.

NOMINATIONS

Executive nominations received by the Senate December 21, 1995:

DEPARTMENT OF ENERGY

THOMAS PAUL GRUMBLY, OF VIRGINIA, TO BE UNDER SECRETARY OF ENERGY, VICE CHARLES B. CURTIS.

EXPORT-IMPORT BANK OF THE UNITED STATES

MARTIN A. KAMARCK, OF MASSACHUSETTS, TO BE PRESIDENT OF THE EXPORT-IMPORT BANK OF THE UNITED STATES FOR THE REMAINDER OF THE TERM EXPIRING JANUARY 20, 1997, VICE KENNETH D. BRODY, RESIGNED.

THE JUDICIARY

DONALD W. MOLLOY, OF MONTANA, TO BE U.S. DISTRICT JUDGE FOR THE DISTRICT OF MONTANA VICE PAUL G. HATFIELD, RETIRED.

SUSAN OKI MOLLWAY, OF HAWAII, TO BE U.S. DISTRICT JUDGE FOR THE DISTRICT OF HAWAII VICE HAROLD M. FONG, DECEASED.

IN THE AIR FORCE

THE FOLLOWING-NAMED OFFICERS FOR APPOINTMENT IN THE RESERVE OF THE AIR FORCE, TO THE GRADE INDICATED, UNDER THE PROVISIONS OF TITLE 10, UNITED STATES CODE, SECTIONS 8373, 8374, 12201, AND 12212:

To be major general

BRIG. GEN. JAMES F. BROWN, 000–00–0000, AIR NATIONAL GUARD OF THE UNITED STATES.
BRIG. GEN. JAMES MC INTOSH, 000–00–0000, AIR NATIONAL GUARD OF THE UNITED STATES.

To be brigadier general

COL. GARY A. BREWINGTON, 000–00–0000, AIR NATIONAL GUARD OF THE UNITED STATES.
COL. WILLIAM L. FLESHMAN, 000–00–0000, AIR NATIONAL GUARD OF THE UNITED STATES.
COL. ALLEN H. HENDERSON, 000–00–0000, AIR NATIONAL GUARD OF THE UNITED STATES.
COL. JOHN E. IFFLAND, 000–00–0000, AIR NATIONAL GUARD OF THE UNITED STATES.
COL. DENNIS J. KERKMAN, 000–00–0000, AIR NATIONAL GUARD OF THE UNITED STATES.
COL. STEPHEN M. KOPER, 000–00–0000, AIR NATIONAL GUARD OF THE UNITED STATES.
COL. ANTHONY L. LIGUORI, 000–00–0000, AIR NATIONAL GUARD OF THE UNITED STATES.
COL. KENNETH W. MAHON, 000–00–0000, AIR NATIONAL GUARD OF THE UNITED STATES.
COL. WILLIAM H. PHILLIPS, 000–00–0000, AIR NATIONAL GUARD OF THE UNITED STATES.
COL. JERRY H. RISHER, 000–00–0000, AIR NATIONAL GUARD OF THE UNITED STATES.
COL. WILLIAM J. SHONDEL, 000–00–0000, AIR NATIONAL GUARD OF THE UNITED STATES.

THE FOLLOWING-NAMED OFFICERS FOR PROMOTION IN THE REGULAR AIR FORCE OF THE UNITED STATES TO THE GRADE INDICATED UNDER TITLE 10, UNITED STATES CODE, SECTION 624:

To be brigadier general

COL. BRIAN A. ARNOLD, 000–00–0000.
COL. JOHN R. BAKER 000–00–0000.
COL. RICHARD T. BANHOLZER, 000–00–0000.
COL. JOHN L. BARRY, 000–00–0000.
COL. JOHN D. BECKER, 000–00–0000.
COL. ROBERT F. BEHLER, 000–00–0000.
COL. SCOTT C. BERGREN, 000–00–0000.
COL. PAUL L. BIELOWICZ, 000–00–0000.
COL. FRANKLIN J. BLAISDELL, 000–00–0000.
COL. JOHN S. BOONE, 000–00–0000.
COL. CLAYTON G. BRIDGES, 000–00–0000.
COL. JOHN W. BROOKS, 000–00–0000.
COL. WALTER E. L. BUCHANAN III, 000–00–0000.
COL. CARROL H. CHANDLER, 000–00–0000.
COL. JOHN L. CLAY, 000–00–0000.
COL. RICHARD A. COLEMAN, JR., 000–00–0000.
COL. PAUL R. DORDAL, 000–00–0000.
COL. MICHAEL M. DUNN, 000–00–0000.
COL. THOMAS F. GIOCONDA, 000–00–0000.
COL. THOMAS B. GOSLIN, JR., 000–00–0000.
COL. JACK R. HOLBEIN, JR., 000–00–0000.
COL. JOHN G. JERNIGAN, 000–00–0000.
COL. CHARLES L. JOHNSON II, 000–00–0000.
COL. LAWRENCE D. JOHNSTON, 000–00–0000.
COL. DENNIS R. LARSEN, 000–00–0000.
COL. THEODORE W. LAY II, 000–00–0000.
COL. FRED P. LEWIS, 000–00–0000.
COL. STEPHEN R. LORENZ, 000–00–0000.
COL. MAURICE L. MC FANN, JR., 000–00–0000.
COL. TIMOTHY J. MC MAHON, 000–00–0000.
COL. JOHN W. MEINCKE, 000–00–0000.
COL. HOWARD J. MITCHELL, 000–00–0000.
COL. WILLIAM A. MOORMAN, 000–00–0000.
COL. TEED M. MOSELEY, 000–00–0000.
COL. ROBERT M. MURDOCK, 000–00–0000.
COL. MICHAEL C. MUSAHALA, 000–00–0000.
COL. DAVID A. NAGY, 000–00–0000.
COL. WILBERT D. PEARSON, JR., 000–00–0000.
COL. TIMOTHY A. PEPPE, 000–00–0000.
COL. GRAIG P. RASMUSSEN, 000–00–0000.
COL. JOHN F. REGNI, 000–00–0000.
COL. VICTOR E. RENUART, JR., 000–00–0000.
COL. RICHARD V. REYNOLDS, 000–00–0000.
COL. EARNEST O. ROBBINS II, 000–00–0000.
COL. STEVEN A. ROSER, 000–00–0000.
COL. MARY L. SAUNDERS, 000–00–0000.
COL. GLEN D. SHAFFER, 000–00–0000.
COL. JAMES N. SOLIGAN, 000–00–0000.
COL. BILLY K. STEWART, 000–00–0000.
COL. FRANCIS X. TAYLOR, 000–00–0000.
COL. GARRY R. TREXLER, 000–00–0000.
COL. RODNEY W. WOOD, 000–00–0000.

THE FOLLOWING-NAMED OFFICERS FOR APPOINTMENT IN THE RESERVE OF THE AIR FORCE, TO THE GRADE INDICATED, UNDER THE PROVISIONS OF TITLE 10, UNITED STATES CODE, SECTIONS 8373, 8374, 12201, AND 12212:

To be major general

BRIG. GEN. WILLIAM A. HENDERSON, 000–00–0000, AIR NATIONAL GUARD.
BRIG. GEN. TIMOTHY J. LOWENBERG, 000–00–0000, AIR NATIONAL GUARD.
BRIG. GEN. MELVYN S. MONTANO, 000–00–0000, AIR NATIONAL GUARD.
BRIG. GEN. GUY S. TALLENT, 000–00–0000, AIR NATIONAL GUARD.
BRIG. GEN. LARRY R. WARREN, 000–00–0000, AIR NATIONAL GUARD.

To be brigadier general

COL. JAMES H. BAKER, 000–00–0000, AIR NATIONAL GUARD.
COL. JAMES H. BASSHAM, 000–00–0000, AIR NATIONAL GUARD.
COL. PAUL D. KNOX, 000–00–0000, AIR NATIONAL GUARD.
COL. CARL A. LORENZEN, 000–00–0000, AIR NATIONAL GUARD.
COL. TERRY A. MAYNARD, 000–00–0000, AIR NATIONAL GUARD.
COL. FRED L. MORTON, 000–00–0000, AIR NATIONAL GUARD.
COL. LORAN C. SCHNAIDT, 000–00–0000, AIR NATIONAL GUARD.
COL. BRUCE F. TUXILL, 000–00–0000, AIR NATIONAL GUARD.