have a major impact on the overall bill that we are recommending from the committee. But these are all part of the managers' package. I did not want anyone to be blindsided or have any thought of any right being diminished by the action of the committee.

Excuse me, Mr. President, there is a second page. Amendments, like mushrooms, tend to grow in the night:

An amendment by Senator MCCAIN on allocation of health care resources at VA; an amendment by Senator HATFIELD, Umpqua River basin from existing funds; an amendment by Senator MCCAIN on disaster funds allocated in accordance with established prioritization processes; a technical amendment making section changes; an amendment by Senator MURKOWSKI; Greens Creek, AK.

Mr. President, at the time when we move to act on these packaged amendments, I will also ask unanimous consent that the following statements and colloquies be placed in the RECORD: A statement by Senator HUTCHISON; a statement by Senator DEWINE; a colloquy by Senators STEVENS and CAMPBELL; a colloquy by Senators SPECTER and PELL; a colloquy by Senators SIMON and SPECTER; a colloquy by Senators HOLLINGS, MCCAIN, and SPECTER; a colloquy by Senators MCCONNELL and LEAHY; and a colloquy by Senators HARKIN, JOHNSTON, and SPECTER.

I would also ask further that a statement by Senator MCCAIN be printed in the RECORD at the appropriate place following the Burns amendment adopted herein. That is a lot.

Mr. BUMPERS addressed the Chair.

The PRESIDING OFFICER. The Senator from Arkansas.

Mr. BUMPERS. Let me ask the distinguished Senator if there is not also a Dole amendment on the IRS commission, which he did not list.

Mr. HATFIELD. I am told there is. Typographical error.

Mr. BUMPERS. Would the Senator add that to the unanimous-consent request?

Mr. HATFIELD. I have not asked yet unanimous consent, but we do have that included. That is on the second page.

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. WELLSTONE. 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 President, I ask unanimous consent that the order for the quorum call be rescinded.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. WELLSTONE. Mr. President, I ask unanimous consent to speak as in morning business for just a few minutes.

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

Mr. WELLSTONE. Thank you, Mr. President.

NATIONAL DOMESTIC VIOLENCE HOTLINE

Mr. WELLSTONE. Mr. President, at the end of last week I came to the floor and talked about the Violence Against Women Act. I announced that we now set up an important hotline, and that every day on the floor of the Senate I wanted to just announce this number for families in our country. This is the National Domestic Violence Hotline, and the number is 1–800–799–SAFE. There is also a TTD number for the hearing-impaired, and that is 1–800–787–3224.

Mr. President, I talked about domestic violence last week. I will not take the time today. But I would like for the next couple of weeks to get about 30 seconds every day to announce this number.

Again, for those that are watching C-SPAN, the National Domestic Violence Hotline is 1–800–799–SAFE, and the TTD number for the hearing-impaired is 1–800–787–3224. If a woman feels she needs help because she is being beaten or her children are being beaten, she is being battered, this is the number to call. There are people who are skillful; there are people who understand this issue. Because of this hotline, there is help for women, there is help for children, there is help for families in this country.

Mr. President, I thank the Chair, and 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. HATFIELD. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

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

BALANCED BUDGET DOWNPAYMENT ACT, II

The Senate continued with the consideration of the bill.

AMENDMENT NO. 3553 TO AMENDMENT NO. 3466

Mr. HATFIELD. Mr. President, I send to the desk the managers package, as I have outlined it and explained it.

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

The Senator from Oregon [Mr. HATFIELD], for himself and Mr. BYRD, proposes an amendment numbered 3553 to Amendment No. 3466.

Mr. HATFIELD. Mr. President, I ask unanimous consent that 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. HATFIELD. Mr. President, again, let me call to the Senate's attention—as I have done now in the Republican caucus at lunch, and others in the Democratic Caucus, I think, had similar material—that we have put together, with the clearance of Senator BYRD on the Democratic side of the aisle, a managers package to accommodate those Members who were not present when a unanimous-consent agreement was entered into at 7:45 last Thursday night. The deadline was 8:05. So there were those who were negotiating at that time with other colleagues.

I have recited those amendments and we have indicated very clearly that people's rights to either modify, to change, second degree, or strike were certainly open.

We have waited now close to half an hour for anyone to appear to take advantage of that opportunity.

I ask unanimous consent that the statements that the following statements and colloquies—I am just boxing those together—be placed in the RECORD. As I recited before, there is a statement by Senator HUTCHISON; a statement by Senator DEWINE; a colloquy by Senators HATFIELD and SPECTER; a colloquy by Senators STEVENS and CAMPBELL; a colloquy by Senators SPECTER and PELL; a colloquy by Senators SIMON and SPECTER; a colloquy by Senators HOLLINGS, MCCAIN, and SPECTER; a colloquy by Senators MCCONNELL and LEAHY; a colloquy by HARKIN, JOHNSTON, and SPECTER; a colloquy by Senators SIMON and SPECTER; a colloquy by Senators MCCAIN and BURNS, which I ask be placed in the RECORD in the appropriate place following the Burns amendment that we will have adopted in this package.

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

SEMATECH

Mrs. HUTCHISON. Mr. President, the purpose of my amendment is to restore the funding level for Sematech to the full amount authorized in the 1996 Defense authorization bill.

Mr. President, semiconductor manufacturing leadership is as critical to America's national defense and economic security today as it was in 1987 when Sematech was formed. Sematech has proven to be a model for government-industry cooperation. Unlike so many other programs, Sematech has produced all that it has promised it would and then took the unprecedented step of deciding to decline all future direct Federal funding.

It is indeed ironic that as this program come to an end, our competitors in Japan recently announced they are establishing a consortium modeled after Sematech. They have publicly admitted that the success of Sematech has resulted in America reclaiming world market share leadership in both chips and the equipment used to manufacture them and the Japanese now feel the need for their own Sematech.

We must never surrender our leadership or our resolve to be the technology leader of the world. In this the final year of funding, I believe we have an obligation to provide adequate funding to ensure Sematech is able to complete its mission and finish research

project already underway that the industry and the Department of Defense are counting on.

CRIMINAL JUSTICE IDENTIFICATION SYSTEMS

Mr. DEWINE. Mr. President, my amendment provides $11.8 million for local governments for the development of criminal justice identification systems and their linking to FBI databases. Specifically, this amendment allows the FBI to grant funds to local communities, in consultation with the States, to upgrade their criminal identification systems. Through this funding, law enforcement agencies could develop their criminal histories, and DNA, fingerprint, and ballistics identification systems, and hook them up to the FBI national databases. It would also allow local law enforcement to contribute identification materials to the database in Washington. This proposal is strongly supported by the FBI and State and local law enforcement agencies and governments.

While the FBI's fingerprint and criminal histories systems are not yet complete, State and local governments need these funds now to take necessary steps to prepare their criminal records for connection to the national database.

This language was also passed by the Senate in June, 1995, as part of S. 735, the Senate's antiterrorism measure, and in October, 1995, as part of H.R. 2076, the Commerce, Justice, State and the Judiciary Appropriations.

I want to thank Senator MCCONNELL for his tremendous efforts in securing passage of this amendment. I also want to express my appreciation to Senator HATFIELD and Senator GREGG for accepting this amendment.

REGIONAL EDUCATIONAL LABORATORIES

Mr. HATFIELD. I am pleased to see that the Senate provided an increase of funding for education research in fiscal year 1996. There is not a more central and basic role for the Federal Government than to be funding research and development activities. Within that increase, have you provided for the regional educational laboratories?

Mr. SPECTER. We have provided $51 million for the regional educational laboratories in the education research item. We have 10 laboratories across the Nation. This funding will provide them each with a $1 million increase.

Mr. HATFIELD. Have you designated the purpose of these funds for the laboratories?

Mr. SPECTER. The laboratories, by law, are to have their research priorities and program of work determined totally by their regional educational governing boards. These boards are responsible to meet the education needs of their region. We are not giving a specific charge. We expect the laboratory boards to determine what is needed.

Mr. HATFIELD. Does this mean that the Department of Education can direct these funds in any way?

Mr. SPECTER. Senator HATFIELD, the answer is that these funds are intended for regional priorities only and only when the priority is determined by a laboratory's board, and is a priority within the general problem areas established in the law. None of these funds are to be used for any other purpose. This is what Congress intended when we reauthorized these laboratories. A key role of the Office of Educational Research and Improvement is to guarantee that this expectation is met, not only with the additional funds we provide this year, but for all the funds for the regional educational laboratories.

NATIONAL TEST FACILITY

Mr. CAMPBELL. Would the Senator from Alaska yield a few moments at this time to enter into a brief colloquy?

Mr. STEVENS. I would be happy to yield to the distinguished Senator from Colorado.

Mr. CAMPBELL. I thank the Senator. As the Senator may recall, the Senate report on the National Defense Authorization Act for Fiscal Year 1996 contained language concerning the $30,000,000 mandated cut from the Ballistic Missile Defense Organization [BMDO] program management and support program element. It is also my understanding that based on the additional management requirement, the Defense Appropriations Subcommittee directed that none of the program management and support account reduction be applied to the programs, activities, or functions of the Army Space and Strategic Defense Command. As a result of this report language, the National Test Facility [NTF] will take approximately a $4 million reduction in funding. As a result, there will be insufficient funds to do the much needed upgrade of the communications of the national test bed network. Also, a computer essential to the NTF's mission may not be able to support its operational requirements. I am advised that this facility is essential to the BMDO's mission, and therefore, cannot withstand any further reduction in funding.

I would like to ask the Honorable Chairman, Senator STEVENS, if he would work to include the National Test Facility as another program not be affected by the BMDO program management and support account reduction?

Mr. STEVENS. The Senator from Colorado raises important issues regarding the NTF and I can assure him I will work in the conference committee to address this issue. I also take this opportunity to thank the Senator from Colorado for his diligent efforts as the newest member of the Appropriations Committee.

INTERNATIONAL EDUCATION

Mr. SPECTER. Senator PELL, we are pleased to be able to provide support in the amount of $5 million in fiscal year 1996 for the International Education Program in title VI of the Goals 2000: Educate America Act. Since this sum is one-half of the originally authorized amount for this program we would appreciate any guidance that you, as the author of this legislation and the ranking minority member of both the Senate Foreign Relations Committee and the Education Subcommittee, might be able to provide on the use of these funds.

Mr. PELL. Thank you. First, I want to express to you my deep appreciation for the efforts you have made on behalf of this program, which provides critically important help in both civics and economic education to the emerging democracies in Eastern Europe and the former Soviet Union. Also I want to personally thank your staff member, Bettilou Taylor, for the amount of time and work she put forth in this area.

I very much appreciate the opportunity to provide guidance on how the funds for this program should be used. In a colloquy with then-Chairman Harkin in 1994, we agreed that the Department, given the limited funds, should award one grant in each area—one in civic education and one in economics education. I am pleased that the Department of Education complied with this request, and I believe it is a practice that should be continued.

Further, given the delay in reaching an agreement on a fiscal 1996 appropriations bill, I believe it advisable that the Department award continuation grants to the two organizations that received awards last year. These organizations, the National Council on Economic Education in New York and the Center for Civic Education in California, have had their grants for less than a year and should be given ample opportunity to implement fully the programs they have initiated over the past several months.

Mr. SPECTER. I thank the Senator for his kind words. Also, I believe he has offered good, solid advice, and would concur with him that the Department should award continuation grants for the two organizations in question.

FUNDING FOR LIBRARY LITERACY

Mr. SIMON. I am concerned that funds for library literacy have been eliminated in the committee report. This is a particularly important program that supports literacy projects in over 250 libraries across the country. I did note and do appreciate, however, that the committee increased funding for library services.

Mr. SPECTER. My colleague is correct. Libraries are important in promoting literacy and I want to make it clear that the committee intends that library literacy projects continue to receive support through the additional funds allocated for library services. I will work in Conference Committee with the House to ensure that the conference report reflects this intent.

Mr. SIMON. I thank my colleague. Though I obviously would feel more comfortable if funds were appropriated

specifically for this purpose, I appreciate my colleague's efforts to accommodate my concerns regarding this important program.

MEDICARE-MEDICAID DATABANK

Mr. HOLLINGS. Mr. President, I rise for the purpose of engaging in a short colloquy with the distinguished Senator from Pennsylvania and the Senator from Arizona regarding the Medicare-Medicaid databank.

Mr. SPECTER. I am familiar with the issue and would be glad to discuss it with my friends from South Carolina and Arizona.

Mr. HOLLINGS. Well, I do not believe that this is controversial because it has been addressed in the past by the committee and by the Senate. Last year, the committee report included report language prohibiting the use of funds for the Medicare-Medicaid databank. This year, the House fiscal year 1996 Labor, Health and Human Services, Education, and Related Agencies Appropriations report again makes it clear that the House committee does not intend for funds to be used for this function, which could generate both needless paperwork and fines for businesses across America. I just want to make the record clear that the Senate continues to agree.

Mr. MCCAIN. I share the concern of my friend from South Carolina and have supported this prohibition from the start. Implementing the databank clearly would burden business with costly reporting requirements. In fact, I have introduced a bill to eliminate this burdensome mandate and hope it could be passed by the end of the year.

Mr. SPECTER. I appreciate my colleagues raising this issue. I know that language similar to the fiscal year 1996 House report language was included in the Senate report last year, and certainly, the Senate committee continues to agree.

Mr. MCCAIN. I thank my friend from Pennsylvania for his clarification.

Mr. HOLLINGS. I thank my colleagues and yield the floor

FOREIGN OPERATIONS

Mr. LEAHY. Mr. President, the chairman of the Foreign Operations Subcommittee, Senator MCCONNELL, and I have agreed to an amendment he is offering to rescind $25 million in funds appropriated in Public Law 104–107, the fiscal year 1996 Foreign Operations bill, for the Export-Import Bank. Those funds would then be eligible for transfer to the Commerce, Justice, State Subcommittee for programs under the jurisdiction of the Attorney General.

Senator MCCONNELL and I have also agreed that if the $50 million emergency supplemental appropriation for anti-terrorism assistance for Israel that is contained in this omnibus appropriations bill is offset with Defense Department funds or military construction funds, the $25 million transfer to the Commerce, Justice, State Subcommittee may occur. However, if any of the Israel supplemental is offset with Foreign Operations funds, the transfer will not occur. This ensures that if the Israel supplemental is paid for with Foreign Operations funds, the Export-Import Bank money would remain in the Foreign Operations budget and would reduce the impact of that offset on Public Law 104–107.

Mr. MCCONNELL. Mr. President, the Senator from Vermont, Senator LEAHY, has accurately stated our understanding.

Mr. JOHNSTON. Mr. President, I would like to commend the distinguished chairman, Senator SPECTER, and the distinguished ranking member of the Labor, Health and Human Services Subcommittee on Appropriations, Senator HARKIN, for their guidance and cooperative efforts in bringing this continuing resolution to the floor. There were extreme differences of opinion on a variety of subjects within this legislation, and both the chairman and ranking member deserve a great deal of credit for their efforts.

Mr. President, I rise today to bring attention to a program that is providing an indispensable service to Americans living underserved rural areas. The committee has provided funding above request levels for the Office of Rural Health Policy, and I applaud this decision. Rural telemedicine is a novel initiative in that it provides people in rural communities across the country access to physicians and instant diagnosis. This is a particularly essential program given the declining numbers of doctors who practice general medicine in our Nation's small communities. Telemedicine research has been ongoing, with specific efforts to determine the best and most efficient methods of delivering these services to America's citizens.

One of the excellent telemedicine research projects which would have been funded in 1995 was from Louisiana State University Medical Center in New Orleans. LSU went through the competitive process and was highly regarded on the merits, and I'm proud of their accomplishments, and the work that they are doing in southeast Louisiana.

Mr. President, a number of telemedicine projects were approved last year, but did not receive funding as a result of rescissions. The LSU Telemedicine projects was just such a program. In order that LSU Medical Center might continue its outstanding work, I would ask the distinguished chairman and ranking member, and hope that they agree, that consideration would be given to those programs that, after the required peer review, should have received funding from the fiscal year 1995 appropriation, but were not based simply on timing.

Mr. SPECTER. I thank my distinguished colleague from Louisiana for his comments, and for bringing this component of telemedicine research to the subcommittee's attention. The subcommittee adjusted the funding levels for the Office of Rural Health Policy because it felt that programs, such as telemedicine, offer promise for improving services to rural communities in the future. There is a need to evaluate how telemedicine projects currently underway or under consideration fit into the overall scheme of health care delivery in the areas being served. Therefore, I think it would be consistent for the Health Resources and Services Administration to consider previously approved projects when it obligates Rural Health funding.

Mr. HARKIN. Mr. Chairman, I concur with your remarks. It would be appropriate to continue these efforts to secure effective telemedicine services for rural communities and to use existing, approved projects where possible.

HCFA RESEARCH AND DEMONSTRATIONS

Mr. SIMON. Mr. Chairman, I want to bring to the attention of the Senate and the committee language included in the Senate Appropriations Committee Report accompanying H.R. 2127, the 1996 Labor, Health and Human Service, Education Appropriations bill. It is my understanding that unless specifically contradicted, all items in that committee report are incorporated, by reference, in the committee report accompanying the continuing resolution now being considered by the Senate.

Mr. SPECTER. That is correct.

Mr. SIMON. Accordingly, language included in the Senate committee report under the Health Care Financing Administration Research, Demonstrations, and Evaluations account that encourages HCFA to give ''full and fair consideration'' to a proposal from Northwestern Memorial for a ''3-year project to develop a comprehensive health care information management system'' is incorporated by reference in the report accompanying the continuing resolution now under consideration.

Mr. SPECTER. That is further correct. This is a project that warrants full and fair consideration by HCFA, which should adhere to the intentions of the Senate with regard to this important piece of report language.

Mr. SIMON. At a time when the Congress is proposing—and HCFA will be responsible for administering—significant reductions in Medicare and Medicaid costs, this proposal is particularly timely. Specifically, with the advent of managed care, and the resulting shift of patient care from inpatient acute care to ambulatory and other primary care settings, an integrated health care delivery system is essential. At present, information management systems to measure cost outcomes—and achieve cost savings—beyond the acute care setting are not commercially available. The information management system recommended in this report language would serve as a prototype for other health care delivery systems, and offers the promise of cutting health care costs while maintaining quality health care.

Mr. SPECTER. I share your interest in ensuring that HCFA has the information necessary to reduce the costs of

health-related entitlements while maintaining quality care. I also agree that the information management system referenced in the committee report is precisely the kind of project that HCFA should be exploring to achieve these objectives.

Mr. SIMON. Thank you for your interest in this important project.

FLINT CREEK

Mr. MCCAIN. Mr. President, I would like to clarify for purposes of the RECORD the amendment that we have just adopted.

First, the amendment gives the Federal Energy Regulatory Commission [FERC] the discretion of whether to transfer the license for the Flint Creek project. Second, in determining whether to transfer the license the commission must determine whether the waiver of fees is warranted, necessary and in the public interest.

In making these determinations FERC will ensure that the current licensee receives no payment or consideration for the license transfer, that no entity other than a political subdivision of the State of Montana would accept the license if made available, and that a fee waiver is necessary in order to transfer the license.

Mr. President, the proponents of this amendment inform me that without a limited fee waiver, the Flint Creek project would be defunct, the dam removed and that, accordingly, the Federal Treasury would receive no fee revenues whatsoever, leaving both the people of the area and the Federal Treasury worse off.

I trust that FERC will carefully examine the situation and exercise its discretion to ensure fairness to the parties in Montana, the Federal Treasury and all similarly situated projects. I ask my friend from Montana, is that a correct reading of the amendment.

Mr. BURNS. My friend has described the amendment correctly.

CDBG FUNDS

Mr. BOND. Mr. President, I support the amendment offered by the Senators from South Dakota to earmark $13 million from the CDBG program to enable the city of Watertown to replace a failed sewage treatment plant without burdening that city with unfair additional debt and devastating economic consequences. This grant will be matched by the city.

The city of Watertown participated in an innovative wastewater treatment project which failed. When that city undertook this demonstration, it was with the encouragement of EPA, and with the understanding that if the plant were to fail, that Federal grant funds would be provided to enable the city to meet its secondary treatment responsibilities.

Unfortunately, the plant has failed, and the authorization to make such grants by EPA also has expired, since Congress has directed that henceforth such assistance only be available in the form of formula allocated capitalization of state revolving loan funds. It has been argued that we should override this statutory direction and make specific grants to certain communities. Throughout the consideration of this bill I have opposed such earmarks from the EPA state revolving loan account, and I remain opposed to the diversion of EPA funding for such site specific concerns.

Mr. President, despite my concern over such use of EPA revolving loan funds, I reluctantly have accepted the argument of the Senators from South Dakota that this city would be unfairly burdened with a massive additional cost of financing a replacement wastewater treatment plant, a cost that they were assured previously they would not have to pay. More importantly, this additional cost, necessitated by the failure of a technology recommended by the Federal Government, will have devastating economic consequences for this city.

As such, amelioration of these consequences is one which the HUD CDBG program was intended to address: that of creating or preserving employment in a community. While I also am generally opposed to such earmarks in the CDBG program, this is a program which has such purposes under its current authorization, and as such, is a more appropriate means of addressing the legitimate concerns of this community.

THE COMMITTEE FOR MINORITY VETERANS AND THE COMMITTEE ON WOMEN VETERANS

Mr. AKAKA. Mr. President, would the Senator from Missouri, the chairman of the VA, HUD, and Independent Agencies Subcommittee, yield for a question?

Mr. BOND. I would be happy to yield for a question from the junior Senator from Hawaii.

Mr. AKAKA. Is it the intention of the committee to include the Committee for Minority Veterans and the Committee on Women Veterans under the restrictions placed on the travel budget of the Secretary of Veterans Affairs?

Mr. BOND. No, it was not.

Mr. AKAKA. Will the Committee for Minority Veterans and the Committee on Women Veterans be able to meet their responsibilities, including travel obligations, under the restrictions placed on the Secretary's travel?

Mr. BOND. Yes, they will. I believe that the ranking member of the Subcommittee, the Senator from Maryland, also supports this view.

Ms. MIKULSKI. That is correct. As a strong proponent of the Committee on Women Veterans and the Committee for Minority Veterans, I fully support their efforts and will make every effort to see that their activities are not adversely affected.

Mr. AKAKA. I am most grateful for the Senator from Maryland's past assistance in providing support and funding for the two centers.

As created by Congress, the centers were established to address the special needs of women and minority veterans overlooked under the Department's previous structure. Both centers and their respective Advisory Committees have made great strides in identifying and assisting minority and women veterans.

The Committee for Minority Veterans is required to meet at least twice a year and submit a annual report no later than July 1. The Committee on Women Veterans is scheduled to meet four times during a fiscal year and is expected to submit its next annual report in January 1997. The projected costs for the two committee to hold meetings, conduct public hearings, visit VA field facilities, and outreach to minority and women veterans are estimated to be over $120,000 for the remainder of the fiscal year. I am pleased that the provision in this bill will not adversely affect the activities of the Center for Minority Veterans and the Center on Women Veterans.

Mr. President, I thank the Senator from Missouri and the Senator from Maryland for their assistance on this matter.

DEVILS LAKE BASIN

Mr. CONRAD. I notice that the chairman and ranking member of the Appropriations Subcommittee on VA-HUD and Independent Agencies are on the floor and Senator DORGAN and I would like to engage them in a short colloquy.

As you know, two amendments to the omnibus appropriations bill were adopted on the floor on Monday providing much needed hazard mitigation and disaster relief for the people of the Devils Lake Basin in North Dakota. As Senator DORGAN and I stated on the floor prior to adoption of those amendments, Devils Lake reached a 120-year high water level last year, and the resulting flooding caused more than $35 million in damages. Based on the most recent National Weather Service forecast on March 1, we anticipate record high lake levels again this year. The amendments which were adopted will go a long way toward preventing another disastrous flood from occurring. We would like to know if additional assistance might be available to North Dakota through the Community and Development Block Grant Program.

Mr. DORGAN. We note that an additional $100 million dollars is provided for the Community Development Block Grant Program in the disaster supplemental portion, title II, of the pending bill. The State of North Dakota, working with the affected counties of Benson and Ramsey and the Devils Lake Sioux Tribe, have identified many homes that will require relocation or acquisition to prevent them from being damaged by floods later this year. A substantial portion of the anticipated $50 million in flood damage could be prevented if homes in the flood plain are acquired or moved prior to the flood. Senator CONRAD and I would like to inquire if CDBG block grant funds have been used for acquisition and relocation in the past.

Mr. BOND. It is my understanding that CDBG funds have been used for acquisition and relocation in the past and would be an allowable use of these funds under HUD guidelines for the CDBG program.

Ms. MIKULSKI. I concur with the chairman of the subcommittee on the use of CDBG funds for acquisition and relocation assistance. If Federal dollars can be saved by taking action before flooding occurs, I think we should do so.

Mr. CONRAD. I thank the chairman and ranking member for their comments. We have one additional question for the chairman and ranking member.

Mr. DORGAN. North Dakota has received a Presidentially declared disaster declaration for each of the past 3 years. H.R. 3019 provides disaster assistance for the Pacific Northwest and other recent natural disasters. Could the chairman provide me with his view as to whether the Devils Lake Basin would have eligibility for additional CDBG assistance under the ''other recent disasters'' provision in title II of H.R. 3019?

Mr. BOND. I believe the State of North Dakota would be eligible to receive CDBG funding under title II of this bill, provided the administration concurs with the congressional designation of the appropriation as an emergency requirement pursuant to the Balanced Budget and Emergency Deficit Control Act of 1985, and submission of an official budget request to this end.

Ms. MIKULSKI. I believe the chairman's interpretation of the provisions in the bill is correct.

Mr. CONRAD. I thank the chairman and ranking member of the subcommittee for clarifying the intent of Congress regarding the utilization of CDBG funds for flood mitigation efforts. I also want to thank the chairman and ranking member of the full committee for their help throughout this process.

Mr. DORGAN. I want to concur with the remarks of Senator CONRAD. They and their staffs have provided us with invaluable help in our efforts to seek assistance to prevent flooding in the Devils Lake Basin in North Dakota.

B–52 SUPPLEMENTAL FUNDING AMENDMENT

Mr. CONRAD. Mr. President, my distinguished colleague from North Dakota and I offered an amendment reprogramming $44.9 million from Air Force research and development, R&D, accounts to operations and maintenance, O&M, earmarked for retention of our entire fleet of B–52H aircraft in active status or a fully maintained attrition reserve.

Retention of these aircraft makes good sense. The B–52 is currently our only dual-capable aircraft, capable of responding anywhere in the world with advanced conventional precision guided munitions or in support of our nuclear deterrent. The B–52 is our most proven bomber, and as a result of consistent upgrades which are continuing, the B–52 is a thoroughly modern aircraft. Gen. Michael Low, former Commander of the Air Combat Command, has stated that the B–52's airframe is good until 2035. The B–52 is also cost effective, making it a good buy as we work to balance the budget.

As my colleagues may be aware, the Air Force has announced its intention to send up to 28 of these aircraft to the boneyard at Davis-Monthan. This is clearly unwise. In the context of great uncertainty over Russian ratification of START II, loss of the capability to reconstitute the current force structure in a relatively short period of time would likely decrease Russia's incentive for ratification. I know that my colleagues shared this concern when they voted to pass the fiscal year 1996 Defense Authorization Act, which included a provision prohibiting the retirement of any B–52's or any strategic systems, with fiscal year 1996 funds.

Recent events in the Taiwan Strait and frequent threatening Iraqi military maneuvers near Kuwait since the gulf war highlight the wisdom of this provision. In an era when we face the possibility of sudden massive aggression that leaves us little time to deploy reinforcements, the B–52's global reach is a valuable capability we ought not sacrifice.

As many of my distinguished colleagues are aware, the Botton-Up Review [BUR] found that 100 deployable conventional bombers are needed to win one major regional conflict [MRC] before swinging to another MRC. Because of the slow pace of conventional upgrades to the B–1 fleet and the continuing production of the B–52, however, we could only deploy 92 global range bombers if we had to go to war today. Sending dual-capable B–52's to the boneyard when we are unable to meet our requirements for even one MRC is unwise, if not dangerous.

Retention of these proven, cost effective, and highly capable bombers is clearly in our interest, and I believe that this amendment is the right way to do it. In light of the great budgetary pressure faced by the Air Force in this time of fiscal austerity, I am pleased that a portion of the Defense Department's unexpected inflation dividend was available for reprogramming. No other valuable Air Force program will be negatively affected by this amendment.

I urge my colleagues to support this amendment, and call on the Department of Defense to respect Congress's prerogative to determine the structure of our Armed Forces. In particular, I urge the Defense Department to postpone inactivation of any part of our B–52 force until Congress has completed all action on this year's defense budget, including the reprogramming package currently under development by the administration and supplemental appropriations legislation for fiscal year 1996.

I thank my distinguished colleagues for their careful consideration of this amendment, and yield the floor.

Mr. DORGAN. Mr. President, I rise to explain the amendment that I have offered with Senator CONRAD to ensure full funding for the B–52 bomber fleet. Let me outline what my amendment would do and then let my colleagues know why the Senate should pass it.

We have 94 B–52 bombers in active service in the Air Force today. Our experience in the Vietnam war and the Persian Gulf war shows that the B–52 has long been our workhorse bomber. But despite what the B–52 continues to do for our national defense, the Air Force is considering drawing down the B–52 fleet.

I am trying to prevent this from happening, and to keep B–52's up and flying. My amendment would provide the Air Force with the funding to operate and maintain 94 B–52 aircraft either in active status or in attrition reserve. A plane in active status, of course, is part of a combat coded squadron. A plane in attrition reserve is not in a separate squadron but is cycled through active squadrons, and is maintained in flyable condition.

In order to pay for full maintenance of the B–52 fleet, my amendment would transfer $44.9 million in Air Force research and development funds to Air Force operations and maintenance. The $44.9 million has already been appropriated in the defense appropriations bill. The money is available for transfer because the Defense Department's new estimates of inflation led the Department to conclude that it can accomplish its Air Force research and development with less money. In fact, the Defense Department proposed that this $44.9 million be rescinded as part of its supplemental appropriations and rescissions request.

I have run my amendment by the Congressional Budget Office, and CBO tells me two things that should cause my colleagues to support my amendment. First, CBO believes that the $44.9 million funding transfer will enable the Air Force to carry out my amendment's purpose of maintaining 94 B–52's. So this amendment is fully funded. Second, CBO has scored this amendment as saving $4 million in fiscal year 1996 and as deficit neutral over the 5 years 1996 to 2000. CBO projects that this amendment would actually save money in this fiscal year and be deficit neutral over the next 5 years.

Having described my amendment, let me briefly tell my colleagues why I think it is important that we retain our full, 94-plane B–52 fleet.

START II TREATY

The most important reason to keep 94 B–52's flying is that Russia has not yet ratified the START II Treaty. START II is the arms control treaty that requires both us and the Russians to cut our nuclear stockpiles. It makes no sense to retire strategic weapons systems when START II has not yet gone into effect. Disarmament should

not be unilateral. Members of the Russian Duma will doubtless ask themselves why they should ratify START II if the United States is cutting its strategic bomber force anyway.

CONGRESSIONAL INTENT

Second, Congress has explicitly recognized the force of these START II considerations. We wrote a provision into law, section 1404 of the National Defense Authorization Act for Fiscal Year 1996, forbidding the retirement of any strategic weapon system this year. We did that because we knew that we should not cut our nuclear arsenal until Russia subjects itself to the limits in START II. That is why section 1404 explicitly prohibits retiring B–52 bombers or even preparing to retire them. My amendment simply backs up section 1404 with the funding the Air Force needs to maintain the full B–52 bomber fleet. I seek to enable the Air Force to carry out the intent of Congress.

CAPABILITIES OF B–52 FLEET

Third, I would remind my colleagues that B–52 bombers are long-range force projectors. With maximum fuel load, the B–52 can fly 10,000 miles without in-air refueling, which is over 33 percent further than the B–1 or B–2 bombers. With in-air refueling, the B–52 literally has a worldwide range. The B–52 has been modified to carry up to 12 air-launched cruise missiles externally and 8 internally. Alternatively, it can carry up to 50,000 pounds of attack missiles and gravity bombs. A bomber of such range and payload is vital in order to project air power to areas where the United States lacks prepositioned equipment or bases capable of handling heavy bombers.

To take an example, Mr. President, right now we face a crisis in Southeast Asia, in the Taiwan Strait. China is firing live ammunition and testing dummy missiles in a way that is calculated to disrupt Taiwan's economy and rattle Taiwan's electorate. We have one carrier task force in the area; we are moving a second carrier task force from the Persian Gulf to Southeast Asia in order to keep the peace. Well, the B–52 has already kept the peace in the Persian Gulf. And it can keep the peace in Southeast Asia in one hop if need be. It makes no sense to retire B–52's at a moment when our ability to project force into every corner of the world is key to the peace of Southeast Asia.

BOMBER STUDY ONGOING

Last, my colleagues will recall that in February President Clinton ordered the Defense Department to study the future of our long-range bomber fleet. The Deep Attack Weapons Mix Study, which is headed by Under Secretary of Defense for Acquisition and Technology Paul Kaminski and Vice Chairman of the Joint Chiefs of Staff Gen. Joseph Ralston, will examine both the munitions and the bombers used to strike deep into enemy territory. That study includes a close look at the strategic bomber force structure. It seems to me that any retirement of B–52 bombers would prejudge the results of the Deep Attack Weapons Mix Study. I think my colleagues will agree that we should ensure that the Air Force can await the results of the study before retiring any B–52 bombers.

In conclusion, Mr. President, I am asking the Senate to approve an amendment that is paid for, that fulfills congressional intent, that maintains America's strategic forces, and that keeps a capable bomber in the air. I hope my colleagues will support this amendment.

Thank you, Mr. President. I yield the floor.

AMERICORPS

Mr. LEAHY. Mr. President, I support the mission of AmeriCorps. I believe that engaging Americans of all ages to help communities solve their own problems is a worthy goal.

One of the greatest threats facing our cities and towns today is the loss of a sense of community responsibility. AmeriCorps invites Americans to put something back into their communities—to reestablish the local ties that have been so important to this country.

I am very concerned about the provision in this omnibus appropriations bill which terminates AmeriCorps grants through Federal agencies. Right now, about half of AmeriCorps participants in my home State run through the USDA AmeriCorps Program. This includes the Vermont Anti-Hunger Corps and a rural development team. These projects have involved nonprofit groups, and a unique partnership of Federal, State, and local organizations. All of which have contributed to their success.

I want to clarify with the Chairman that this language would not preclude these local programs currently funded through Federal agencies to continue through national direct grants or through State commissions.

Mr. BOND. Yes, the Senator is correct. If local programs currently being funded through Federal agencies are doing a good job, then I would encourage them to either work with national groups to apply for funding or work with the commission in the State in which they reside. These local programs have the experience and expertise to compete very well for AmeriCorps grants. I expect the Corporation for National and Community Service and the State commissions to take this experience into consideration when reviewing new grantees. The bottom line is that we do not want Federal agencies capitalizing on funds that should be going directly to nonprofit organizations.

Mr. LEAHY. I thank the Chairman Senator BOND. I ask Senator MIKULSKI if this is also her understanding?

Ms. MIKULSKI. I share the concern of the Senator, about the termination of the grants to Federal agencies. Unfortunately, we lost the public relations war in defining how these Federal agency grants really work. These programs are not bloated bureaucracies, but a way for small local programs to benefit from the technical expertise of Federal agencies in designing programs to meet their own local needs. I would urge any local program currently being funded through a Federal agency to apply through the national direct grants or through their own State commissions.

Mr. LEAHY. I thank Chairman BOND and Senator MIKULSKI. I plan to work closely with these Vermont programs so that they can continue to providing services through AmeriCorps. And I appreciate all of the work the Senators have done to come to a bipartisan agreement on funding for AmeriCorps. I look forward to continue working with them on this important issue.

VETERANS HEALTH CARE

Mr. MCCAIN. Mr. President, we need to take immediate steps to implement a plan to better allocate health care funding among the Department's health care facilities so that veterans, no matter where they live or what circumstances they face, have equal access to quality health care.

The amendment that I propose here today with my distinguished colleague, Senator BOB GRAHAM of Florida, will, I hope, finally direct the Department of Veterans Affairs to do the right thing. That is, to eliminate funding disparities among VA health care facilities across the country.

Mr. President, inequity in veterans' access to health care is an issue that I originally brought to Secretary Jesse Brown's attention in March 1994. The Department of Veterans Affairs is currently using an archaic and unresponsive formula to allocate health care resources. The system must be updated to account for population shifts.

The veterans population in three States, including Arizona, is growing, at the same time that it is declining in other parts of the country. Unfortunately, health care allocations have not kept up with the changes. The impact of disparate funding has been very obvious to me during my visits to many VA medical centers throughout the country, and particularly in Arizona, and was confirmed by a formal survey of the Carl T. Hayden VA Medical Center in Phoenix, which was conducted by the Veterans of Foreign Wars [VFW] in April 1994.

The problem has been further verified by the General Accounting Office [GAO] in a report entitled ''Veterans Health Care: Facilities' Resource Allocations Could Be More Equitable.'' The GAO found that the Department of Veterans Affairs continues to allocate funding based on past budgets rather than current needs, and has failed to implement the Resource Planning and Management system [RPM] developed 2 years ago to help remedy funding inequity.

Mr. President, the GAO cites VA data that the workload of some facilities increased by as much as 15 percent between 1993 and 1995, while the workload of others declined by as much as 8 percent. However, in the two budget cycles studied, the VA made only minimal changes in funding allocations. The maximum loss to a facility was 1 percent of its past budget and the average gain was also about 1 percent.

This inadequate response to demographic change over the past decade is very disturbing, and, I believe, wrong. To illustrate the problem, I would point out that the Carl T. Hayden VA Medical Center experienced the third highest workload growth based on 17 hospitals of similar size and mission, yet was only funded at less than half the RPM process.

Mr. President, the GAO informs me that rather than implementing the RPM process to remedy funding inequities in access to veterans health care, the VA has resorted to rationing health care or eliminating health care to certain veterans in areas of high demand.

The GAO says:

> Because of differences in facility rationing practices, veterans' access to care system wide is uneven. We found that higher income veterans received care at many facilities, while lower income veterans were turned away at other facilities. Differences in who was served occurred even within the same facility because of rationing.

The GAO also indicates that there is confusion among the Department's staff regarding the reasons for funding variations among the VA facilities and the purpose of the RPM system.

Mr. President, this problem must be addressed now. This amendment compels the VA to take expeditious action to remedy this serious problem and adequately address the changes in demand at VA facilities.

To conclude, I want to reiterate that I find it simply unconscionable that the VA could place the Carl T. Hayden VA Medical Center at the bottom of the funding ladder, when the three VA medical facilities in the State of Arizona must care for a growing number of veterans, and are inundated every year by winter visitors, which places an additional burden on the facilities.

I ask unanimous consent that the VFW survey and the GAO summary report be printed in the RECORD.

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

VETERANS OF FOREIGN WARS OF THE UNITED STATES,
Washington, DC, April 7, 1994.

JOHN T. FARRAR, M.D.,
Acting Under Secretary for Health (10), Veterans Health Administration, Department of Veterans Affairs, Washington, DC.

DEAR DR. FARRAR: A member of my staff, Robert F. O'Toole, Senior Field Representative, conducted a survey of the Phoenix, Arizona, Department of Veterans Affairs Medical Center, on March 14–15, 1994. During his time at the medical center, he was able to talk with many patients, family members and staff. This enabled him to gather information concerning the quality of care being provided and the most pressing problems facing the facility.

While those receiving treatment in the clinics and wards felt that the quality was good, they almost all commented on the long waits in the clinics and the understaffing throughout the medical center. In discussing their problem with various staff members, it was noted that nurses were under extreme stress. More than one was observed by Mr. O'Toole in tears when completing their tour. The nursing staff on evening shifts must rush continually through their duties in an attempt to cover all their patients needs due to the shortage in staffing in both support and technical personnel.

In attempting to determine the reason for this problem, it became apparent that the station was grossly underfunded. Which means that the staff must either take unwanted shortcuts or continue to work beyond the point expected of staffs at the other medical centers. While it is well understood that the Veterans Health Administration is underfunded throughout the system, it is clear from the comparisons that this facility has not received a fair distribution of the available resources resulting in the deplorable situation now facing the health care team.

Another problem in Phoenix that must be addressed is the serious space deficiency, especially in the clinical areas. The ambulatory care area was designed to handle 60,000 annual visits. In fiscal year 1993, the station provided 218,000 annual visits, almost four times the design level. Many physicians are required to conduct exams and provide treatment from temporary cubicles set up inside the waiting rooms. This bandaid approach has added to the already overcrowding.

The other problem that we feel should be pointed out is that of the staffing ceiling assigned to the Carl T. Hayden Veterans Medical Center. Currently, the medical center has a FTE of 1530 which is over the target staffing level. Based on available reports, the medical center would need an additional 61 registered nurses just to reach the average Resource Program Management (RPM) within their group. This facility operates with the lowest employee level in their group when comparing facility work loads, and 158th overall. To reach the average productivity level of the Veterans Health Administration medical centers, they would need an additional 348 full-time employees. While it is realized that this station will never be permitted to enjoy that level of staffing, it is felt that they, at the least, should have been given some consideration for their staffing problems during the latest White House ordered employee reductions.

To assist the medical center to meet their mandatory work load, and the great influx of winter residents, it is recommended that the $11.4 million which was reported to the Arizona congressional delegation to have been given Phoenix in addition to their FY 94 budget be provided. To enable the station to handle the ever increasing ambulatory work load, the Veterans Health Administration must approve the pending request for leased clinic space in northwest Phoenix and, the implementation plan for the use of the Williams Air Force Base hospital as a satellite outpatient clinic, along with the necessary funding to adequately operate the facility. In addition, VHA should approve and fund, at a minimum, the expansion of the medical centers clinical space onto the Indian School land which was acquired for that purpose.

Approval of the above recommendations would make it much easier for this medical center to meet the needs of the ever increasing veteran population in the Phoenix area. There is no indication that the increasing population trends will change prior to the year 2020. This hospital cannot be allowed to continue the downhill slide. The veterans of Arizona deserve a fair deal and the medical staff should be given the opportunity to provide top quality health care in a much less stressful setting.

I would appreciate receiving your comments on the Phoenix VA Medical Center at your earliest opportunity.

Sincerely,

FREDERICO JUARBE, Jr.,
Director, National Veterans Service.

U.S. GENERAL ACCOUNTING OFFICE, HEALTH, EDUCATION, AND HUMAN SERVICES DIVISION,
Washington, DC, February 7, 1996.

Hon. JOHN MCCAIN,
U.S. Senate.

DEAR SENATOR MCCAIN: The Department of Veterans Affairs (VA) is faced with the challenge of equitably allocating more than $16 billion in health care appropriations across a nationwide network of hospitals, clinics, and nursing homes. The challenge is made greater by the shifting demographics of veterans. While nationally the veteran population is declining, veterans have migrated from northeastern and midwestern states to southeastern and southwestern states in the past decade, offsetting veteran deaths in these states.

VA has historically based its allocations to facilities primarily on their past funding levels—providing incremental increases to facilities' past budgets. In an effort to improve its planning, allocation, and management processes, VA made a considerable investment in implementing a new system, called the Resource Planning and Management (RPM) system, for use initially in fiscal year 1994. VA considers RPM to be a management decision process to use to formulate its budget, allocate most of its resources, and compare facility performance.[1] As the basis for resource allocation, RPM classifies each patient into a clinical care group, calculates average facility costs per patient, and forecasts future workload. VA envisioned that the system would improve VA's management of limited medical care resources, better define future resource requirements, and enable VA to explore opportunities to improve quality and efficiency in its health care system. This vision included improving the equity of its allocations by more closely linking resources with facility workloads and alleviating inconsistencies in veterans' access to care across the system.

Two recent events could have significant implications for VA's resource allocation system. First, VA is restructuring its organization to establish 22 veterans integrated service networks (VISN) that will replace four regional offices and assume the individual facilities' role as the basic budgetary and planning unit for health care delivery. The new structure will require some change in how resources are allocated.[2] Second, the Senate passed your proposed amendment to the VA appropriations bill that would require VA to develop a plan for the allocation of health care resources among its health care facilities to ensure that veterans have the same access to quality health care.[3]

Because of your interest in this issue, you asked us to review the equity of VA's resource allocation system, particularly as it related to the allocations made to the Carl T. Hayden Medical Center in Phoeniz, Arizona. More specifically, you asked us to determine the following:

To what extent does VA's allocation system provide for an equitable distribution of resources among VA facilities?

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[1] Footnotes at end.

What are the causes of any inequity in the distribution of resources, and what changes, if any, would help ensure that the system more equitably distributes resources?

In September 1995, we sent you our preliminary observations.[4] This report presents our final results.

To accomplish our objectives, we first needed to apply a definition of the term ''equity.'' We based our evaluation of the equity of the system's distribution on VA's vision for RPM.[5] We considered the following two elements to be characteristics of an equitable system:

It provides comparable resources for comparable workload.

It provides resources so that veterans within the same priority categories have the same availability of care, to the extent practical, throughout the VA health care system.

We then reviewed VA documents and analyzed RPM system data to determine the degree to which these two elements were present. We discussed potential reasons for any inequities in allocations with VA Headquarters, the Boston Development Center, the RPM Committee, and facility officials in several locations. To assess potential changes to address inequities, we discussed such changes with VA officials and reviewed VA documents on its original plans for RPM and minutes of several RPM committees and work groups. Further details of our scope and methodology are in appendix I. We performed our review between December 1994 and October 1995 in accordance with generally accepted government auditing standards.

RESULTS IN BRIEF

The resource allocation system gives VA the ability to identify potential inequities in resource distribution and to forecast workload changes. Data generated by the system show wide differences in operating costs among facilities that VA considers comparable, even after factors such as locality costs and patient mix differences are considered. VA's data also show some facilities' overall patient workloads increasing by as much as 15 percent between 1993 and 1995, and others' workloads declining by as much as 8 percent. However, in the two budget cycles in which RPM has been in effect, VA used it to make only minimal changes in facilities' funding levels—the maximum loss to any facility was about 1 percent of its past budget and the average gain was also about 1 percent. As such, VA's distribution of resources has remained almost exclusively related to incremental changes to the amount that each facility has received in the past.

To date, VA has chosen not to use the RPM system to help ensure resources are allocated more equitably. VA officials indicated that larger reallocations were not made during the first 2 years of RPM to allow facilities time to understand the process. VA officials also cited several other reasons that significantly larger reallocations among facilities could not be made. Although VA is taking some actions on these issues, it has not fully addressed concerns that (1) facilities cannot efficiently adjust to large budget changes, (2) VA needs a better understanding of the reasons for the variations, and (3) resources allocated to facilities outside the RPM process should also be considered in judging the equity of distributions. VA's reasons for not using RPM to even out differences in veteran access to care were less clear as there appeared to be confusion within VA about whether the resource allocation system was intended to achieve this goal.

FOOTNOTES

[1] VA in 1995 operated 172 hospitals, 375 ambulatory clinics, 133 nursing homes, and 39 domiciliaries. For resource allocation purposes, RPM combines certain health care facilities that are managerially associated. In total the RPM system develops allocations for 167 facilities.

[2] VA officials indicated that as part of this change, the resource planning and management processes it used would change and the system would be renamed. At the time of our review, the system was known as RPM.

[3] On September 26, 1995, the Senate adopted amendment number 2787 to the VA appropriations bill, which was in conference at the time of our review. If it becomes law, the provision would require the Secretary of VA to develop a plan for the allocation of health care resources to ensure that veterans having similar economic status, eligibility priority, and/or similar medical conditions have similar access to care regardless of the region in which the veterans reside. The plan will include, among other things, procedures to identify reasons for variations in operating costs among similar facilities.

[4] See VA's Medical Resource Allocation System (GAO/HEHS–95–252R, Sept. 12, 1995).

[5] This vision was described in the Secretary's statements to the Congress on RPM and in other VA publications.

Mr. GRAHAM. Mr. President, I am here to offer my enthusiastic support as an original cosponsor of Senator MCCAIN's amendment. Mr. President, as a nation, we have always been able to come together in times of crisis—especially in times of war.

Despite our sometimes vehement disagreements, we as citizens of this great country have always been able to put partisanship aside when our young men and women are called to fight for democracy. For this—we can all be very proud. But the strength of a nation is displayed not just during war, but also in its aftermath. When the battles have long since raged, and the memories of welcome home parades have faded, it is at this time when our Nation can proudly display its commitment to those who fought the battles to keep this country free—our Nation's veterans. Mr. President, please take note when I say ''Our Nation's Veterans.'' They are not Florida's veterans or Arizona's veterans or New York's veterans. They are our veterans, and we as a nation have a collective responsibility to honor the commitment we made to them. When Members of this honorable body, including my esteemed colleague from Arizona, volunteered to do battle for America's freedom, no one asked what geographic region they came from. That question would have been so insignificant as to border on the absurd.

Sadly, after our veterans returned home, and it is our turn to honor our commitments to them—where they live matters a great deal. Mr. President, just last month, the General Accounting Office published a rather startling report.

Allow me to highlight a few of the report's findings.

The Department of Veterans Affairs has had a system in place for 3 years, known as RPM—Resource Planning and Management—designed to give veterans better access to health care regardless of where they live. While not perfect, the system as designed would go a long way toward equal treatment for veterans.

However, despite the time, money, and effort put into designing such a system—VA has chosen not to use it. Between 1993 and 1995, some VA facilities' patient workloads have skyrocketed by as much as 15 percent. At other facilities, patient workloads have decreased by 8 percent.

Despite this wide disparity in patient workload change, the VA has used its own resource allocation system to change any given facility's budget by the minuscule total of plus or minus 1 percent.

The decision to pay homage to bricks and mortar rather than to our Nation's veterans has its price—and our Nation's veterans pay it. GAO reports that patient workload increases above historical workload are funded at 17 cents on the dollar—so if a veteran moves from New York to Florida—he will get 83 percent less care solely because he moved. That is not right.

Surely, though, the VA must have compelling reasons for not acting on the RPM system. Surely, there must be terrible consequences should VA decide to forgo the status quo. Again, sadly—no. VA's justifications for inertia are weak—but here they are.

First, VA claims that facility managers will have difficulty in adjusting to the large budgetary changes that would come about should resource allocation become more equitable. Mr. President, isn't adjusting to budget fluctuations what makes for good management, and in this case good government? In a private sector system, the chief executive of the hospital makes budgetary decisions based on forecasting patient workload on an annual basis. Why should we demand any less from the VA? Further, any difficulties VA facility managers have in adjusting to budgetary changes pale in comparison to the difficulties our veterans face as a result of VA's inertia. This seems to me, Mr. President, as a perfect example of the tail wagging the dog.

Second, the second justification for failing to treat veterans equally is that VA doesn't understand why some facilities are able to make do with less funding while others require more resources for the same number of patients. VA reasons that until it understands why some facilities are more efficient than others, the agency won't implement a system that achieves fairness. Mr. President, it is a given that facilities which receive more than their share of resources will use all of these resources and facilities which receive less than their share will struggle and make do as best they can—rationing care along the way. But there are breaking points for even the most efficient facilities. And the consequences for these facilities fall squarely on our Nation's veterans and manifest themselves in concrete ways.

For instance, a veteran who would normally have to wait 2 weeks to see an orthopedic surgeon may have to wait 6 months to see one should he choose to retire to Florida and Arizona. Or, a veteran who used to get free prescription glasses up North is laughed out of the VA facility down South. Because of this disparity, some

veterans are forced to move back home to get the care to which they are accustomed. Others simply give up in despair. Mr. President, we can help to rectify this inequity today. Right now. Our amendment would simply mandate that VA develop a plan for their fair allocation of resources to ensure that veterans having similar economic status, eligibility priority, and similar medical conditions have similar access to care regardless of where they live. And in the end, providing equal care to all our Nation's veterans is what the VA health care system is all about.

We as politicians can quibble over such terms as construction projects, resource allocation methodology, and patient workload, but one thing is certain: We all have a stake in honoring our collective commitment to our veterans—and they deserve no less.

Thank you, Mr. President.

Mr. CHAFEE. Mr. President, the managers' amendment to the omnibus appropriations bill for fiscal year 1996 includes a provision—added on behalf of myself and Senator KEMPTHORNE—to increase the appropriation for Endangered Species Act listing activities by the U.S. Fish and Wildlife Serivce from $750,001 to $2,000,001. The total amount available for the Fish and Wildlife Service's resource management activities is increased by $1,249,999 to accommodate this addition to the listing account. Senator KEMPTHRONE and I proposed this amendment in order to address concerns raised during debate last week on the Endangered Species Act listing moratorium.

Let us review the bidding.

On March 13, the Senate approved a second-degree amendment offered by Senator HUTCHISON and Senator KEMPTHORNE to Senator REID's underlying amendment to strike the moratorium on final listings under the Endangered Species Act. The Hutchison second-degree amendment imposes a moratorium on final decisions to list species as threatened or endangered and on final decisions to designate critical habitat. However, the Hutchison amendment allows the Fish and Wildlife Service to use funds appropriated under the omnibus bill to issue emergency listings, to propose species for listing, and to review and monitor species on the candidate list.

Mr. President, I oppose Senator HUTCHISON's second-degree amendment because I believe that a moratorium on adding species to the threatened and endangered list is wrong. Thus, I supported Senator REID's amendment to strike the provisions that would impose a moratorium on adding new species to the threatened and endangered lists. Make no mistake about it—I continue to oppose the provision in this bill that would impose a moratorium on final decisions by the Secretary of the Interior or the Secretary of Commerce to list a species or to designate critical habitat under the Endangered Species Act.

During the March 13 debate on the ESA moratorium, it was pointed out that the second-degree amendment offered by Senators HUTCHISON and KEMPTHORNE increased the authority of the Fish and Wildlife Service, as compared to that included in the underlying bill, but provided only $1 in new funding. This would have resulted in a difficult situation for the Fish and Wildlife Service as appropriations for listing activities would have been sorely inadequate to meet the needs and requirements of the law. In other words, it would have been nearly impossible for the Service to perform the tasks that are authorized under the Hutchison language—tasks such as decisions on emergency listings or responses to citizen petitions—without an increase in funding. The $1,249,999 that is added to the listing account under this amendment is intended to provide the U.S. Fish and Wildlife Service with funding necessary to perform emergency listings and other listing activities that are authorized under the Hutchison amendment.

Mr. President, it was a pleasure to work with Senator KEMPTHORNE and Senator HUTCHISON on this amendment. And, while I oppose the ESA listing moratorium, I believe that—working together to secure additional funding for listing activities—we have improved the prospects for orderly, effective research and conservation efforts by the Fish and Wildlife Service. It is my hope that we can continue to work together to enact responsible legislation to reauthorize the Endangered Species Act later this year.

I would like to thank Senators HATFIELD and GORTON and their Appropriations Committee staff for their assistance with this amendment. Also, I very much appreciate the willingness of Senator HATFIELD and of Senator BYRD to include this provision in the managers' amendment.

HIV-POSITIVE SERVICEMEMBERS

Mr. NUNN. Mr. President, the National Defense Authorization Act for fiscal year 1996, which was signed into law by the President on February 10, 1996, contains a provision which mandates the discharge of every member of the Armed Forces who is HIV positive within 6 months.

At the present time, the services have in place procedures for medically separating HIV-positive personnel who are physically disabled. Those who are not disabled are placed in a nondeployable status but continue to perform military duties.

This is similar to the status of others whose medical condition—such as cancer, heart disease, asthma, and diabetes—restrict deployability but not the capability to provide valuable military service.

The new procedure would require the Armed Forces to discharge, not later than August 31, 1996, those who are physically capable of performing their military duties and who are, today, providing valuable service to the Nation.

The new mandatory discharge policy rejects the judgment of the Armed Forces that HIV-positive servicemembers should be treated no differently from others whose medical condition renders them nondeployable.

That judgment was made by the Joint Chiefs of Staff during the Reagan administration, and was recently reemphasized by Secretary of Defense, Bill Perry, and JCS Chairman, Gen. John Shalikashvili.

The new policy represents a sharp break with the traditional military practice of considering medical discharge on a case-by-case basis. In my judgment, the new policy is unnecessary, wasteful, unfair, and unwise.

The new policy is unnecessary because HIV-positive personnel represent a tiny fraction of our Armed Forces. Out of the 1.4 million members of the Armed Forces on active duty, only 1,150 are HIV positive. That is less than one-tenth of 1 percent.

Moreover, these HIV-positive servicemembers constitute only one-fifth percent of the 5,000 personnel in the military who are permanently nondeployable for medical reasons.

If we can usefully accommodate some 4,000 individuals who are nondeployable for reasons other than HIV, there is no reason why we should discharge the small additional fraction who are HIV positive.

The policy is wasteful because it will be throwing away the large investment the military has made in the training and experience of individuals who can still make a valuable contribution to the Armed Forces. Why throw away that investment at the peak of an individual's career?

Not only will the new policy waste our recruitment and training dollars, it will throw away invaluable experience.

Consider the case of the sergeant who has been married for 10 years, who has a child, and who is HIV positive. His service record is full of honors, including an award for automating a warehouse system that saved the Navy an estimated $2 million over a 2-year period.

He has 12 years of service and has been HIV positive for 5 years. There is reasonable likelihood that he could serve for many more years, with the potential to develop systems that will save millions more for the Navy.

This new policy will deprive him of his livelihood and deprive the taxpayers of the contributions that he can make to greater efficiency and savings.

The new policy is unfair because it will leave many servicemembers without employment for themselves and health care for their families. There is a sergeant with 13 years of service who is married, with three children. He is HIV positive, as is his wife and two of the three children.

Under the new policy, he is the only one of the family who will retain a right to DOD medical care. His family, including his HIV positive wife and two HIV positive children, will be excluded from any DOD health care.

As a result of the bill, he will be discharged from service, lose his employment, loss his retirement potential, and lose his family's medical care.

This is an individual who is perfectly capable of performing military duties, yet we are going to throw away our investment in him and place him in dire financial straits—even though those who are non-deployable for reasons other than HIV will remain in service. That is unfair.

The new policy is unwise, because it could undermine the traditional doctrine of judicial deference to Congress in the realm of military personnel policy.

In a 1994 essay in the Wake Forest Law Review, I examined the Supreme Court's precedents and concluded that the Court's jurisprudence reflected ''the highest degree of deference to the role of Congress and respect for the judgment of the Armed Forces in the delicate task of balancing the interests of national security and the rights of military personnel.''

I also noted, however, that the Supreme Court emphasized that Congress is not free to disregard the Constitution when it acts in the area of military affairs. Consequently, it is essential that Congress act with care when it establishes procedures that would impose conditions on military service that would be constitutionally impermissible in civilian life.

In the case of the new HIV discharge policy, we have not acted with care. It is instructive to contrast the development of the new policy with the process followed in 1993 when the legislative and executive branch considered the policy on homosexuality in the Armed Forces.

In February 1993, Congress rejected an amendment that would have imposed a policy without any hearings of deliberation. Instead, we provided for a 6 month detailed review within the executive branch and Congress.

That period provided an opportunity for the Department of Defense and Congress to hold hearings, receive testimony from the members of the Armed Forces, legal and academic experts, and interested members of the public. The Senate Armed Services Committee alone complied a record of more than 1,000 pages in testimony.

The hearing process and DOD reviews in 1993 were followed by the development of a proposed DOD policy and specific legislation, including detailed legislative findings. The findings focused on clear expert testimony on the impact on unit cohesion, morale, discipline, and military effectiveness.

The civilian and military leadership of the Department of Defense supported the legislation; it was overwhelmingly approved after thorough debates in both the House and the Senate, was signed into law by the President, and has been defended by the Department of Justice in the face of several legal challenges.

Although there may be disagreement on the merits of the 1993 policy, the process ensured careful and thorough review by the legislative and executive branches of the relevant policy and constitutional issues. The process was designed to provide for careful and thorough review. The contrast to the development of the new HIV policy could not be more striking.

There has been no review within the executive branch. In fact, the military leadership views the policy as unnecessary and unfair.

The House did not develop a detailed legislative record, and the provision was not even included in the Senate-passed bill.

There is not a clearly articulated legislative basis for treating HIV-positive personnel in a manner that differs from the treatment of other nondeployables.

In the absence of careful legislative consideration, it could be difficult for the new policy to survive a constitutional challenge—particularly in terms of the weak arguments for the policy.

Supporters of the provision have relied primarily on three reasons to justify the provision.

First, they believe that the retention of HIV-positive personnel degrades unit readiness. There has been no showing, however, that the small fraction of nondeployable personnel who are HIV positive have a significantly greater impact in this regard than the large number of persons who are nondeployable for other reasons.

The second reason given for the policy is to establish deployment equity on the grounds that if a person is nondeployable, other servicemembers stand a greater risk of deployment. That concern might be appropriate if the numbers were significantly greater and if the HIV positive personnel were the only nondeployables. For example, if the number of HIV positive personnel in the Marine Corps were to become a significant percentage, then the HIV policy would have to be reconsidered together with the policies that retain servicemembers who are medically nondeployable for reasons such as cancer, diabetes, asthma, and heart disease.

This however, is not the case today. The numbers are tiny and the persons who are nondeployable for other reasons greatly outnumber those who are HIV positive.

The third rationale offered by supporters of the policy is that discharge is warranted because, it is asserted, persons who are HIV positive likely contracted the infection through sexual misconduct or drug abuse.

There are two problems with this argument. First, it ignores the well-established medical fact that HIV can and often is transmitted through actions that do not involve military misconduct, such as blood transfusions and heterosexual conduct.

Second, there are ample administrative and judicial procedures in the Armed Forces to discipline those who engage in misconduct involving sex and drugs. The record does not establish a military need to discharge all who are HIV positive in order to maintain good order and discipline.

The administration, believing the new provision to be unconstitutional, has determined that it will obey the law but not defend it in court.

As a result, the judiciary will be thrust into the midst of a constitutional debate on a controversial military personnel matter with a sparse legislative record and a severe split between Congress and the President.

It is an invitation to undermine the doctrine of deference, which has served so well and so long to ensure that the Armed Forces have the tools necessary to maintain good order and discipline without interference from the courts.

For that reason alone, the provision should be repealed.

This provision was not part of the Senate-passed authorization bill. I opposed this provision during the conference with the House of Representatives on the authorization bill and I spoke out against it on the floor of the Senate during debate on the conference report.

Today, I support the amendment that would repeal this provision.

Mrs. BOXER. Mr. President, despite my objections to the omnibus appropriations bill, I am pleased that it includes an amendment overturning the prohibition on military service by HIV-positive personnel. As my colleagues are aware, this grossly unfair prohibition was established in the fiscal year 1996 DOD authorization bill and will become effective this summer.

I opposed the fiscal year 1996 DOD authorization bill largely because of this provision. The day the Senate approved that provision, I vowed to mount an effort for repeal. I am pleased that today, the full Senate has joined in that fight.

The policy now in effect—developed in the Reagan and Bush administration—works well. The amendment contained in this bill reinstates the current policy, in which military personnel who test positive for the HIV virus are permitted to keep their jobs, so long as they are physically able.

Currently, HIV-positive personnel are treated in the same manner as other soldiers with chronic ailments such as diabetes and heart disease. Only about 20 percent of the roughly 6,000 worldwide nondeployable troops are HIV positive.

Dismissing all HIV-positive soldiers makes no sense. Why should the Pentagon fire military personnel who perform their duties well and exhibit no signs of illness? This would waste millions of tax dollars in unnecessary separation and retraining costs.

Backers of this provision argue that HIV-provision personnel degrade readiness because they are not eligible for worldwide deployment. This argument is absurd. Can anyone seriously contend that about 1,000 personnel—less than 0.1 percent of the active force—could have a meaningful impact on readiness?

Assistant Secretary of Defense Fred Pang clearly expressed the Department's position, writing,

As long as these members can perform their required duties, we see no prudent reason to separate and replace them because of their antibody status. However, as with any Service member, if their condition affects their performance of duty, then the Department initiates separation action . . . the proposed provision would not improve military readiness or the personnel policies of the Department.

Lt. Gen. Theodore Stroup, Jr., Army Deputy Chief of Staff for Personnel has echoed these sentiments, writing,

It is my personal opinion that HIV-infected soldiers who are physically fit for duty should be allowed to continue on active duty.

I ask unanimous consent that a column I wrote on this subject for the Los Angeles Times be printed at this point in the RECORD.

[From the Los Angeles Times, Feb. 6, 1996]

CONGRESS MISSES THE ''MAGIC'' SHOW

MILITARY: A BILL OUSTING THE HIV-POSITIVE HAS NOTHING TO DO WITH READINESS; IT'S SIMPLY DISCRIMINATION

(By Barbara Boxer)

Americans cheered last week as Earvin ''Magic'' Johnson triumphantly returned to the Los Angeles Lakers. In just 27 minutes, he scored 19 points and dispelled any remaining doubt about his ability to compete at the highest level.

To their credit, Magic's fans, coaches, teammates and even his NBA opponents welcomed him back with open arms. Imagine how absurd it would be if Congress, just as Magic demonstrated his Hall of Fame talent, passed a law requiring the NBA to fire all basketball players who have the HIV virus.

This past week, Congress did something just that absurd.

A little-noticed provision of the annual military spending bill requires the Pentagon to fire all soldiers, sailors and Marines who test positive for the HIV virus, even if they perform their duties as skillfully as Magic Johnson makes a no-look pass. The military strongly objected to this provision, but Congress did not care. The president has called the new policy unfair, but because it is part of a larger bill that includes urgently needed funding for our troops in Bosnia, he will sign it into law.

Under current policy, military personnel with the HIV virus are permitted to remain in the services as long as they are able to perform their duties. If their health deteriorates, the military initiates separation procedures and provides disability benefits and continued health insurance coverage for them and their dependents. So they can remain near health care providers, military personnel with HIV are placed on ''worldwide nondeployable status,'' which means that they cannot be sent on overseas missions. Soldiers with other serious chronic illnesses, such as severe asthma, cancer and diabetes are also nondeployable. In fact, only about 20 percent of the more than 5,000 nondeployable personnel are infected with HIV.

The congressional authors of the new policy, led by Rep. Robert K. Dornan of Orange County, argue that nondeployable personnel degrade military readiness because they cannot be sent overseas. However, their true motive appears to be less lofty than protecting the readiness of our forces. The new policy irrationally singles out military personnel with HIV. If backers truly believe that nondeployable personnel harmed readiness, why wouldn't they seek to oust soldiers with diabetes and asthma? The only conceivable answer is that readiness is not their real motivation. Their motivation is discrimination, pure and simple.

Can anyone seriously contend that 1,059 HIV-positive soldiers—less than 0.1 percent of the total force—can meaningfully affect readiness? The Pentagon doesn't think so. Its top personnel policy expert, Assistant Defense Secretary Fred Pang, recently wrote that ''as long as these members can perform their required duties, we see no prudent reason to separate and replace them . . . The proposed provision would not improve military readiness or the personnel policies of the department.''

If Magic Johnson can run and leap with the best of them, why can't a military clerk file with the best of them, or a military driver drive with the best of them?

Perhaps the worst aspect of the new policy is its total rejection of the compassion and camaraderie for which the armed forces are rightfully praised. The United States of America does not kick its soldiers when they are down. We have a proud tradition of standing by those courageous enough to dedicate their careers to the defense of our nation. That tradition will end the day this new policy is enacted.

Military personnel discharged under the new policy will lose their jobs even if they exhibit no signs of illness. They will lose their right to disability benefits and their spouses and children will lose their health care coverage. This policy is worse than wrong, it is un-American.

The same day that President Clinton signs the bill that includes this new policy, a bipartisan group of senators will introduce legislation to repeal it. The president and our senior military leaders support repeal. Despite their strong support, the odds are unclear. But I am certain about one thing: Those who vote ''no'' should take a good look in the mirror.

DISASTER-RELATED FUNDS

Mr. MCCAIN. Mr. President, my amendment will require that any disaster-related funds earmarked in this bill for specific projects by Federal agencies will be allocated according to the established, priority-based procedures of those agencies.

This amendment would ensure that funds disaster-related funding allocated by the Economic Development Administration, the U.S. Department of Agriculture, the Department of Housing and Urban Development, the Small Business Administration, and the National Park Service, will be awarded based on need—and not according to unauthorized earmarks.

This amendment will not reduce the funding in this bill, nor direct these agencies to give preferential priority to any particular project, State, or region of the country.

This proposal is entirely fair and equitable to all of the States and communities that we represent. It plays no favorites, and offers no advantages to individuals who may be well-intentioned in their desire to receive funding for a local project. This amendment will simply ensure that taxpayer funding made available under this appropriations bill will be spent according to recognized priorities, as opposed to congressionally mandated earmarks.

Let me discuss just one example of what I believe is an inappropriate expenditure of taxpayer dollars that was added to the legislation before us. Last week, an amendment was offered to this bill, and adopted without a recorded vote, that would provide a total of $13.8 million for an unauthorized flood control project.

That amendment directs the Economic Development Administration [EDA] to spend $10 million for flood control work at Devil's Lake Basin in North Dakota; it also directs the U.S. Fish and Wildlife Service to spend $3.8 million for related work at Devils Lake Basin. The approximately $14 million in new taxpayer dollars for this project was not requested by the agencies to be funded in this bill, nor was the project subjected to any competitive evaluation process by the EDA or HUD.

Mr. President, I don't think this is how the Senate should be doing business. And I definitely don't think this is how we should be spending taxpayer's dollars, at a time when we have scarce resources with which to address many serious disaster needs across the country.

I believe earmarking funds for a specific project is unfair, especially with respect to vital flood control programs. It clearly undermines the competitive-review process that ensures that the most urgent needs of distressed cities and townships all across America are properly addressed.

While I'm sure that this situation in North Dakota is worthy of attention, we have no way of knowing that it represents the most serious need for Federal emergency assistance.

As most of my colleagues are aware, the Economic Development Administration [EDA] provides grants for infrastructure programs and community projects in economically distressed areas. In doing so, the EDA is barraged with hundreds and hundreds more requests for Federal aid than they can possibly fulfill. In fact, Mr. President, the EDA has such a backlog on official funding requests that they stopped accepting additional applications almost a year ago.

The EDA makes its funding awards through its regional offices on a competitive, agency-review basis. Right now the EDA has almost 600 funding requests awaiting final decisions—600. These requests represent the pleas of communities across the United States for help from the Federal Government due to military base closures, job losses, natural disaster, and declining local economies. Nationally, the EDA has received over $320 million in community-based funding requests that local officials and residents are anxiously awaiting an answer on.

Clearly, the EDA has an extremely difficult task in deciding which projects to fund. They do so by considering factors such as an areas' per capita income; unemployment rate; the local poverty level; the loss of population in the community; and the general distress level of residents in the area. There will always be more disappointed applicants than there are

winners in a competitive system, but at least the EDA is utilizing a set of economic criteria to ensure that the taxpayer dollars it administers are scrutinized, and flow to the projects which represent truly compelling needs.

Mr. President, we have before us a mammoth new appropriations bill which presents an inviting target for Members to evade this competitive system, and bypass its reasonable guidelines for the expenditure of taxpayer dollars. The earmark added to this bill effectively sweeps aside higher priority requests, and arbitrarily puts one unauthorized project at the head of the line. Instead of a community receiving flood control assistance because it's needs are urgent and meritorious, this one project will prevail over hundreds of others because it secured political support. Well intentioned support, I'm sure, but unfair nonetheless.

As I have said many times on this floor, Mr. President, during one of my many unsuccessful attempts to curb the Congress's seemingly unquenchable thirst for more spending, my criticisms about this specific project is about process. I in no way contend that the Devils Lake Basin flood control program is unnecessary. I fully recognize that the Senators from North Dakota are affirmatively responding to requests for assistance from some of their constituents.

What I do contend is that the Senate should not respond to such requests—requests that all 100 Members of this body receive on a daily basis—in a manner that circumvents a thorough, merit-based process, and substitutes quick-and-easy earmarks in yet another emergency spending bill.

While I am opposed to the Senate again condoning what I feel is an indefensible process, let me state that I have not offered this amendment out of any respect for endless bureaucratic analysis; I offer it because there are dire problems facing our communities and the taxpayers who support them, and it is wrong to subvert their efforts to play by the rules when they are in need of Federal disaster aid.

Again, I don't question the possible benefits of the Devil's Lake Basin project. I do question the wisdom in the Senate boosting it to the head of the line for funding from the Economic Development Administration, when there are 84 other project's among North Dakota's neighboring States that are also anxiously awaiting funding. Unlike Devil's Lake Basin, however, these communities are properly competing for funding from the EDA for their disaster needs.

I have been advised by the EDA, Mr. President, that they did not request funding for the Devil's Lake Basin project, nor have the project's sponsors officially filed a request for funds with the EDA's Denver Regional Office, which allocates funding to North Dakota and nine other Western and Midwestern States. Therefore, dozens of communities in States such as Colorado, Kansas, Missouri, South Dakota, Iowa, Wyoming, and Utah will continue to have their needs go unaddressed by EDA, while $10 million in new moneys they might have competed for will instead be diverted to a single project.

I am not talking about mere pennies, either. The total earmark for the Devils Lake Basin project in this bill is larger than the entire expected budget of the EDA's Denver Regional Office for fiscal year 1996. This one project will receive almost $13 million in Federal aid, while 84 communities in the above 9 States will have to compete with each other for the $11 million that the Denver office is anticipating for this year. Without a doubt, a number of these requests are emergency projects.

Regrettably, many communities who have developed meritorious proposals, and are willing to play by the rules by competing for scarce taxpayer dollars, will never get a dime from the EDA.

Obviously, Mr. President, every Senator in this body is interested in receiving Federal funds for infrastructure and disaster aid for their State. I'm certainly no exception. Arizona has over $6 million in requests pending with the EDA, some of which have been pending for several years. For Arizona to even have a chance at having one project funded, communities in my State must compete with 115 requests from seven other States in Region 7, which includes California, Idaho, Alaska, and Hawaii. These States currently have over $100 million in requests pending at the EDA. Most of these will be rejected due to the intense competition, yet Devils Lake Basin is guaranteed $10 million without having to face any competition.

The $3.8 million earmark for the Devils Lake Basin project in this bill from the Fish and Wildlife Service is similar in the respect that it was not officially requested by the agency, in its submission to the Appropriations Committee for inclusion in this bill. There are other earmarks in the bill, as well.

The amendment I am offering is very simple, and entirely fair to every Member of this body, and every State in our Nation. It simply says that funding provided in this bill to the EDA, the Fish and Wildlife Service, HUD, and other agencies will be awarded according to the established prioritization process of those agencies.

Mr. KENNEDY. Mr. President, I rise to express my deep concern about the title VIII of the pending appropriations bill, the so-called Prison Litigation Reform Act [PLRA].

Its proponents say that the PLRA is merely an attempt to reduce frivolous prisoner litigation over trivial matters. In reality, the PLRA is a far-reaching effort to strip Federal courts of the authority to remedy unconstitutional prison conditions. The PLRA is itself patently unconstitutional, and a dangerous legislative incursion into the work of the judicial branch.

In my view, the effort to enact this proposal as part of an omnibus appropriations bill is inappropriate. Although a version of the PLRA was introduced as a free-standing bill and referred to the Judiciary Committee, it was never the subject of a committee mark-up, and there is no Judiciary Committee report explaining the proposal. The PLRA was the subject of a single hearing in the Judiciary Committee, hardly the type of thorough review that a measure of this scope deserves.

At the hearing, Associate Attorney General John Schmidt expressed serious concerns about the feasibility and consequences of the PLRA. While Mr. Schmidt did not take issue with provisions in the PLRA that merely seek to curb frivolous prison litigation, he noted that other aspects of the proposal would radically and unwisely curtail the power of the Federal courts to remedy constitutional and statutory violations in prisons, jails, and juvenile detention facilities.

I understand that my colleague from Illinois intends to include relevant excerpts of Mr. Schmidt's testimony in the RECORD, but I will just highlight several of the objections that he raised, all of which I share. Mr. Schmidt observed that:

> The effort to terminate all existing consent decrees ''raise[s] serious constitutional problems'' under doctrines reaffirmed by the Supreme Court as recently as this year;
>
> Provisions limiting the power of federal courts to issue relief in prison conditions cases would ''create a very substantial impediment to the settlement of prison conditions suits—even if all interested parties are fully satisfied with the proposed resolution.'' ''This would result in litigation that no one wants . . . and could require judicial resolution of matters that would otherwise be more promptly resolved by the parties in a mutually agreeable manner'';
>
> The proposal to terminate relief two years after issuance is misguided because, in those cases where the problems have not been remedied, the ''Justice Department and other Plaintiffs would have to refile cases in order to achieve the objectives of the original order, and defendants would have the burden of responding to these new suits. Both for reasons of judicial economy, and for the effective protection of constitutional rights, we should aim at the resolution of disputes without unnecessary litigation and periodic disruption of ongoing remedial efforts.''

All of these problems remain in the legislative language before us today.

In addition, I call to the attention of my colleagues an assessment prepared by the Administrative Office of the United States Courts dated June 21, 1995. The Office found that the ''potential annual resource costs of [the bill] could be more than $239 million and 2,096 positions, of which at least 280 would be judicial officers—Article III judges and/or magistrate judges.'' The bill appropriates no funds to the Federal judiciary to offset this enormous fiscal impact.

Finally, I note with great concern that the bill would set a dangerous precedent for stripping the Federal courts of the ability to safeguard the

civil rights of powerless and disadvantaged groups.

I do not intend to offer an amendment to this bill, because it is clear that a majority of the Senate would not vote to strike the provision, and I do not believe the Senate is positioned to consider detailed improvements to the PLRA during debate on this omnibus appropriations bill. But the abbreviated nature of the legislative process should not suggest that the proposal is noncontroversial in Congress.

It is my hope that after the President vetoes this bill, as I expect he will, that the administration seek to negotiate changes in the PLRA that remedy the profound constitutional, fiscal, and practical problems outlined by Mr. Schmidt and other experts.

I ask unanimous consent that a copy of a letter sent by myself and four other Senators to the Attorney General on this subject be printed in the RECORD.

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

U.S. SENATE,
COMMITTEE ON THE JUDICIARY,
Washington, DC, February 2, 1996.

Hon. JANET RENO,
Attorney General of the United States, Department of Justice, Washington, DC.

DEAR MADAM ATTORNEY GENERAL: We write to express our concern about aspects of the Prison Litigation Reform Act (PLRA), which has passed Congress as title VIII of the Commerce, State, and Justice Departments Appropriations bill. President Clinton vetoed this appropriations bill on December 18, but it is our understanding that issues such as the PLRA may be the subject of negotiations between the Administration and members of the Appropriations Committees in the coming weeks.

We do not take issue with provisions in the PLRA that merely seek to curb frivolous prison litigation. But in other respects, the PLRA is far reaching legislation that would unwisely reduce the power of the federal courts to remedy constitutional and statutory violations in prisons, jails, and juvenile detention facilities.

PLRA was considered as one of many issues on the appropriations bill. For this reason, PLRA passed on a voice vote following relatively brief debate. But the manner in which the bill passed the Senate should not suggest to you that the Senate considers the proposal to be entirely noncontroversial.

In particular, we share some of the concerns that Associate Attorney General John R. Schmidt raised in his testimony before the Senate Judiciary Committee on July 27, 1995. Mr. Schmidt noted that provisions limiting the power of federal courts to issue relief in prison conditions cases would ''create a very substantial impediment to the settlement of prison conditions suits—even if all interested parties are fully satisifed with the proposed resolution.'' ''This would result in litigation that no one wants . . . and could require judicial resolution of matters that would otherwise be more promptly resolved by the parties in a mutually agreeable manner.''

Mr. Schmidt also pointed out that the proposal to terminate relief two years after issuance is troublesome because, in those cases where the problems have not been remedied, the ''Justice Department and other Plaintiffs would have to refile cases in order to achieve the objectives of the original order, and defendants would have the burden of responding to these new suits. Both for reasons of judicial economy, and for the effective protection of constitutional rights, we should aim at the resolution of disputes without unnecessary litigation and periodic disruption of ongoing remedial efforts.''

These problems have not been remedied by the changes made to the proposal since Mr. Schmidt's testimony.

We also call to your attention an assessment prepared by the Administrative Office of the United States Courts dated June 21, 1995. The Office found that the ''potential annual resource costs of [the bill] could be more than $239 million and 2,096 positions, of which at least 280 would be judicial officers (Article III judges and/or magistrate judges).'' The bill appropriates no funds to the federal judiciary to offset this enormous fiscal impact.

We suggest that the Administration negotiate changes in the PLRA that remedy the serious fiscal and practical problems outlined by Mr. Schmidt and other experts.

Thank you for your attention to this important matter.

Sincerely,

FRED THOMPSON.
JIM JEFFORDS.
TED KENNEDY.
JOE BIDEN.
JEFF BINGAMAN.

Mr. SIMON. Mr. President, I join Senator KENNEDY in raising my strong concerns about the Prison Litigation Reform Act, a section of S. 1594. In attempting to curtail frivolous prisoner lawsuits, this legislation goes much too far, and instead may make it impossible for the Federal courts to remedy constitutional and statutory violations in prisons, jails, and juvenile detention facilities. No doubt there are prisoners who bring baseless suits that deserve to be thrown out of court. But unfortunately, in many instances there are legitimate claims that deserve to be addressed. History is replete with examples of egregious violations of prisoners' rights. These cases reveal abuses and inhumane treatment which cannot be justified no matter what the crime. In seeking to curtail frivolous lawsuits, we cannot deprive individuals of their basic civil rights. We must find the proper balance.

My colleague from Illinois, Associate U.S. Attorney General John Schmidt, testified before the Senate Judiciary Committee on July 27, 1995, and raised numerous concerns about this legislation. I have included a copy of his comments for my colleagues to review. I should also note that at the same hearing, former Attorney General Barr of the Bush administration, agreed with the assertion that there are constitutional problems with the bill as drafted which have not yet been addressed.

As outlined in Mr. Schmidt's testimony, the bill has so many problems that I cannot list them all here. So let me describe just a few. First, the bill severely limits the options available to States and courts in remedying legitimate complaints. For example, the bill makes it virtually impossible for States to enter into consent decrees even when the consent decree may well be in the State's best interest for both fiscal and policy reasons. Similarly, this legislation, by creating new and burdensome standards of review, would effectively prohibit courts from placing population caps on prisons. Prison overcrowding obviously creates a serious threat to the general public, as well as to prison staffs and the inmates themselves. We must not exacerbate this problem. Furthermore, the bill places undue burdens on States and courts by requiring that relief be terminated 2 years after issuance even in cases where the problems have not been remedied

I am very discouraged that this legislation was considered as one of many issues on an appropriations bill. Legislation with such far reaching implications certainly deserves to be thoroughly examined by the committee of jurisdiction and not passed as a rider to an appropriations bill. I urge the White House to carefully review these provisions and work with Congress to make the necessary changes to remedy the myriad of constitutional and practical problems found in this far-reaching legislation.

I ask unanimous consent that the relevant portions of Mr. Schmidt's testimony be printed in the RECORD.

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

TESTIMONY OF JOHN SCHMIDT

REFORMS RELATING TO PRISONER LITIGATION

The Department also supports improvements of the criminal justice system through the implementation of other reforms. Several pending bills under consideration by the Senate contain three sets of reforms that are intended to curb abuses or perceived excesses in prisoner litigation or prison conditions suits.

The first set of provisions appears in title II of H.R. 667 as passed by the House of Representatives, and in §103 of S. 3. These provisions strengthen the requirement of exhaustion of administrative remedies under the Civil Rights of Institutionalized Persons Act (CRIPA) for state prisoner suits, and adopt other safeguards against abusive prisoner litigation. We have endorsed these reforms in an earlier communication to Congress.[1] We also recommend that parallel provisions be adopted to required federal prisoners to exhaust administrative remedies prior to commencing litigation.

The second set of provisions appears in a new bill, S. 866, which we have not previously commented on. The provisions in this bill have some overlap with those in §103 of S. 3 and title II of H.R. 667, but also incorporate a number of new proposals. We support the objectives of S. 866 and many of the specific provisions in the bill. In some instances, we have recommendations for alternative formulations that could realize the bill's objectives more effectively.

The third set of provisions appears in S. 400, and in title III of H.R. 667 as passed by the House of Representatives, the ''Stop Turning Out Prisoners'' (STOP) proposal. The Violent Crime Control and Law Enforcement Act of 1994 enacted 18 U.S.C. 3626, which limits remedies in prison conditions litigation. The STOP proposal would amend this section to impose various additional conditions and restrictions. We support the

[1] Letter of Assistant General Shalla F. Anthony to Honorable Henry J. Hyde concerning H.R. 3, at 17–19 (January 26, 1995).

basic objective of this legislation, including particularly the principle that judicial caps on prison populations must be used only as a last resort when no other remedy is available for a constitutional violation, although we have constitutional or policy concerns about a few of its specific provisions.

A. The Provisions in §103 of S. 3 and H.R. 667 title II

As noted above, we support the enactment of this set of provisions.

The Civil Rights of Institutionalized Person Act (42 U.S.C. §1997e) currently authorizes federal courts to suspend §1983 suits by prisoners for up to 180 days in order to require exhaustion of administrative remedies. Section 103(a)–(b), (e) of S. 3 strengthens the administrative exhaustion rules in this context—and brings it more into line with administrative exhaustion rules that apply in other contexts—by generally prohibiting prisoner §1983 suits until administrative remedies are exhausted.

As noted above, we recommend that this proposal also incorporate a rule requiring federal prisoners to exhaust administrative remedies prior to commencing litigation. A reform of this type is as desirable for federal prisoners as the corresponding strengthening of the exhaustion provision for state prisoners that now appears in section 103 of S. 3. We would be pleased to work with interested members of Congress in formulating such a provision.

Section 103(c) of S. 3 directs a court to dismiss a prisoner §1983 suit if the court is satisfied that the action fails to state a claim upon which relief can be granted or is frivolous or malicious. A rule of this type is desirable to minimize the burden on states of responding unnecessarily to prisoner suits that lack merit and are sometimes brought for purposes of harassment or recreation.

Section 103(d) of S. 3 deletes from the minimum standards for prison grievance systems in 42 U.S.C. 1997e(b)(2) the requirement of an advisory role for employees and inmates (at the most decentralized level as is reasonably possible) in the formulation, implementation, and operation of the system. This removes the condition that has been the greatest impediment in the past to the willingness of state and local jurisdictions to seek certification for their grievance systems.

Section 103(f) of S. 3 strengthens safeguards against and sanctions for false allegations of poverty by prisoners who seek to proceed in forma pauperis. Subsection (d) of 28 U.S.C. 1915 currently reads as follows: ''The court may request an attorney to represent any such person unable to employ counsel and may dismiss the case if the allegation of poverty is untrue, or if satisfied that the action is frivolous or malicious.'' Section 103(f)(1) of S. 3 amends that subsection to read as follows: ''The court may request an attorney to represent any such person unable to employ counsel and shall at any time dismiss the case if the allegation of poverty is untrue, or if satisfied that the action fails to state a claim upon which relief may be granted or is frivolous or malicious even if partial filing fees have been imposed by the court.''

Section 103(f)(2) of S. 3 adds a new subsection (f) to 28 U.S.C. 1915 which states that an affidavit of indigency by a prisoner shall include a statement of all assets the prisoner possesses. The new subsection further directs the court to make inquiry of the correctional institution in which the prisoner is incarcerated for information available to that institution relating to the extent of the prisoner's assets. This is a reasonable precaution. The new subsection concludes by stating that the court ''shall require full or partial payment of filing fees according to the prisoner's ability to pay.'' We would not understand this language as limiting the court's authority to require payment by the prisoner in installments, up to the full amount of filing fees and other applicable costs, where the prisoner lacks the means to make full payment at once.

B. S. 866

Section 2 in S. 866 amends the *in forma pauperis* statute, 28 U.S.C. 1915, in the following manner: (1) The authority to allow a suit without prepayment of fees—as opposed to costs—in subsection (a) is deleted. (2) A prisoner bringing a suit would have to submit a statement of his prison account balance for the preceding six months. (3) A prisoner would be liable in all cases to pay the full amount of a filing fee. An initial partial fee of 20% of the average monthly deposits to or average monthly balance in the prisoner's account would be required, and thereafter the prisoner would be required to make monthly payments of 20% of the preceding month's income credited to the account, with the agency having custody of the prisoner forwarding such payments whenever the amount in the account exceeds $10. However, a prisoner would not be barred from bringing any action because of inability to pay the initial partial fee. (4) If a judgment against a prisoner includes the payment of costs, the prisoner would be required to pay the full amount of costs ordered, in the same manner provided for the payment of filing fees by the amendments.

In essence, the point of these amendments is to ensure that prisoners will be fully liable for filing fees and costs in all cases, subject to the proviso that prisoners will not be barred from suing because of this liability if they are actually unable to pay. We support this reform in light of the frequency with which prisoners file frivolous and harassing suits, and the general absence of other disincentives to doing so.

However, the complicated standards and detailed numerical prescriptions in this section are not necessary to achieve this objective. It would be adequate to provide simply that prisoners are fully liable for fees and costs, that their applications must be accompanied by certified prison account information, and that funds from their accounts are to be forwarded periodically when the balance exceeds a specified amount (such as $10) until the liability is discharged. We would be pleased to work with the sponsors to refine this proposal.

In addition to these amendments relating to fees and costs, §2 of S. 866 strengthens 28 U.S.C. 1915(d) to provide that the court shall dismiss the case at any time if the allegation of poverty is untrue or if the action is frivolous or malicious or fails to state a claim. This is substantially the same as provisions included in §103 of S. 3 and title II of H.R. 667, which we support.

Section 3 of S. 866 essentially directs courts to review as promptly as possible suits by prisoners against governmental entities or their officers or employees, and to dismiss such suits if the complaint fails to state a claim or seeks monetary relief from an immune defendant. This is a desirable provision that could avoid some of the burden on states and local governments of responding to nonmeritorious prisoner suits.

Section 6 provides that a court may order revocation of good time credits for federal prisoners if (1) the court finds that the prisoner filed a malicious or harassing civil claim or testified falsely or otherwise knowingly presented false evidence or information to the court, or (2) the Attorney General determines that one of these circumstances has occurred and recommends revocation of good time credit to the court.

We support this reform in principle. Engaging in malicious and harassing litigation, and committing perjury or its equivalent, are common forms of misconduct by prisoners. Like other prisoner misconduct, this misconduct can appropriately be punished by denial of good time credits.

However, the procedures specified in section 6 are inconsistent with the normal approach to denial of good time credits under 18 U.S.C. 3624. Singling out one form of misconduct for discretionary judicial decisions concerning denial of good time credits—where all other decisions of this type are made by the Justice Department—would work against consistency in prison disciplinary policies, and would make it difficult or impossible to coordinate sanctions imposed for this type of misconduct with those imposed for other disciplinary violations by a prisoner.

We accordingly recommend that §6 of S. 866 be revised to provide that (1) a court may, and on motion of an adverse party shall, make a determination whether a circumstance specified in the section has occurred (i.e., a malicious or harassing claim or knowing falsehood), (2) the court's determination that such a circumstance occurred shall be forwarded to the Attorney General, and (3) on receipt of such a determination, the Attorney General shall have the authority to deny good time credits to the prisoner. We would be pleased to work with the sponsors to refine this proposal.

Section 7 of S. 866 strengthens the requirement of exhaustion of administrative remedies under CRIPA in prisoner suits. It is substantially the same as part of §103 of S. 3, which we support.[2]

C. The STOP Provisions

As noted above, we support the basic objective of the STOP proposal, including particularly the principle that population caps must be only a ''last resort'' measure. Responses to unconstitutional prison conditions must be designed and implemented in the manner that is most consistent with public safety. Incarcerated criminals should not enjoy opportunities for early release, and the system's general capacity to provide adequate detention and correctional space should not be impaired, where any feasible means exist for avoiding such a result.

It is not necessary that prisons be comfortable or pleasant; the normal distresses and hardships of incarceration are the just consequences of the offenders' own conduct. However, it is necessary to recognize that there is nevertheless a need for effective safeguards against inhuman conditions in prisons and other facilities. The constitutional provision enforced most frequently in prison cases is the Eighth Amendment's prohibition of cruel and unusual punishment. Among the conditions that have been found to violate the Eighth Amendment are excessive violence, whether inflicted by guards or by inmates under the supervision of indifferent guards, preventable rape, deliberate indifference to serious medical needs, and lack of sanitation that jeopardizes health. Prison crowding may also be a contributing element in a constitutional violation. For example, when the number of inmates at a prison becomes so large that sick inmates cannot be treated by a physician in a timely manner, or when crowded conditions lead to a breakdown in security and contribute to violence against inmates, the crowding can be addressed as a contributing cause of a constitutional violation. *See generally Wilson* v. *Seiter,* 501 U.S. 294 (1991); *Rhodes* v. *Chapman,* 452 U.S. 337 (1981).

[2] However, there is a typographic error in line 22 of page 8 of the bill. The words ''and exhausted'' in this line should be ''are exhausted.''

In considering reforms, it is essential to remember that inmates do suffer unconstitutional conditions of confinement, and ultimately must retain access to meaningful redress when such violations occur. While Congress may validly enact legislative directions and guidance concerning the nature and extent of prison conditions remedies. It must also take care to ensure that any measures adopted do not deprive prisoners of effective remedies for real constitutional wrongs.

With this much background, I will now turn to the specific provisions of the STOP legislation.

The STOP provisions of S. 400 and title III of H.R. 667—in proposed 18 U.S.C. 3626(a)—provide that prospective relief in prison conditions suits small extend no further than necessary to remove the conditions causing the deprivation of federal rights of individual plaintiffs, that such relief must be narrowly drawn and the least intrusive means of remedying the derivation, and that substantial weight must be given to any adverse impact on public safety or criminal justice system operations in determining intrusiveness. They further provide that relief reducing or limiting prison population is not allowed unless crowding is the primary cause of the deprivation of a federal right and no other relief will remedy that deprivation.

Proposed 18 U.S.C. 3626(b) in the STOP provisions provides that any prospective relief in a prison conditions action shall automatically terminate after two years (running from the time the federal right violation is found or enactment of the STOP legislation), and that such relief shall be immediately terminated if it was approved or granted in the absence of a judicial finding that prison conditions violated a federal right.

Proposed 18 U.S.C. 3626(c) in the STOP provisions requires prompt judicial decisions of motions to modify or terminate prospective relief in prison conditions suits, with automatic stays of such relief 30 days after a motion is filed under 18 U.S.C. 3626(b), and after 180 days in any other case.

Proposed 18 U.S.C. 3626(d) in the STOP provisions confers standing to oppose relief that reduces or limits prison population on any federal, state, of local official or unit of government whose jurisdiction or function includes the prosecution or custody of persons in a prison subject to such relief, or who otherwise may be affected by such relief.

Proposed 18 U.S.C. 3626(e) in the STOP provisions prohibits the use of masters in prison conditions suits in federal court, except for use of magistrates to make proposed findings concerning complicated factual issues. Proposed 18 U.S.C. 3626(f) in the STOP provisions imposes certain limitations on awards of attorney's fees in prison conditions suits under federal civil rights laws.

Finally, the STOP provisions provide that the new version of 18 U.S.C. 3626 shall apply to all relief regardless of whether it was originally granted or approved before, on, or after its enactment.

The bills leave unresolved certain interpretive questions. While the revised section contains some references to deprivation of federal rights, several parts of the section are not explicitly limited in this manner, and might be understood as limiting relief based on state law claims in prison conditions suits in state courts. The intent of the proposal, however, is more plausibly limited to setting standards for relief which is based on claimed violations of federal rights or imposed by federal court orders. If so, this point should be made clearly in relation to all parts of the proposal.

A second interpretive question is whether the proposed revision of 18 U.S.C. 3626 affects prison conditions suits in both federal and state court, or just suits in federal court. In contrast to the current version of 18 U.S.C. 3626, the proposed revision—except for the new provision restricting the use of masters—is not, by its terms, limited to federal court proceedings. Hence, most parts of the revision appear to be intended to apply to both federal and state court suits, and would probably be so construed by the courts. To avoid extensive litigation over an issue that goes to the basic scope of the proposal, this question should be clearly resolved one way or the other by the text of the proposal.

The analysis of constitutional issues raised by this proposal must be mindful of certain fundamental principles. Congress possesses significant authority over the remedies available in the lower federal courts, subject to the limitations of Article III, and can eliminate the jurisdiction of those courts altogether. In the latter circumstance, state courts (and the U.S. Supreme Court on review) would remain available to provide any necessary constitutional remedies excluded from the jurisdiction of the inferior federal courts. Congress also has authority to impose requirements that govern state courts when they exercise concurrent jurisdiction over federal claims, see Fielder v. Casey, 487 U.S. 131, 141 (1988), but if Congress purports to bar both federal and state courts from issuing remedies necessary to redress colorable constitutional violations, such legislation may violate due process. See, e.g., Webster v. Dob, 486 U.S. 592, 603 (1988); Bowen v. Michigan Academy of Family Physicians, 476 U.S. 667, 681 n.12 (1986); Bartlett v. Bowman, 816 F.2d 695, 703–07 (D.C. Cir. 1987). We therefore examine the proposal's various remedial restrictions from that perspective.

Proposed 18 U.S.C. 3626(a)(1) in the proposal goes further than the current statute in ensuring that any relief ordered is narrowly tailored. However, since it permits a court to order the ''relief . . . necessary to remove the conditions that are causing the deprivation of . . . Federal rights,'' this aspect of the proposal appears to be constitutionally unobjectionable, even if it constrains both state and federal courts.

Proposed 18 U.S.C. 3626(a)(2) bars relief that reduces or limits prison population unless crowding is the primary cause of the deprivation of a federal right and no other relief will remedy the deprivation. We strongly support the principle that measures limiting prison population should be the last resort in prison conditions remedies. Remedies must be carefully tailored so as to avoid or keep to an absolute minimum any resulting costs to public safety. Measures that result in the early release of incarcerated criminals, or impair the system's general capacity to provide adequate detention and correctional space, must be avoided when any other feasible means exist for remedying constitutional violations.

Certain features of the formulation of proposed 18 U.S.C. 3626(a)(2) however, raise constitutional concerns. In certain circumstances, prison overcrowding may result in a violation of the Eighth Amendment, see Rhodes v. Chapman, 452 U.S. 337 (1981). Hence, assuming that this provision constrains both state and federal courts, it would be exposed to constitutional challenge as precluding adequate remedy for a constitutional violation in certain circumstances. For example, severe safety hazards or lack of basic sanitation might be the primary cause of unconstitutional conditions in a facility, yet extreme overcrowding might be a substitute and independent, but secondary, cause of such conditions. Thus, this provision could foreclose any relief that reduces or limits prison population through a civil action in such a case, even if no other form of relief would rectify the unconstitutional condition of overcrowding.

This problem might be avoided through an interpretation of the notion of a covered ''civil action'' under the revised section as not including habeas corpus proceedings in state or federal court which are brought to obtain relief from unconstitutional conditions of confinement. See e.g., Preiser v. Rodriguez, 411 U.S. 475, 499 (1973). However, this depends on an uncertain construction of the proposed statute, and the proposal's objectives could be undermined if the extent of remedial authority depended on the form of the action (habeas proceedings vs. regular civil action). Since the relief available in habeas proceedings in this context could be limited to release from custody, reliance on such proceedings as an alternative could carry heavy costs in relation to this proposal's evident objective of limiting the release of prisoners as a remedy for unconstitutional prison conditions.

A more satisfactory and certain resolution of the problem would be to delete the requirement in proposed 18 U.S.C. 3626(a)(2) that crowding must be the primary cause of the deprivation of a federal right. This would avoid potential constitutional infirmity while preserving the requirement that prison caps and the like can only be used where no other remedy would work.

Proposed 18 U.S.C. 3626(b)—which automatically terminates prospective relief after two years, and provides for the immediate termination of prospective relief approved without a judicial finding of violation of a federal right—raises additional constitutional concerns. It is possible that prison conditions held unconstitutional by a court may persist for more than two years after the court has found the violation, and while the court order directing prospective relief is still outstanding. Hence, this provision might be challenged on constitutional grounds as foreclosing adequate judicial relief for a continuing constitutional violation.

However, we believe that this provision is constitutionally sustainable against such a challenge because it would not cut off all alternative forms of judicial relief, even if it applies both to state court and federal court suits. The possibility of construing the statute as not precluding relief through habeas corpus proceedings has been noted above (as has the possibility that habeas may provide only limited relief), More importantly, the section does not appear to foreclose an aggrieved prisoner from instituting a new and separate civil action based on constitutional violations that persisted after the automatic termination of the prior relief.

A more pointed constitutional concern arises from the potential application of the restrictions of proposed 18 U.S.C. 3626(b) to terminate uncompleted prospective relief ordered in judgments that became final prior to the legislation's enactment. The application of these restrictions to such relief raises constitutional concerns under the Supreme Court's recent decision in Plauty, Spendthrift Farm, Inc., 115 S.Ct. 1447 (1995). The Court held in that case that legislation which retroactively interferes with final judgments can constitute an unconstitutional encroachment on judicial authority. It is uncertain whether Plaut's holding applies with full force to the prospective, long-term relief that is involved in prison conditions cases. However, if the decision does fully apply in this context, the application of proposed 18 U.S.C. 3626(b) to orders in pre-enactment final judgments would raise serious constitutional problems.

While we believe that most features of that STOP proposal are constitutionally sustainable, at least in prospective effect, we find two aspects of the legislation to be particularly problematic for policy reasons.

First, the proposal apparently limits prospective relief to cases involving a judicial finding of a violation of a federal right. This could create a very substantial impediment to the settlement of prison conditions suits—even, if all interested parties are fully satisfied with the proposed resolution—because the defendants might effectively have to concede that they have caused or tolerated unconstitutional conditions in their facilities in order to secure judicial approval of the settlement. This would result in litigation that no one wants, if the defendants were unwilling to make such a damaging admission, and could require judicial resolution of matters that would otherwise be more promptly resolved by the parties in a mutually agreeable manner.

Second, we are concerned about the provision that would automatically terminate any prospective relief after two years. In some cases the unconstitutional conditions on which relief is premised will not be corrected within this timeframe, resulting in a need for further prison conditions litigation. The Justice Department and other plaintiffs, would have to refile cases in order to achieve the objectives of the original order, and defendants would have the burden of responding to these new suits. Both for reasons of judicial economy, and for the effective protection of constitutional rights, we should aim at the resolution of disputes without unnecessary litigation and periodic disruptions of ongoing remedial efforts. This point applies with particular force where the new litigation will revisit matters that have already been adjudicated and resolved in an earlier judgment.

Existing law, in 18 U.S.C. 3626(c), already requires that any order of consent decree seeking to remedy an Eighth Amendment violation be reopened at the behest of a defendant for recommended modification at a minimum of two year intervals. This provision could be strengthened to give eligible intervenors under the STOP proposal, including prosecutors, the same right to periodic reconsideration of prison conditions orders and consent decrees. This would be a more reasonable approach to guarding against the unnecessary continuation of orders than imposition of an unqualified, automatic time limit on all orders of this type.

Mr. HATFIELD. Mr. President, for the better part of an hour we have notified Members through the communication system that we are ready to go to third reading and finalize, first of all, the managers' package—for the better part of an hour. And I think it has now reached a reasonable period of time to bring this to a halt.

So I want to say that at 5:05—in 15 minutes—I will ask for the lifting of the quorum and the Chair will put the question. So that will mean we have waited for an hour and 10 minutes for anyone to exercise their parliamentary right. I think that is a fairly good test of knowing if anyone is interested in doing so. Then we will move to the third reading following the adoption of the managers' package.

Mr. FAIRCLOTH addressed the Chair.

The PRESIDING OFFICER. The Senator from North Carolina.

Mr. FAIRCLOTH. Mr. President, I ask unanimous consent to speak as in morning business.

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

The Senator is recognized.

COMMON SENSE PRODUCT LIABILITY REFORM ACT

Mr. FAIRCLOTH. Mr. President, I rise in strong support of the conference report on H.R. 956, the Common Sense Product Liability Reform Act.

The legislation is modest in its reach, but it includes long-overdue changes, and it pulls together commonsense reforms that command broad support in this Congress.

Nonetheless, President Clinton announced that he will veto the bill and if, indeed, he does veto this legislation, he will line up with the special interests—the trial lawyers—rather than the American people.

The President refused to buck the trial lawyers last year, also, and he vetoed securities litigation reform. His veto was overridden by a bipartisan vote. The senior Senator from Connecticut, Senator DODD, brought strong support from the other side of the aisle, and we overrode the veto. It was not a radical bill. It was a balanced bill, modest reform. But the trial lawyers handed him the veto pen, and, political considerations at the forefront, he signed on the dotted line to veto securities reform.

Likewise, the Product Liability Reform Act is not radical legislation, as Presidential campaign aides insist. It addresses some of the principal abuses—our efforts to pass an expansive bill failed—and it, too, has a broad base of support. Just look at the bipartisan leadership on this bill. But despite the consensus for the bill, President Clinton again will do the trial lawyers' bidding, and he insists that he will veto yet another reform measure.

The argument that this legislation goes too far just does not hold up. The conference report was hammered out with the 60 votes for cloture in mind. It is, by definition, a consensus bill. So, let the facts be clear, this veto is not about consumer protection—the trial lawyers are worried about changes to a legal racket that took them years to build—it is about political considerations in an election year.

So, despite all the White House rhetoric about wages and growth, the President will take a stand for growth, but it will not be for growth in jobs. No, it will be for continued growth in the frivolous lawsuits that swell court dockets and cost American jobs.

The American tort system is far and away the most expensive of any industrialized country. It cost $152 billion in 1994. This is equivalent to 2.2 percent of the gross domestic product. This has serious economic implications, and, in fact, it is estimated that the legal system keeps the growth of our gross domestic product approximately 10 percent below its potential.

We have heard a lot of discussion about economic growth, but I believe that a good legal reform bill is, in effect, a growth bill.

The costs of these baseless lawsuits are profound—lost jobs, good products withdrawn from the market, medical research discontinued, and limited economic growth—all because our tort system is far too expensive.

We do not have the votes for general legal reform in this Chamber. I wish we did. However, we do have the votes for limited product liability reform, and we now have a bill that addresses the principal abuses.

President Clinton will be forced to choose sides on this bill. I hope he will reconsider his announcement and line up with the American workers rather than the trial lawyers. This bill will reduce the costs of frivolous lawsuits—the cases that compel companies to settle rather than risk ruin in the hands of juries run amok—and it will boost capital investment in our factories. Consequently, this legislation will generate jobs—manufacturing jobs—and strengthen our industrial base. This is good economics, and, Mr. President, it is good for the working people of this country.

Mr. President, I yield the floor.

Mr. HATFIELD. Mr. President, for the better part of an hour we have notified Members through the communication system that we are ready to go to third reading and finalize, first of all, the managers' package—for the better part of an hour. And I think it has now reached a reasonable period of time to bring this to a halt.

So I want to say that at 5:05—in 15 minutes—I will ask for the lifting of the quorum and the Chair will put the question. So that will mean we have waited for an hour and 10 minutes for anyone to exercise their parliamentary right. I think that is a fairly good test of knowing if anyone is interested in doing so. Then we will move to the third reading following the adoption of the managers' package.

Several Senators addressed the Chair.

The PRESIDING OFFICER. The Senator from South Carolina.

Mr. HOLLINGS. Mr. President, may I proceed for 5 minutes?

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

Mr. HOLLINGS. Mr. President, in response to my distinguished friend from North Carolina—and I know North Carolina very well—I would challenge the distinguished Senator to name the industry that refused to come to North Carolina, or to Tennessee, on account of product liability. Specifically, the State of North Carolina, as well as my State of South Carolina, has foreign industry galore. They talk about the international competition, and within that international competition we just located, with respect to investment Hoffman LaRoche from Switzerland, the finest medical-pharmaceutical facility that you could possibly imagine; with respect to the matter of photographic papers, Fuji has a beautiful new plant there; and we have Hitachi, a coil roller bearings, and we have over 40 industries from Japan and 100 from Germany. The distinguished Presiding