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# House of Representatives

The House was not in session today. Its next meeting will be held on Tuesday, July 14, 1998, at 12:30 p.m.

# Senate

WEDNESDAY, JULY 8, 1998

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

## PRAYER

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

Dear Father, we come to You as Your daughters and sons because there is no other place we can go where love is as freely given, costly forgiveness as graciously offered, assurance of our value more creatively communicated, and where our hurts are more effectively healed. You know us as we are. In a world where we are not permitted to be weak, You receive us with our weaknesses and make us strong. In an atmosphere where we are compelled to win and spin, it is good to be able to be real with You. May the strength and security of this quiet moment with You prepare us for a day in which we can enjoy life, work creatively together in spite of misunderstandings, and bring delight to the people You have entrusted to be our family and friends. Through our Lord and Saviour. Amen.

## RECOGNITION OF THE ACTING MAJORITY LEADER

The PRESIDENT pro tempore. The able acting majority leader is recognized.

Mr. ROTH. Thank you, Mr. President.

## SCHEDULE

Mr. ROTH. Mr. President, this morning the Senate will immediately resume consideration of the IRS reform conference report. It is expected that there will be lengthy debate during today's session on the conference report, with a final vote occurring by late afternoon. In addition to the conference report, the Senate may consider any other legislative or executive items that may be cleared for action.

Members are reminded that a cloture motion was filed last night to the substitute amendment to the product liability bill. Therefore, Senators have until 1 p.m. today to file first-degree amendments to the substitute. The cloture vote will occur on Thursday, July 9, at a time to be determined by the two leaders.

Once again, the majority leader would like to remind Members that July will be a busy month, with late night sessions and votes. The cooperation of all Members will be necessary for the Senate to complete its work prior to the August recess.

I thank my colleagues for their attention.

## RESERVATION OF LEADER TIME

The PRESIDING OFFICER (Mr. ALLARD). Under the previous order, the leadership time is reserved.

## INTERNAL REVENUE SERVICE RESTRUCTURING AND REFORM ACT OF 1998—CONFERENCE REPORT

The PRESIDING OFFICER. Under the previous order, the Senate will now resume consideration of the conference report accompanying H.R. 2676, which the clerk will report.

The assistant legislative clerk read as follows:

Conference report to accompany H.R. 2676, an act to amend the Internal Revenue Code of 1986, to restructure and reform the Internal Revenue Service, and for other purposes.

The Senate resumed consideration of the conference report.

Mr. ROTH addressed the Chair.

The PRESIDING OFFICER. The Senator from Delaware.

Mr. ROTH. Mr. President, if my colleagues' July Fourth recess was anything like mine, then they heard a great deal from their constituents concerning the bill that we bring to the floor today. The Internal Revenue Service Restructuring and Reform Act of 1998 is legislation that not only has the interests but the support of Americans everywhere, and with good reason.

For far too long, the Internal Revenue Service has been allowed to consolidate immense power without the counterbalance of accountability. For far too long, the agency has been allowed to operate in darkness, hiding behind section 6103 authority, using authority granted them by Congress to, in some cases, bludgeon taxpayers.

Last summer, the National Commission on Restructuring the IRS, following an extensive review of the IRS, issued a report that called for major changes to the agency.

In September, the Finance Committee held 3 days of hearings which identified numerous additional problems and some terrible, even unconscionable taxpayer and IRS-employee abuses within the IRS.

Those hearings were followed by others which demonstrated clearly that

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



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the Service was in need of serious reform. And we heard from taxpayers, tax collectors, tax practitioners. We heard from small business men and women. We heard from innocent spouses. And we listened to outrageous stories from innocent Americans who, for no valid reason, got caught in the crosshairs of an organization that was driven by quotas and lacking in oversight.

Our outrage knew no partisan line. Colleagues on both sides of the aisle were offended by many of the stories. To the witnesses—many of whom testified without knowing what their efforts would bring—we apologized as best we could. We said that we would press forward, and we promised reform. That, Mr. President, is what we are delivering today.

This is the bipartisan conference agreement on a plan that will effectively change the way the Internal Revenue Service does business. It represents the most comprehensive overhaul of the IRS ever enacted. It combines the House and Senate bills and incorporates the many good suggestions offered by the Agency's new Commissioner, Charles Rossotti.

Let me be clear on just how important Mr. Rossotti has been to our efforts. Following our Finance Committee hearings, he had courage enough to release a report that validated the concerns we raised. Rather than try to throw up a wall or confuse issues, he made a commitment to reform. Every step we have taken he has taken with us.

Commissioner Rossotti and I have met on many occasions, and he has testified before our committee. We have attended taxpayer service days together. He has advocated a new management plan that could revolutionize the way the Internal Revenue Service does business.

I am also grateful for the taxpayers and the many current and former IRS employees who came before our committee. These were courageous individuals, and without them, there would be no reform. And they represent only a fraction of those who met with us, who wrote to us, who called, and, in the process, moved our investigation forward. Likewise, I am grateful to my colleagues—Senator MOYNIHAN, a defining presence in the Senate, if ever there was one. I am grateful to Senators CHARLES GRASSLEY and BOB KERREY and their efforts on the National Restructuring Commission.

Working with Congressman PORTMAN, and others, they got the ball rolling early on, and were leaders in this effort. I thank Chairman BILL ARCHER for the work he did on the Ways and Means Committee, for the spirit of cooperation he brought to the conference, and for the success he had two weeks ago in getting this legislation approved overwhelmingly in the House.

Now, the time has come, Mr. President, to pass it here—legislation that will open the door to real restructuring and reform of what can only be considered the most powerful agency in the United States government.

This legislation is built on four principles:

The first principle is to establish independent oversight of the agency to prevent abuses against taxpayers and against employees. One of the major concerns we heard throughout our oversight initiative was that the taxpayers who get caught in the IRS hall of mirrors have no place to turn that is truly independent and structured to represent their concerns. This legislation requires the agency to establish an independent Office of Appeals—one that may not be influenced by tax collection employees or auditors.

Appeals officers will be made available in every state, and they will be better able to work with taxpayers who proceed through the appeals process.

Mr. President, agency employees made it clear that there is no dependable and consistent mechanism in place to represent taxpayer interests. Just as this bill will give the appeals process greater independence, it will also make the Office of Taxpayer Advocate as well as local problem resolution officers more independent.

In the future, the Secretary of Treasury, rather than the Commissioner will appoint the National Taxpayer Advocate. And the Taxpayer Advocate will be just that. Criteria to fill this position will include that the Advocate must not be an IRS employee two years before and five years after holding this position. In addition, this bill provides the Advocate with greater ability to issue an assistance order to help taxpayers.

To ensure that independent review and accountability become part of the IRS culture—top to bottom—our legislation creates a nine-member IRS Oversight Board—a board composed of six experts from various professional fields in the private sector, the Commissioner, the Secretary of Treasury, and a full-time Federal employee, or a representative of employees. This board will be independent of influence from management and the senior executive corps. It will be able to monitor and hold managers and executives accountable for their actions, and the actions of their employees.

Under our legislation, the Oversight Board will have broad responsibility and will ensure that the IRS has procedures in place to carry out its mission. I anticipate that the Board will be able to nip problems in the bud so that the IRS will not have to endure embarrassing Congressional hearings that expose systemic problems that should have been identified and addressed.

These measures will go a long way toward protecting taxpayers and IRS personnel. To further protect IRS employees, this legislation creates a new Treasury Inspector General for Tax Administration. We heard far too often in our hearings that the current IRS Office of Chief Inspector does not have sufficient independence to adequately fulfill its obligation. Likewise, the current Treasury Inspector General lacks resources and has experienced problems of its own in providing seamless oversight of the agency.

The new Treasury IG for Tax Administration will have greater independence than the IRS Chief Inspector.

This provision is supported by Secretary Rubin and Commissioner Rossotti, and it will create a structure where the new Treasury IG for Tax Administration will not allow oversight to fall through the cracks. This new Treasury IG for Tax Administration will provide independent investigations of alleged IRS employee misconduct without management interference.

The new Treasury IG will also respond in a timely manner to requests to investigate or audit made by the Commissioner or the IRS Oversight Board.

Now, these measures will go a long way toward combating the intimidating culture that witnesses testified exists within the agency. They will provide independent protections and promote an agency that the public trusts—an agency that the employees can be proud of.

The second principle incorporated in this legislation is to hold IRS employees accountable for their actions and to reward those who treat the taxpayer fairly. One of the problems we discovered in our hearings is that the Commissioner did not have the kind of authority that is necessary to streamline management and remove managers who contaminate the culture of the agency. Additionally, we found that the Commissioner does not have sufficient authority to hire those who will work toward making the kinds of changes that are necessary.

This legislation changes that. It provides the Commissioner the tools he needs to hire top-flight managers who are experts in their field. It gives the Commissioner the wherewithal to transform the agency's work force by providing bonuses and other incentives, and to sufficiently discipline employees whose inappropriate actions harm the image and effectiveness of the agency.

This bill requires the IRS to terminate an employee if it is proven that the employee willfully failed to obtain required authorization to seize a taxpayer's property, committed perjury material to a taxpayer's matter, or falsified or destroyed documents to conceal the employee's mistakes with respect to a taxpayer's case. It allows terminations to take place if an IRS employee engages in abuses or egregious misconduct.

Conditions for which an employee can be dismissed include, but are not limited to, assaulting or battering a taxpayer or other IRS employee, violating the civil rights of a taxpayer or other IRS employee, or breaking the law, regulations, or IRS policies for the purpose of retaliating or harassing a

taxpayer or other IRS employee. Our legislation also allows an employee to be fired for willfully misusing section 6103 authority to conceal information from Congress.

As I have said before, an environment that allows employees guilty of these kinds of behaviors to continue to work within the system is not acceptable to me, the Finance Committee, or to the American people. We have heard enough excuses. The time has come for change. And this legislation allows needed changes to take place.

The third principle advocated by this legislation is to ensure that taxpayers are protected, that they have due process during collections activities. This includes requiring the IRS to obtain court approval before seizing a home.

It also ensures that the burden of proof be lifted off the shoulders of the taxpayer when it's appropriate and placed on the agency. It allows necessary and long-overdue reforms to the interest and penalty system. This will guard taxpayers against the outrageous and often overbearing financial liability that occurs when the agency moves too slowly.

With this legislation, the burden of proof is shifted to the IRS if the taxpayer maintains records, cooperates with the agency, and provides credible evidence to the court. In addition, the IRS will have the burden of proving a taxpayer's income if it uses arbitrary statistics to determine that income.

Another major taxpayer protection in this legislation is our provision to strengthen innocent spouse relief. Some of the most tragic stories our committee heard concerned innocent spouses whose lives have been ruined by the unrelenting pursuit of IRS collections officers.

This legislation allows divorced or separated spouses to elect to limit their liability for a tax deficiency to the amount of the tax that is attributable to their income. In this way, they will not be held liable for income earned by their spouse. Beyond expanding innocent spouse relief, this legislation allows the Secretary of the Treasury to provide equitable relief if innocent spouse relief is otherwise unavailable. It makes relief retroactive to help those innocent spouses who are still being hounded by the IRS.

Let me say, however, that relief will not be available in cases of fraud, or if the IRS proves the taxpayer claiming innocent spouse relief had actual knowledge of an item giving rise to the tax liability.

Beyond this, with this legislation, we make necessary and important changes to how penalties and interest are applied. In order to prevent IRS employees from arbitrarily using penalties as leverage against taxpayers, this bill requires non-computer determined penalties to be approved by management.

Furthermore, each notice to taxpayers which includes a penalty or interest must specify how the amount was calculated. If a taxpayer enters into an installment agreement, the monthly failure-to-pay-penalty is cut in half.

Under this bill, if the IRS does not provide a notice of deficiency—or other form of notification of the specific amount of taxes due—within eighteen months after a return is timely filed, then interest and penalties will be suspended until the taxpayer is actually notified.

This eighteen month period will be reduced to twelve months in the year 2004, as the agency improves its ability to notify taxpayers of their deficiencies. In this way it is the IRS, not the taxpayer, who bears the burden of IRS delay.

These enhanced rights are meant to protect honest taxpayers. We do not excuse those who evade their responsibility or cheat on their income tax returns. The protections contained in this legislation exclude the failure to file, failure to pay, and penalties related to fraud.

Finally, Mr. President, the fourth principle this legislation advances is to provide the Commissioner the tools necessary to take the IRS into the 21st century. It directs Commissioner Rossotti to eliminate the current national office, regional office and district office structure of the IRS.

It gives him the authority to replace these antiquated management models with operating units that will directly serve particular groups of taxpayers, better meeting their needs and making the agency much more efficient and user-friendly. As I have said before, Commissioner Rossotti should be complimented on his tremendous work and managerial skills. His plan to restructure the agency is as bold as it is necessary, and this legislation gives him the authority he needs to move forward.

And moving forward is what this legislation is all about—to usher the IRS into a new era of accountability—to provide taxpayers with the protections they deserve—to bring efficiency and modern management to an organizational structure that dates back to before the industrial age. With this legislation, we bring a promise of hope to honest taxpayers and hard-working employees who have waited far too long. We bring responsibility and greater openness.

We focus on the need for service and fairness. With this legislation, Commissioner Rossotti will be able to transform the IRS, make it more effective and intolerant of corruption and abuse of power.

I appreciate all the work that has gone into this bill—for the many hours and weekends given by Senators, Congressmen, and staff. Particularly, I want to thank Frank Polk, Mark Prater, Tom Roesser, Mark Patterson, Nick Giordano, and our committee investigators.

I want to thank Lindy Paull, and the staff on the Joint Tax Committee—Barry Wold, Mel Schwarz, Cecily Rock and Mike Udell. Again, I am grateful to Senator MOYNIHAN—for his leadership and dedication to this cause. I am grateful to my colleagues on both sides of the aisle who stood firm for legislation with teeth—who, in seeking change, demanded real change—real reforms. That's what we offer today. I am proud of this bill. Americans have every reason to celebrate. They have let their desire be known, and, Mr. President, they have been heard.

SEC. 1101–IRS OVERSIGHT BOARD

Mr. President, there has been substantial debate on whether a Treasury employees union representative should have a designated seat on the IRS Oversight Board. I agree with many of my colleagues that a representative of IRS employees should not be provided a position on the IRS Oversight Board because such member would be subject to a substantial conflict of interest. I did not include an IRS employee representative on the IRS Oversight Board in my original chairman's mark. However, the members of the Finance Committee voted to include an IRS employees representative on the board and to waive the criminal conflict of interest laws for this particular board member. Amendments to these provisions were considered by the full Senate and defeated.

During conference negotiations, the Department of Justice opined that ''The employee-representative restriction in the bill would impermissiby limit the President's appointment power in violation of the Constitution.'' The Department of Justice suggested alternative language to avoid the Constitutional problem. In response to the Constitutional problems raised by the Department of Justice, the conferees agreed that one member of the IRS Oversight Board shall be a full time Federal employee or a representative of employees. The conferees also incorporated Justice's recommendation that this board member receive the same compensation as other board members who are not government employees. The Department of Justice also recommended that the employee representative should not be exempt from the conflict of interest laws. As a compromise, the conferees agreed to delete the provision which would exempt the employee representative from the conflict of interest laws. However, at the time of nominating this particular board member, the President could seek a waiver of the criminal conflict of interest laws to the extent such waiver is necessary to allow such member to participate in the decisions of the Board.

Waiving criminal conflict of interest laws for one person is a very serious matter and should not be taken lightly. As such, the bill requires the President to submit a written intent of waiver along with the actual waiver language to the Senate with the nomination of such member. I anticipate that the President would seriously consider the ramifications of nonminating

an individual with inherent conflicts of interests. If, in the President's judgment, such an individual must be on the IRS Oversight Board, the President must submit a written statement of intent to waive the criminal conflict of interest laws. To be effective, the waiver must be provided verbatim with the nomination of such individual.

While I would have preferred the language in my original chairman's mark, this conference agreement addresses the competing concerns of my colleagues as well as the Constitutional problems raised by the Administration.

In September 1997 and April 1998, the Finance Committee held several days of oversight hearings regarding IRS practices and procedures. These eye-opening hearing revealed improper and inappropriate IRS practices and in some situations violation of the law. I, along with those taxpayers who watched the hearings, was shocked and deeply troubled with the practices of the IRS. I believe that proper oversight by Congress and the Administration should have reduced or even prevented such activity from occurring. One of the most important functions of the IRS Oversight Board is to prevent taxpayer abuse. The Oversight Board must have access to information that will enable the board to reveal problems, bring problems to the attention of the Commissioner to address, and inform Congress if the Commissioner does not address problems. The Oversight Board should have ''big picture'' oversight authority over law enforcement activity, including examinations, collection activity, and criminal investigations. Taxpayers must be protected from improper and/or illegal activity. Hopefully, the Oversight Board, rather than a congressional committee, will nip problems in the bud and keep the IRS on a straight course.

SEC. 1102—COMMISSIONER AND OTHER OFFICIALS

The bill alters the reporting relationship between the IRS Chief Counsel and the Treasury General Counsel. The bill requires the IRS Chief Counsel to report directly to the Commissioner except for the extremely limited situations where an issue relates solely to tax policy. It is intended that ''tax policy'' would be limited to recommendations relating to tax legislation and the drafting of treaties. The Chief Counsel will report to both the Commissioner and to the Treasury General Counsel with respect to tax litigation and legal advice or interpretation of the tax law not relating solely to tax policy. In the rare circumstance where there is a dispute between the Commissioner and the Treasury General Counsel, the matter must be submitted to the Secretary or Deputy Secretary for resolution. The Commissioner, as the client, must be able to make a decision based upon the legal advice provided by the Chief Counsel. Neither the Treasury General Counsel nor any other Treasury official (other than the Secretary or Deputy Secretary) may overrule the Commissioner's decisions. The Secretary or Deputy Secretary may not delegate this authority to someone else. For example, the Commissioner should be able to decide whether to proceed with a litigation matter or recommend that a case be appealed. If the Treasury General Counsel disagrees, then the issue should be resolved only by the Secretary or Deputy Secretary. Furthermore, the Commissioner should have the ability to interpret the tax law and issue guidance in various forms. The Commissioner should be able to expeditiously issue guidance including regulations, revenue ruling and revenue procedures, technical advice and other similar memoranda, private letter rulings and other published guidance. Once again, if there is a disagreement between the Commissioner and the Treasury General Counsel, the issue must be resolved by the Secretary or the Deputy Secretary.

SEC. 1103—TREASURY INSPECTOR GENERAL FOR TAX ADMINISTRATION

The bill transfers the IRS Office of Chief Inspector's function to a new Treasury Inspector General for Tax Administration which will provide more effective and efficient oversight over the IRS. The current system in which the Treasury Inspector General, with its limited resources and tax expertise, attempted to provide oversight along with the IRS Office of Chief Inspector which some believed lacked sufficient independence from management, simply did not provide adequate and independent oversight. I was appalled with the current system which allowed issues to fall through the cracks, included little or no ability to follow up on issues, or even to timely investigate media allegations of outrageous taxpayer abuse.

The time has come to provide a new, credible Treasury Inspector General for Tax Administration which has the resources and expertise to independently audit and investigate problems within the IRS. Coupled with the IRS Oversight Board and a new more independent National Taxpayer Advocate, this provision in the bill will provide yet another check on the bureaucracy within the IRS to ensure that taxpayers and their problems don't slip through the cracks. While the vast majority of IRS employees are honest, hardworking, and law-abiding, enhanced oversight will help ensure that taxpayers are treated properly.

Mr. MOYNIHAN addressed the Chair.

The PRESIDING OFFICER. The Senator from New York.

Mr. MOYNIHAN. Mr. President, I rise in the first instance to thank our revered chairman, Senator ROTH, chairman of the Finance Committee, who brings this measure to the floor with the unanimous vote of the Finance Committee. From the first, ours has been, under his direction, a nonpartisan effort to deal with a nonpartisan issue of the first order of consequence. We are equally, in turn, grateful for the work of the National Commission on Restructuring the Internal Revenue Service. Senators KERREY and GRASSLEY of our committee and Congressmen PORTMAN and COYNE from the House side contributed significantly to shaping the concept of the Internal Revenue Service as a customer-based agency, as they put it.

I believe, sir, that we have done this. We have done it with the aid and the cooperation and the participation of Chairman BILL ARCHER and ranking member CHARLES B. RANGEL of the Committee on Ways and Means in the House, who worked with us on the committee of conference. Senator ROTH was chairman. And the result before you is an exceptional piece of legislation—and not an everyday event.

The Internal Revenue Service became a permanent part of our government in 1862 as part of the Civil War Income Tax Act, which was signed into law July 1, 1862, by President Abraham Lincoln. That was almost a century and a half ago. Yet it was not until just last September that the full Finance Committee of the Senate exercised its oversight jurisdiction to ask, how is this enterprise working and where is it going? The hearing illustrated the need for changes at the IRS and encouraged the thinking on the subject which has produced the measure we bring before you today.

As evidence of the process already underway by the unanimous confirmation of this body, Mr. Charles O. Rossotti became the Commissioner of Internal Revenue. This was a stroke of administrative inspiration by Secretary Rubin, who went out into the private sector looking not for a tax lawyer—an honorable profession; normally the Commissioners of the IRS have been tax lawyers—but instead for an administrator. He found the head of a large company that specialized in information services of a wide variety, and who was prepared to do this as a public service and not to continue in the line that has been of a particular profession, the practice of tax law.

We have established an IRS oversight board of six private persons, the Secretary of the Treasury, and the representative of the IRS employees, and finally the Commissioner of the IRS itself. The board will be responsible for setting the strategic direction and goals of the agency, while the Commissioner will continue to manage day-to-day operations. The Finance Committee—and then the Senate—specifically voted to include the Secretary and employee representative on the board.

The conference agreement, which maintained this arrangement, passed the House by a vote of 402 to 8. With the Secretary of the Treasury on the board, the board will know things it cannot otherwise learn. The U.S. Secretary of the Treasury is a world figure. His presence on the board gives it stature within the Government and with the public. The fear was that otherwise it would lapse into a sort of advisory mode that would fail to serve the objectives of this ''reform and restructuring'' legislation.

We are pleased that the agreement maintains the position on the board for a representative of the IRS employees. The representative will be able to work cooperatively on the inside rather than working in opposition from the outside.

An ongoing problem is how to attract top executives to a government activity which has its counterpart in the private sector where compensation—if I may use that term—is often very high, if not indeed exorbitant, because the amounts of money involved are very large.

So to recognize the disparity between government and private sector salary structures, the conference agreement adopted the Senate provision authorizing the appointment by the Commissioner of up to 40 persons to critical positions for 4-year terms with an annual compensation equivalent to the pay of the Vice President of the United States; that is to say, currently $175,400. These will be persons chosen for their particular skills. They will be there for a 4-year period. They will be departing the private sector for an interval of public service at something approaching the salaries they normally enjoy.

Other provisions will permit the establishment of a new performance management system focused on individual accountability, and allow for the creation of an incentive award system bringing the IRS into contemporary management modes—out of the model of the civil service that was developed a century ago when we set up the Civil Service Commission, again establishing grades for employees with salaries that were low, but careers that were guaranteed for life. That effort was very controversial at that time. I can record that two Senators from New York State resigned from the Senate when the newly elected President appointed a collector of customs in the port of New York of whom they did not approve. One was Roscoe Conkling; the other, Thomas P. Platt. Mr. Conkling was no friend of civil service reform and once observed that when Dr. Johnson declared patriotism to be the last refuge of a scoundrel, he underestimated the potential of reform.

And yet reform didn't come about, a century passed, and we found that the system had not the internal energies to change itself, to adapt to new technologies and new management modes. We hope the IRS will with these new arrangements—the infusion of new people, and a clear understanding that we expect the system to be open, innovative, and ''user friendly,'' in the term the chairman frequently used in our hearings. And we shall see.

There are several other measures, Mr. President. I should point out that the conferees were heroic in their determination not to include all manner of extraneous or narrowly-applicable provisions, as is often the case in a tax bill but is not the case, with very few exceptions, in ours.

There are two provisions in the conference report, however, that are of special interest to the Senator from New York. The first adopts the Senate provision for a complexity analysis requirement. It requires the staff of the Joint Committee on Taxation to provide an analysis of the complexity and administrative issues associated with tax legislation reported by the Finance Committee and Ways and Means Committee. The provision is intended to provide notice, prior to floor consideration, about provisions that have widespread applicability and may be unduly burdensome for taxpayers to understand and comply with, or difficult for the IRS to interpret and administer, or both.

I might interject that when this was before us in the Finance Committee, the distinguished chief of staff of the Joint Committee on Taxation said that she looked forward to this, but that she was fearful as to whether the joint committee could begin this complicated effort so long as it was burdened with the task of determining which items in tax legislation were subject to the line-item veto, a detailed and exhaustive analysis of every tax bill, which was a new responsibility for the joint committee. I am happy to say, in the weeks since that exchange took place, the Supreme Court has dutifully and properly declared the line-item veto to be unconstitutional. So one of the unintended consequences—I cannot imagine the Court had this very much in mind—is that the joint committee is now in a position to begin a type of analysis which is new to American legislation.

We are in the practice of having an increasingly complex Tax Code. There can surely be no question that we are dealing with the problems that we found in the Internal Revenue Service because the Internal Revenue Service has to administer a Tax Code that is frequently incomprehensible. An almost priestly hierarchy understands its meanings and can work them through the tax courts and such like. But to the public and, too, the Congress, they are often simply incomprehensible.

I remember standing on this floor a year and a half ago with an 800-page tax bill, Mr. President, and that was the only copy of the tax bill on the Senate floor, which we were about to vote for 92–8. A copy provided to the distinguished chairman had been promptly appropriated by the Budget Committee to see if there were any budget points of order, and so the one copy was here on this desk, and Senators on both sides of the aisle would come up and ask whether a provision they had an interest in was in the bill, and I would say, ''I hope in good spirit I can find out, but what will you pay me?'' Indeed, there was no other way for the Senator to learn. And this is not an unusual event.

I am going to say this not once but twice because we have to start attending to our own behavior in these matters. I was one of the participants in the enactment of the Tax Reform Act of 1986. This was a wonderful, collegial experience led by our good friend and former colleague, Senator Packwood, along with Senator CHAFEE, Senator Danforth, a ''core group,'' as we called ourselves, of about six of us. We would meet for coffee at 8 o'clock every morning in Senator Packwood's office, and it would be my job, rather as the dean in a cathedral, to provide a reading for the morning. I would make sure I got the Wall Street Journal early, and without a great deal of effort I would find the advertisements where you would see a little classified ad which would say, ''Rocky Mountain sheep, guaranteed losses.'' And the Wall Street Journal would tell you how you would be certain to lose money in such a manner that the code would eventually reward you for your losses, which is an interesting game to play if you are interested in C notes but not a very productive form of economic activity.

Well, we cleaned up that Tax Code. We brought the rates down from, oh, half a dozen income tax rates to 28 percent and 15 percent—two rates. We did ''base broadening'' as the term was; more and more income became subject to taxation, so the rates of taxation could be lowered. And when it was all over, to our surprise and rather to the consternation of the tax bar, you might say, we had, indeed, produced a fairly simple and comprehensible Tax Code. That was 1986—1986, Mr. President.

What you have before you, sir, what we have in the Senate before us—and my revered chairman will know this better than anyone else present—we have the 65th public law to amend the Internal Revenue Code since the Tax Reform Act of 1986. We have passed 65 tax bills. That comes to about six a year. If you were assigned that task, you would say it would be impossible to achieve; it would be asking too much of our staffs and our Members. But we have done this heroic, if absurd, task, and it has to be said again that simplification is the essence of justice and efficiency in the code. We are a large, complex economy, an international economy. We are not going to have a simple code, but there is no reason we should have an incomprehensible one, particularly when the complexities often reflect the influence of special interest in the code.

In this regard, not many weeks ago we heard testimony from one of our Nation's most distinguished and accomplished economists, Murray Weidenbaum, who had been chairman of the Council of Economic Advisers in the administration of President Reagan. I served with him in the administration of President Nixon. At that time he took it upon himself to explain and popularize the idea of revenue sharing—get Federal revenue out to cities and States, let them decide

how to spend it, and reduce the dependency on administrative judgments, decisions, and statutes here in Washington. That was a very fine idea which we lost to the budget deficits of the 1980s.

But Murray Weidenbaum made a powerful point, coming from a powerful mind. He said, if you spend all your income, the American Tax Code is simple. You just fill out a one-page form: I made $50,000 last year, spent $50,000; I made $100,000, I made $100 million—God in heaven knows there are some who do—but I spent it all, and my taxes are as follows. It is only when you begin to save that the Tax Code gets complicated.

Of course, our largest economic question right now is the rate of savings in the American economy. The fact that we have large trade deficits basically reflects that we are importing capital. We have the lowest savings rate of any industrial country in the world—or any prime industrial country of which I am aware. It is quite striking. I would not argue this is the principal factor, but it is the fact that if you save money you can get in trouble with the Internal Revenue Code. Whatever else, that should not be the case. It is the case.

I think the complexity analysis, particularly if it is directed with this kind of issue in mind, has the potential of a very important innovation in the development of tax legislation. Don't expect it to change anything in the next 3 or 4 years, but in 20 years' time we might find that this small provision in this large legislation had large consequences.

One other item. In the interval since this legislation was agreed to, the majority and minority leaders have created a special committee on the year 2000 problem, with a hurry-up reporting date. But during the Finance Committee's consideration of the bill, Commissioner Rossotti specifically noted, in a six-page letter, that some of the changes the chairman has described in such admirable detail would overburden the IRS's ongoing efforts to upgrade its computers to allow for the century date change. In time we came to see the need for the effective-date changes he recommended—and Secretary Rubin reinforced this in a typically succinct one-page letter. We have, in the main, accommodated the Commissioner in this regard. I think this is probably the first statutory recognition of the year 2000 problem, which we are going to know a lot more about in very short order.

Now, briefly, a few matters of concern. Contrary to the unanimous opposition of the tax profession, this legislation includes a provision that shifts the burden of proof in civil cases from the taxpayer to the IRS. We all live in the real world and no one on the surface would ever think it right that the burden of proof be on a taxpayer, not the Government. But reality can be different. Four former IRS Commissioners, who appeared on a bipartisan panel before the committee, testified that shifting the burden of proof would cause more harm than good to the taxpayer. Similar sentiment was expressed by dozens of professors of tax law. Their concern is that this provision will result in more intrusive IRS audits, create additional complexity and litigation, and create confusion for taxpayers and the IRS as to when an issue needs to be resolved in court and when the burden has shifted. I recognize the political popularity of the provision, but I fear it may actually prove to work against the taxpayer. Be warned—persons who have the best reason to be impartial in their judgment have said this is not going to help, it is going to make things yet more difficult.

Another provision certain to cause confusion and to lead to additional litigation with the IRS is the expansion of the privilege of confidentiality to tax advice furnished by accountants. This new privilege may be asserted in noncriminal tax proceedings before the IRS and in Federal courts. However, like the current attorney-client privilege, information disclosed for the purposes of preparing a new tax form is not privileged and the conference agreement precludes application of the expanded privilege to written communications to a corporation ''in connection with the promotion of the direct or indirect participation of such corporations in any tax shelter.'' This is a right that most taxpayers will never be eligible to assert, and many will be surprised to learn about its limitations.

One provision that the bill does not include, and should, is the correction of a drafting error in the 1997 act which gives a windfall to the few estates in this country with a value of more than $17 million. It costs nothing to fix, and the joint committee estimates that the failure to correct this error would cost taxpayers $900 million in the next 10 years. The Senate bill fixed it. But somehow the conferees could not reach agreement.

Finally, Mr. President, and possibly most important, I direct the Senate's attention to a modest, but hugely significant, semantic triumph that has been included in this legislation.

Section 5003 of the conference agreement replaces in U.S. trade law the confusing 17th century phrase ''most-favored nation,'' which begins with the French phrase ''la nation la plus favorisee.''

We now replace that term with the plain American term ''normal trade relations.'' This relieves the President and the Congress of the burden of having to ask, why is this typically not-very-popular country being made a most-favored nation?

Why, for example, is there now a dispute about whether Vietnam should be given most-favored-nation status? Of course, it is not most-favored nation; it simply means you get the same treatment that the most-favored nation, some other nation most favored, gets. It is antique usage that immediately confuses everyone involved, and now we will be able to say we propose ''normal trade relations.'' It is plain English and avoids the needless misunderstandings that have accompanied that other term.

I do not want to overburden the Senate with detail, but the most-favored-nation concept is well over 700 years old. It has been traced by historians to a clause in the treaty of November 8, 1226, in which Frederick II, Emperor of the Holy Roman Empire, conceded to the city of Marseilles the privileges previously granted to the citizens of Pisa and Genoa. Not greater privileges, but merely the same.

The term itself is perhaps a little more recent. The first use that we can come across specifically is in the treaty of 1659 between France and Spain, which guaranteed that the subjects of each sovereign, while in the realm of the other, would be treated as the most-favored nation. Again, the phrase ''le plus favorablement,'' or in modern French, ''la nation la plus favorisee''—having the same rights as were granted the English and the Dutch.

In the main, the usage has become counterproductive. It confuses the public as to what is being proposed. I think it is fair to say sometimes it confuses the Congress as well, and we are well to be rid of it. I think it is past time and, if I may say, this is a matter that the Finance Committee has had in mind for some while. The distinguished and revered chairman and I introduced legislation last year for this purpose, and now we see it about to become law.

Mr. President, I thank you for your courtesy, and I have said my piece on the matter. I yield the floor.

Mr. GREGG addressed the Chair.

The PRESIDING OFFICER. The Senator from New Hampshire.

Mr. GREGG. Does the Senator from Nebraska wish to speak?

Mr. KERREY. I am prepared to proceed.

Mr. GREGG. I am going to speak about 10 minutes. Will that be an inconvenience to the Senator, or does he have to get somewhere?

Mr. KERREY. One of the things I want to do, and I will be pleased to step aside for 10 minutes, I want to engage in a short colloquy with the distinguished Senator from New York on this bill. I will try to be as brief as possible and then yield back to the Senator. I have a longer statement I will make on this legislation.

The PRESIDING OFFICER. The Senator from Nebraska.

Mr. KERREY. I thank the Chair, and I thank the distinguished Senator from New Hampshire. One of the things the Senator from New York has referenced—and I will later in my remarks praise both he and the chairman of this committee for what they have done in bringing this legislation to the floor—one of the things the Senator referenced in his comments was the 1986 Tax Reform Act. Indeed, this bill, it should be noted by colleagues,

amends that act. So this would be the, I guess, the 65th tax bill we have passed since 1986.

I wonder if the Senator from New York can engage briefly in a discussion for the benefit of the Senator from New Hampshire and for those who happen to be watching this debate. One of the things that we struggle to do as citizens is to understand what it is that the government is doing and why.

Under our constitutional authorities as a Congress we have a whole range of things we are charged with doing. One of the most difficult things we are charged with doing, once we have decided we are going to have a government of any kind at all, is we have to collect taxes and what to use those taxes for and we then have to decide who is going to pay the taxes, and we write the law accordingly. We then distribute the money to the various agencies of government that we previously created.

I wonder if the Senator from New York, with his understanding of the rest of the world, can talk a little bit about how much we take for granted our capacity to voluntarily collect. We have a voluntary system of tax collection, unlike many other nations on Earth.

I know right now one of the most difficult problems, for example, that the newly democratic Russia is facing is their capacity to collect tax revenues in sometimes a not-so-voluntary fashion.

I wonder if the Senator can talk a little bit about the constitutional issues of us raising the taxes to pay for the government and the importance of our being able to maintain a voluntary system of tax collection.

Mr. MOYNIHAN. I certainly will. I will be succinct, because nothing could be more clear.

The United States is blessed with a citizenry that pays its taxes on time and in full. There are exceptions, but we do it voluntarily. Technically, we self-assess; we decide ourselves what we owe the government. The rate of compliance is very high.

Up until just recently, and it is just beginning to change, for example, in the United Kingdom, which we associate with and we think of as a free society, and it certainly is, the subjects of the queen did not decide how much taxes he or she owed; the queen decided. They were sent a bill. You are free to contest it in court, and you can contest it in court the rest of your life, but you still have to pay the bill.

So the idea of complexity in this system, making it so difficult to know what it is you owe jeopardizes a precious institution, which is the faith of the public in the good intentions and performance of the government itself. That, I think, was one of the reasons the Kerrey Commission called for the reforms that are in this legislation of the IRS. You can have an openness and a sense that things are on the level here and government is doing the right thing.

Mr. KERREY. I thank the Senator for delaying his exit from the floor. I appreciate very much that reference.

Mr. President, I believe this piece of legislation goes to the heart of our capacity to maintain government of, by and for the people. Our republican form of government is at risk if people feel they are not getting a fair shake with this voluntary system of collection.

Congressman PORTMAN and I co-chaired this restructuring commission. We noted U.S. tax collection is the most efficient in the world. Less than half of a percent of the total revenues collected is in cost. In the face of mounting criticism, problems, it seems to me it is very important to make certain that as we write the laws that will determine how this money is collected, that we not throw the proverbial baby out with the bathwater. We have problems, and this legislation attempts to correct the problems. But underneath these problems is a relatively efficient system of collecting taxes that enables the citizens to fund their Government, and in a relatively efficient fashion.

Mr. MOYNIHAN. Indeed.

Mr. GREGG addressed the Chair.

The PRESIDING OFFICER. The Senator from New Hampshire.

Mr. GREGG. Mr. President, I wish to join with what I am sure will be numerous Senators in congratulating the Senator from Delaware and the Senator from New York and the Committee on Finance for bringing forward this exceptionally good bill which is truly timely.

Many of us, as we have tried to help folks out in our States, have run into situations where people have been treated in ways which can only be described as abusive by the Internal Revenue Service, where the Internal Revenue Service has gone way beyond the appropriate action for the purposes of collecting the revenues of the country and has treated American citizens in a way that you might expect were they to be living in a police state instead of in a democracy.

In my experience, probably one of the worst cases I have ever seen of Government excesses involves a family known as Barron in New Hampshire. That family, unfortunately, got into some tax trouble, failed to pay its taxes, and the IRS, in an appropriate way, attempted to collect those taxes—at least appropriately at the beginning. But then it got carried away. And as a result of getting carried away, it put that family through an extraordinary trauma, to a point where Mr. Barron ended up committing suicide. And his wife, Shirley Barron, who is now responsible for the family, found herself in a situation which was beyond all reason, which was untenable and which was horrible.

A lien had been put on her house. Her children's bank accounts had been taken. Her bank accounts had been taken. The IRS was even making it impossible for her to pay her electric fee, her utility fees. This all occurred after a time period when they thought they had reached an agreement with the Internal Revenue Service. They thought an understanding had been reached, and, in fact, an understanding had been reached. Then the IRS, in a manner which can only be called bait and switch, backed out of that agreement and assessed them with even more penalties and interest. And on an original tax bill which was, I believe, somewhere in the vicinity of $20,000 or $40,000, they ended up with an obligation, according to the Internal Revenue Service, of multiple hundreds of thousands of dollars.

It was a situation which was so horrendously handled that it literally drove Mr. Barron to commit suicide, destroyed the lives of this family. And it has become a cause celebre in New Hampshire, and to some degree nationally. It would be terrible in and of itself, because there is really nothing we can do as a Government to correct what happened to Mrs. Barron and the treatment she received. Her life has been irreparably harmed, and her family will always suffer as a result of this.

It would be terrible enough if it were the only instance of this type of situation occurring, but as we saw from the hearings which the Senate Finance Committee held under Chairman ROTH, it was not the only instance. Regrettably, on too many occasions the Internal Revenue Service has acted in this almost malicious but certainly abusive way.

This does not mean that the Internal Revenue Service is populated with people who wish to treat American citizens, taxpayers, in a manner that is totally inappropriate. No. In fact, just the opposite. The Internal Revenue Service is filled with good and conscientious people, in my opinion; but there are bad apples.

More importantly than that, the Service has created an atmosphere, a way of management, a culture, which has allowed the excesses to proceed in the actions against taxpayers which are beyond the pale of reasonableness to become commonplace, through the lack of management and, in my opinion, due to lack of structure, both legal and managerial. So this bill attempts to correct that.

The most important thing it does, or one of the most important things it does, is it shifts the burden of proof, gets us back to where we should have been to begin with, which is to presume that the taxpayer is innocent rather than presuming that the taxpayer is guilty until the taxpayer has proven himself or herself innocent. That is very important, so that the taxpayer goes in at least on some level of a playing field which has some levelness to it versus a playing field which was radically tilted against the taxpayer under the present structure.

In addition, the bill protects the innocent spouse. In so many instances, the spouse is a part of the familial activity as being part of a family; signs

the return without a great deal of knowledge of what is in that return, sometimes without any great knowledge of what is in that return, but signs it and then finds out later on, as was the case in Mrs. Barron's situation, that action has been taken that was inappropriate and liability exists. And when the spouse who is responsible disappears, as a result of divorce, or in this case as a result of death, the innocent spouse ends up with an obligation which is totally inappropriate. So the protection of the innocent spouse is absolutely critical and a very, very good part of this bill.

In addition, the bill takes what I think is a critical step in the area of managing the Internal Revenue Service's procedures because it limits the ability of the Internal Revenue Service to assess interest and penalties in a manner which uses the interest and penalties to basically force settlements on the taxpayer, even when the taxpayer feels they did not owe the obligation.

There is no question but that the basic collection process at the Internal Revenue Service proceeds with, in many instances, running up the interest and penalty obligations so when they get into negotiations with the taxpayer, even if the taxpayer knows they do not owe the taxes, the utility of proceeding becomes so expensive, it becomes so impossible to ever want to proceed in a manner which would put you at risk for the interest and penalties which have been run up that you end up paying the underlying tax and negotiating out the interest and penalties. That is a collection process which, regrettably, has become the modus operandi of the Internal Revenue Service.

This bill puts some limitation on that by limiting the ability of the Internal Revenue Service to run those interest and penalties up if they have not notified the taxpayer within a timely manner—18 months initially, 12 months as time goes out—that an obligation is due or they perceive that an obligation is due. This is an extremely important change in the collection process. In addition, the bill provides much better services to the taxpayer, which is critical.

Thus, I am extremely supportive of this effort. I say this. It does not resolve the problem. The problem goes to the basic law. The fact is that we have created a tax law which is so complex, so convoluted, such a mishmash of regulations and cross-purpose legislation, that it becomes basically unenforceable because it is not comprehendible.

After finishing law school, I went back to school for 3 years and got a graduate degree in tax policy with an LL.M. I have to say, I do not fill out my own tax return because it is simply too complex. Now, if I cannot do it, how can somebody who is just working every day and trying to make ends meet be able to do it? Obviously, they cannot.

And what we see in the collection atmosphere is that the Internal Revenue agents, regrettably, because of the complexity in many instances, do not understand it because it is not understandable.

So the law itself is a basic problem here, and we simply have to reform the law if we really want to correct this problem. We have to go to a much simpler law, a fairer law, something that can be managed in a way that is comprehendible to people who are working every day and trying to fill out their return, who don't happen to be specialists.

As an interim step, as an effort to try to correct what is basically a law that is not enforceable effectively but is being enforced in a manner which in many cases is abusive—as an interim step, this bill makes great progress. Thus, I congratulate the committee for their efforts. I hope it will not be looked at as the end of the process but will be looked at as a step in the process to reforming our tax laws so that they can be administered in a way which will regain the confidence of the American people that they are fair and that they are reasonable.

I yield the floor.

The PRESIDING OFFICER. The Senator from Wyoming.

Mr. THOMAS. Mr. President, I come to the floor, as many other Members have, to speak in favor of the IRS reform bill that is before the Senate. As the Senator from New Hampshire indicated, I want to take just a little bit of a different approach. We talk about this as one of the steps in the changes that do need to be made.

I do come to the floor to express my support for the package. The agency, of course, has basically run roughshod over American taxpayers for too long. This is the first significant reform in this agency in over four decades.

Congress should do more of this kind of oversight. It seems to me in this whole business of funding the Government, this whole business of appropriations, that we need to find a way to have more time for oversight. That is why I am supporting and continue to support a biennial budget in the appropriations process, so we would have off years to do this kind of thing for many other agencies.

Basically, I guess my point is that this is an important part of the Republican agenda, of our agenda, to do things about taxes. No. 1, of course, is to have tax reduction. I think American families deserve that. I think it is good for the economy. It has to do with having less Government and a smaller Government. IRS reform is part of it, and this is a great step in that direction.

Certainly, the third point is simplification of the Tax Code. I think, also, that is a necessary element before we find satisfaction with our Tax Code.

So, reducing taxes, IRS reform, and simplification comprise a three-pronged agenda, one which I support. Last year we made some progress in terms of reducing taxes, reduced them in capital gains, reduced estate taxes, installed a $500-per-child tax credit, expanded IRAs, and passed other important small business tax reductions.

I would like to go forward in that area, and I hope we shall. Further reducing capital gains, eliminating estate taxes, reducing and eliminating the marriage tax penalty are areas in which we can make progress.

This year we will reform IRS, the Federal agency that has interaction with more Americans than any other agency. I salute Senator ROTH and the Senator from New York and members of the Finance Committee for holding fast against the initial White House reluctance and opposition to reforms in this agency. His hearings, the committee's hearings, brought to light many unbelievable abuses of taxpayers by this agency.

This reform package, then, increases the oversight on IRS, holds IRS employees more accountable, makes IRS a more service-friendly agency, puts the law on the side of the taxpayer, has some very key provisions: Taxpayer confidentiality, extends the attorney-client privilege to accountants, reverses the burden of proof from the taxpayer to the IRS, guarantees 30 days to request a hearing of disputes, gives new powers to the taxpayers who petition the courts to contest decisions, and reforms the management of the IRS.

These are all good things.

The third part of our agenda, which is still there and I believe is of paramount importance if we are to really change the tax atmosphere: I think we have to address the basic underlying Tax Code. Hopefully, that will take place in the next year or two. We plan to significantly reform the Tax Code and to eliminate the complexity that is now there. There seems to be some misunderstanding about one of the proposals now which would terminate the current Tax Code in the year 2001. It does not eliminate the Tax Code, it simply gives a time certain in which a new Tax Code needs to be devised.

The IRS is responsible for creating many of the problems the taxpayers have, but Congress needs to bear the burden of fixing the current Tax Code. There are 17,000 pages of inherently confusing data that need to be changed. Taxpayers spend $200 billion and 5.4 billion hours to comply with the tax law. The IRS employs over 100,000 people, more than five times the number of the FBI. After 80 years of abuses by lawmakers, lobbyists, and special interests, the tax system is unfair, complex, it is costly and punishes work, savings, and investment.

Certainly there is a great opportunity for basic recodification of the Tax Code. I support plans, of course, that have the basic elements of fairness, of simplicity, reducing the overall tax burden.

It is interesting, as you go about in your State, my State of Wyoming, and

ask how many people like the Tax Code the way it is now, nobody responds, of course. Then you say: What do you want to do about it? Do you like sales tax? Do you like flat tax? Do you like consumption tax? But we haven't come, yet, to a consensus on what the replacement ought to be. That is the challenge before us.

I am pleased we are about to pass this historic bill, complete the second part of a three-pronged tax agenda. I hope soon we will move to finish the job and fundamentally reform the Tax Code.

I yield the floor.

Mr. GRAMM addressed the Chair.

The PRESIDING OFFICER. The Senator from Texas.

Mr. GRAMM. Mr. President, I rise in support of the conference report on IRS reform.

What I would like to do is very briefly give a summary of the two philosophical approaches that were initially embodied in the debate, why I believe we chose the better of the two, and then I will outline the few issues in the bill that I feel very strongly about.

First of all, when we started learning of IRS abuses—something that most of our offices heard about from constituents from the very beginning of our congressional service—and then when we saw it in its rawest form in testimony before the Finance Committee, I think there were two basic approaches or responses people had. I think one view was that people at the IRS had become insensitive, that there was something wrong with them, and that what we needed was a massive effort to try to sensitize people in the IRS. I have to say, that is the administration's initial viewpoint. It was as if they thought we could solve the problem simply by hiring every sociologist in the country and have them sit down individually with IRS employees and encourage them to be good people.

My own view, and the view that I believe dominates this bill, was a view that by and large, with a few notable exceptions, there was nothing wrong with people who work with the IRS. They are ordinary people. They have families. They own dogs. They are pretty much like us. The problem is, as the ancient Greeks observed, power corrupts. In the Internal Revenue Service, you have an agency of government that has tremendous power. As compared to the criminal justice system, for example, the IRS in its dealings with us on tax matters is literally the police, the investigator, the prosecutor, the judge, and the jury. And as a result of the fact that the IRS has so much unchecked power, that created an environment in which abuse occurred.

What bothered me most in listening to the testimony was not that you had people do bad things. We know that even good people sometimes do bad things. We know smart people sometimes do dumb things. But what alarmed me about the testimony over and over was the fact that nothing bad happened to bad people, that when people did bad things in the IRS, they were seldom, if ever, punished. And when people did good things like trying to raise the level of awareness in the IRS that abuses were occurring, often bad things happened to them.

That convinced me and, I believe, convinced the majority of the members of the Finance Committee, and ultimately the majority of Members of both Houses of Congress, that the system needed changing, that we had a system that reinforced bad behavior, and what we, of course, want is a system that reinforces good behavior.

I don't know what we are going to get from the oversight board we have established. I hope it will be productive. I certainly am supportive of it. I am not sure how well that approach will work, but there is a secondary approach in the bill that I am convinced will work, and that is an approach that really aims to curb this unbridled power.

The first change we made in the bill, which I think is vitally important, is we shift the burden of proof from the individual taxpayer to the Internal Revenue Service. We do that not only on income taxes, but we do it on estate taxes. I believe this is a very important change. Now, critics of this change said that only the taxpayer knows the facts, only the taxpayer has real access to the records, and so if you shift the burden of proof, the taxpayer will have an incentive to destroy records.

I think we came up with an excellent compromise in this area, and that compromise is that if taxpayers keep records that a prudent person could be expected to keep, if they turn those records over to the Internal Revenue Service on a timely basis, at that point the burden of proof shifts. I believe that this is a vitally important provision. It is a provision of the bill that basically guarantees honest taxpayers the same rights that criminals have in the criminal justice system. I think this is a major step in the right direction.

The next change that I believe will change the relationship between the tax collector and the taxpayer is a provision that is basically a version of loser-pay. This is an important principle, it seems to me. I would personally like to see it throughout our legal system. I have always been amazed that the British had the best legal system in the world and one of the poorest health care systems in the world, but we are interested in adopting their health care system and not their legal system. But the brilliance of their system, which actually dates back to ancient Greece, is that if you bring a lawsuit and lose, you have to pay the costs—costs incurred by the court, costs incurred by the defendant in defending their rights.

Now, we have a variant of that in this bill, and I think it is a very important provision. What this bill says is, if you are audited by the Internal Revenue Service, and you end up in a running dispute with them, and in the process you are forced to hire attorneys and to hire accountants to defend yourself, at the end of the process, if it is found that you did not violate the law, then the Internal Revenue Service is liable for the costs you incurred in hiring lawyers and accountants and defending yourself. I believe that by shifting the burden of proof and expanding the loser pays concept, that the rights of the taxpayer—the honest taxpayer—will be strengthened because it will change the behavior of the Internal Revenue Service.

In a related provision, we have language in the bill where, if you offer to settle with the Internal Revenue Service and offer to make a payment to them and they refuse to accept that payment, and instead they take the taxpayer to court, if at the end of the day the court rules that you owe the amount you offered, or less—not counting interest and penalties that might have been imposed by the Internal Revenue Service in the interim—then the IRS again becomes liable for payment of the cost of legal and accounting expenses incurred from the point that you made the offer to settle until the final judgment was reached in the court of law. It seems to me that is another vitally important change.

The third and, I believe, final major section of the bill has to do with the flexibility of the Internal Revenue Service hiring people. Under our current system, basically, you have to be in the Internal Revenue Service for 25 years to have a major supervisory, decision-making post. One of the things we have done in this bill is waive a number of the general procedures under civil service. We are allowing the Internal Revenue Service to go outside the system and bring in private expertise—some on a permanent basis, some on a temporary basis—and in the process, we are bringing in new people with private experience, many of whom will go back into the private sector. The net result, I believe, will be a more efficient and basically a more balanced Internal Revenue Service.

Finally, related to this third issue is the whole issue of people who violate the law and people who behave in ways that you can, under no circumstance, justify, nor should you ever tolerate in a government agency—or any other entity, for that matter. What we have done in this bill is not only given the new IRS chief flexibility in hiring new people from the outside, including very highly skilled and highly compensated individuals, but we have also given the Internal Revenue Service Director the ability to fire people—to fire people for a list of violations, and in the process strengthen his power to hold the agency accountable to the taxpayer.

So I want to congratulate Senator ROTH for his leadership on this bill. The major provisions of the bill relating to the burden of proof and to the loser-pay provision were provisions

that the chairman insisted on and made part of this bill. They are dramatic changes. I want to congratulate Senator MOYNIHAN as well as Senator KERREY and Senator GRASSLEY who served on the commission whose recommendations we built on in developing this legislation and did adopt many of its proposals. I think we have put together a good bill that will shift the burden of proof, that will force the IRS to pay when it is wrong, that enhances the ability to hire and fire—hire on the basis of competence, fire on the basis of incompetence, and on the basis of illegal or reprehensible behavior. I think it is a good bill.

I simply want to say this: Anybody who sat through all those hearings that we had in Finance—and I did—had to be convinced that the time had come for a fundamental change in the relationship between the taxpayer in this country and the agency that is charged with collecting taxes. We needed substantial changes that enhanced the power and standing of the taxpayer and that diminished the unbridled power of the Internal Revenue Service. I believe this bill achieves those goals. Nobody claims this solves every problem in the country. Nobody claims this makes our Tax Code any more decipherable. Nobody would claim that every problem is solved. But this is a major step forward.

I am strongly in favor of this bill, and I hope we can follow this bill next year with an effort to reform the Tax Code, to make it simpler and fairer. I think everyone believes that would be an improvement. The trick, obviously, is to make it happen. But I congratulate those that have been involved in the bill. I am proud to support it. I think it is certainly one of the highlights of this Congress and recent years, and I am glad to have been a small part of it.

I yield the floor.

Mr. KERREY addressed the Chair.

The PRESIDING OFFICER (Mr. HUTCHINSON). The Senator from Nebraska.

Mr. KERREY. Mr. President, I also rise in support of the conference report, the Internal Revenue Service Restructuring and Reform Act of 1998. I would like to begin my comments with high praise for the Chairman of the Finance Committee, both for calling the hearings last fall and again this year, and for his efforts every step of the way to make certain that this was a responsible bill, a balanced bill, and a bill that reflected the high values of the American people. I appreciate very much his leadership, as well as the ranking member of the Finance Committee, Senator MOYNIHAN. The chairman, I think conducted the hearings in a very responsible way and in a way that enabled the American people to see that the laws governing the IRS were in urgent need of changing. It simply would not have happened without Senator ROTH's diligence and willingness to bring to the American people's attention many of the problems that they saw last fall and again this year.

Mr. President, representative democracy is a very difficult system. We all know it. We all view it to be the best. With all of its faults, it still is the best system around. But it is a difficult system, because the people themselves have to decide what they want their laws to be. We, as their representatives, have to reflect their wishes and desires. But at the end of the day, you have to write a law and decide which words they ought to be. What goes into those laws very often is an attempt to resolve conflicts.

This piece of legislation I believe is in an area of government that in many ways is the most difficult of all. I would put law enforcement closely behind it as being both the most important and the most difficult. You always have conflicts between law enforcement and the desire for public safety, which is an overriding concern in the desire to protect individual rights. It is always there. It will never end. It is a never-ending battle. It is a never-ending argument. It is a never-ending struggle to try to resolve those conflicts.

Likewise, when it comes to paying for government—and all of us, I presume, are careful in how we spend the taxpayers' money—many of us are of the view that government itself needs to be watched very carefully, in an attempt, especially at the Federal level, to reduce it as much as possible so that taxpayers get to keep as much of their money as possible. The bottom line is, we are going to have some government.

I was very struck watching President Jiang Zemin in China. I didn't see any demonstrators over in China. And the reason is, they don't have a law protecting them. They don't have government of, by, and for the people. That is a law that protects, but it also costs us money.

We have to decide how we are going to organize our police force, fire department, and all the rest of it. When, at the Federal level we decide we want an Army, a Navy, an Air Force, and a Marine Corps, which we authorized not too long ago for the defense of this Nation, we have to decide how we are going to collect the money. So we write a law that not only decides how that money is going to be collected but we write a law that authorizes the collection agency—in this case, the IRS.

I begin with those basics because sometimes I hear people describe the IRS as if it is a Sears & Roebuck or a private-sector operation. It is not. It is a creation of law. If you wanted to get rid of the IRS completely—I have heard some people argue that—you could come down here and offer an amendment to abolish the IRS. The IRS needs a law. The IRS—and in its current form, for those who are in the private sector and used to working with private-sector organizations—the IRS has a board of directors composed of 535 Members of Congress, 100 in the Senate and 435 in the House. Again, it is important to understand that.

We come—all of us—with different views, different ideas. The distinguished occupant of the Chair represents the good people of Arkansas. I represent the good people of Nebraska. The chairman of the committee so responsible for this legislation represents the good people of Delaware. We come with a variety of ideas in the way that we want the IRS to be governed. We bring those ideas typically forcefully to the floor, or to our respective committees, to try to get things done.

I say that because sometimes those ideas are in conflict. Sometimes at the very moment we are calling for tax simplification, we are voting ''aye'' on something that makes the code more complicated. As the distinguished Senator from New York said, this piece of legislation amends the 1986 act, which itself was called, I think, the Tax Simplification Act of 1986. It was enacted before I arrived in the Senate. Fortunately, I could blame all of the problems that thing created on those who voted for it. But that legislation has been amended 64 times, and each time, typically, it makes the code a bit more complicated.

We talk about wanting the IRS to do a better job of collecting revenue. It doesn't take long, after they have been trained and get up to speed, before the private sector puts an offer on the table to try to pull the good people away, hire them away. Sometimes the IRS says, ''We want to modernize so as to have good computer operating systems.'' Sometimes we fail to appropriate the money that they need to get the job done.

All of this, and more besides, describes the difficulty of writing a law that enables the IRS to do the things that the American people want, which is to collect the amount of money that is owed in a voluntary fashion and to create an environment so that those who are willing to pay in a voluntary fashion—those who are volunteering to pay their fair share—get the answer to the question, ''How much do I owe?'' in as efficient a way as possible and get their taxes paid in as efficient a way as possible with the least amount of cost and harassment on their side, while still preserving the power of the IRS to go after individuals who are not willing to voluntarily comply, don't want to pay their fair share, and who, I think it is fair to say, burden those who are voluntarily complying by withholding their fair share.

So the IRS restructuring legislation is an attempt to improve the law. I believe it does that in a number of very, very significant ways. I would like to describe a few of those for my colleagues. Indeed, at the press conference, after the conference work was done, I heard a number of people in the press ask—and I have been asked as well in Nebraska—''How will we notice the changes in this law? How will the

changes be noticed by me, a taxpayer who has a relationship with the IRS?'' I would like to identify a few of those.

First, the law that creates governance for the IRS has been dramatically changed. It has been changed in the executive branch side. But it also has been changed in the legislative branch side.

It must be noted, I think, in fairness, that we first started noticing problems with the IRS a half-dozen years ago when the tax system modernization program that we had appropriated money for wasn't functioning very well. The GAO was requested to do an examination. The GAO came back and said that as much as $3 billion had been wasted. At the time, I had the high honor of serving on the Appropriations Committee under Chairman BYRD and the ranking Republican, Senator Hatfield. Our Subcommittee on Treasury-Postal Appropriations tried to fence the money for a couple of years. We tried to work with the IRS to figure out some way to make this work better.

In 1995, what Senator SHELBY and I were going to do was withhold the money entirely. We took an alternative course to create in 1995 this restructuring commission that Congressman PORTMAN and I had the high honor to be cochairs of in 1996 and 1997. We were just one of six committees, and still are, that the IRS had to report to. They had to come to the Appropriations Committee, the Finance Committee, and they go to the Governmental Affairs Committee. And they had to go to all three of their counterparts on the House side. They are required under law to go to each one of those.

What the GAO reported—both at that time and later to the restructuring commission—was that you need to reorganize that, that you are not going to be able to make good investments in computers and operating systems and the software for those computers. You will make a mistake when you spend the taxpayers' money unless you get to a point in some environment where there is a shared agreement on how that money is to be spent: What is the purpose? What is the goal? Where is it that you are trying to go?

This legislation creates on the executive branch side a new board of governance which the President appoints. They have a considerable amount of power and independence. These individuals will come from the private sector with a variety of different experiences to be able to assist the Commissioner in making a decision about what kinds of management objectives and what kinds of computer systems and software systems are going to be in place. But that board will have the opportunity as well under this legislation to meet with a single committee on an annual basis to review IRS operations and management.

So the appropriators, the Finance Committee, and the Governmental Affairs people, in both the House and the Senate, will be meeting with this board of directors in reaching agreement. It is much more likely in this kind of environment—whatever plan the IRS comes up with and the Commissioner comes up with—that the Congress will support that plan, and support that plan on a consistent basis.

This governing board is also much more likely to provide taxpayers with a sense that the IRS is more directly accountable to them. There will be an opportunity for citizens to go to that board, and it is much more likely that we in our offices will be able to follow up on cases that are brought to our attention.

So the governance board on the executive branch under this law and the change in governance on the legislative branch are the first things that I believe taxpayers are going to see. They are going to see better decisions and more consistent support being provided for those decisions as a consequence of the changes in this law. They were very controversial for a long period of time. The administration reached agreement with the Congress on what those provisions were going to be. But I believe every single taxpayer is going to see a benefit as a consequence of improved governance and improved decisionmaking being made by the Commissioner of the IRS.

The second big area where people are going to notice a change is the new management powers and authorities that are granted to the Commissioner.

First of all, under law, the Commissioner will be able to serve a full 5-year term. Over the past, I think, 5 years now, we have had three different Commissioners. There has been substantial turnover and difficulty as a consequence of maintaining continuity. And the maintenance of continuity is a very important objective of this legislation. The IRS Commissioner not only will have the power to make management decisions in an affirmative way by providing incentives for people to perform and rewarding them when they do perform but new authorities to terminate employees who are not performing up to the highest standards of the American people and the American taxpayer.

In addition, the Commissioner is not only given authority but directed to change the way we manage the IRS from the current system, which is a district and regional geographical organization, to functional lines of governance. Every single taxpayer is going to notice that change, Mr. President, not this year but certainly over the next 2 or 3 years. Our taxpayers are going to say it is an awful lot easier now that the Commissioner has organized the IRS by individual taxpayers, by corporate taxpayers small, by corporate taxpayers big, and by nonprofits. It is going to be a lot more likely that the Commissioner is going to be able to give each one of those entities the continuity of service they are asking for.

As individuals move from one part of the country to another, they find themselves in a different region, in a different district. It is much more likely that the Commissioner is going to be coming to the Congress saying: Here are some changes we could make to decrease the cost of compliance and make it easier for larger taxpayers, for smaller taxpayers, for individual taxpayers—much more likely when we organize around functional lines.

And with the increased authority under the law the Commissioner will have, it is much more likely that every single taxpayer will say: It has gotten much easier for me to pay my taxes. They may still think they are too high. They may still say: It should be a consumption tax or some other way of paying my taxes, but it has gotten easier; I have gotten the information more quickly; there is an operating system here, a computer system here, an information system here, that has made it easier for me to acquire the information if I have a complaint or discrepancy.

And you hear it all the time. Somebody calls up and says: I am making $10,000 a year; I got a bill for $140,000; it's ridiculous; something is wrong. I call up my IRS office. They don't have the ability to reassure me that a mistake has been made. It takes months and months and months.

With this new governance structure, with this new authority, we are providing the Commissioner what I think every single Senator and every single Representative is going to hear citizens saying: I am able to call up and get an immediate change. If I have a change of address and my refund check hasn't arrived, it is going to be much more likely I am going to get immediate attention, same-day attention, to that and shorten the amount of time that is required to get the problem resolved.

Mr. President, not only do taxpayers save money because the IRS will spend less money, but the taxpayers themselves downstream will save a lot more money, not having to chase around and solve the problem.

The third big area is in taxpayer rights, and there are a lot of changes. I am just going to list a few of them. The chairman talked extensively about the burden of proof shift. I think it is a reasonable compromise, although there is still some cause for concern. If we find ourselves with some problems as a consequence of this provision, which I don't think we will, Congress can always make some modifications. It shifts the burden of proof in all forms of income at the Tax Court. There are changes in the way taxpayers' proceedings are handled at the IRS, including such issues as to how costs are awarded and apportioned, civil damages if the IRS is negligent.

One of the things we are trying to do all the way through the rights provision is make certain that when the IRS sends out a collection notice, they are going after a taxpayer for doing something, that they have relatively high

certainty the taxpayer has done something wrong. The burden is on them to make a judgment with this new law, because if we find that the IRS has been negligent, the IRS has done something wrong, under these new provisions the IRS can be held not only responsible but liable for payment to the taxpayer—much more likely, as a consequence, taxpayers are going to see fewer collection notices that are sent out when no collection is warranted.

There is relief for innocent spouses, changes in interest and penalty, new protections under audit, new disclosure requirements to taxpayers—extremely important provisions, Mr. President. The taxpayer very often just doesn't get the information, doesn't know what is going on. As a consequence, they are not able to make a judgment about how much they owe.

There are provisions in the bill to create low-income clinics, a very important provision as well. We all know that the higher your income, the more likely it is you are going to have somebody do your taxes for you. With all the tax simplification and complexity issues that we hear, as income gets more complicated, it is more and more likely as a result that your income is going to be higher and more likely that somebody else is going to do your tax return for you. But for that lower-income American, these low-income clinics are going to be, I think, an extremely important part of our overall effort to make certain that all Americans say, whether it is the IRS or the FBI or the USDA or whatever it is, it is still Government of, by, and for the people. And the law has to be on the side of all Americans, not just those of higher incomes but on the side of middle-income Americans and lower-income Americans. And I think this low-income clinic provision is a very important part of it.

In addition, under the rights provision, the IRS will be required to catalog complaints it can bring to Congress, and we can sort out and see if there are any repetitive problems here and make judgments about whether or not, as a result of those repetitive problems, we need to make further changes in the law.

The fourth big area is the area of simplicity. The distinguished Senator from New York commented on that at length. I would only point out that I think, again, Members are going to hear taxpayers saying: Well, finally we have some things in there that help us deal with this problem, estimated to be $100- to $200-billion a year, of costs to the taxpayer to comply with the current code.

Now, it has to be said, as long as you tax income, it is going to be invasive. That is my own belief. If you tax income, it is almost going to be true that it is going to feel invasive if you are in an audit situation. This law will give taxpayers, I think, some new evidence that we are getting the word out on simplification.

First of all, for the first time under law, the Commissioner is empowered to make comments and to be there when laws are being written. Right now, you will have to search your memory bank, and I think in vain, to find a time when you have ever heard an IRS Commissioner say: Great idea, Mr. President; great idea, Senator Blowhard—for some new tax break—but here is what it is going to cost the taxpayer to comply.

We heard in the restructuring commission examples, and we filed them as a part of our index, of situations where provisions in the code cost far more to enforce than they generate in revenue. The cost to the taxpayer and the cost to the IRS to collect the money is greater than the benefit measured in the amount of money that is collected.

So in addition to putting the Tax Commissioner at the table and giving him authority to comment, as the distinguished Senator from New York mentioned earlier, there is a new simplicity analysis that will be done and prepared so we can judge whether or not an idea that we have is going to either increase or decrease the cost to the American people to comply.

There are new provisions, next, Mr. President, in the area of the Taxpayer Advocate, making the advocate more independent, making the Advocate more likely to help in the resolution of problems—a very important section. And I think every single taxpayer who has a problem with the IRS is going to see that this new Taxpayer Advocate is more likely under this new law to be able to help resolve in an expeditious fashion any complaint or problem they have.

Last, Mr. President, in the section dealing with electronic filing, those of us who have spent some time on this believe, No. 1, that if you are trying to reduce the cost, the most important thing is to reduce the number of errors. In the electronic world, there is less than half of 1 percent errors. In the paper world, it is 20 to 25 percent errors being made both by the IRS and the individuals who are filling out the forms. The electronic world offers us a tremendous opportunity to decrease the cost to comply for both the taxpayer and the IRS.

The language of this bill says that the IRS would encourage private sector competition. Again, I must say I think it is very important that Congress pay attention to this. Though I want the IRS to be able to offer services to the American taxpayer, I want to make certain that there is vigorous competition out in the private sector for the delivery of these services.

All in all, I believe this piece of legislation represents a good-faith effort on the part of Members of this body and the House to do something that is extremely difficult, and that is to write the laws governing the collection of our taxes in a way that resolves all the various conflicts that you have when you are trying to write any piece of legislation dealing with something where you are simultaneously trying to make it easy for taxpayers to comply and make it difficult for people who are not willing to comply to live outside the letter, the spirit, and the intent of the law.

I close with what I said at the beginning. I have high praise for Chairman ROTH for his good work, his balance, and his determination to finally get this done. I have high praise as well for Senator GRASSLEY, who served on the restructuring commission, for Congressman PORTMAN, who was my chairman, as well as Congressman CARDIN and the senior Senator from New York, Senator MOYNIHAN, the ranking Democrat on the committee.

I look forward to final passage, and I yield the floor.

The PRESIDING OFFICER. The Senator from Nevada.

Mr. REID. Mr. President, America is a great country. It is not perfect, but it is a great country. It is a country where the voice of the people is usually heard. That is what this is all about today. The American public, for some time, has been upset about the way their tax collector has been handling a very important aspect of the business of this country. Today we are dealing with something that is very important to the American people.

I also must say that this IRS restructuring and reform bill would not have been possible but for the senior Senator from Nebraska. The senior Senator from Nebraska has worked long and hard on this issue. Even before this legislation was introduced, as he has just briefly outlined, when he was a member of the Appropriations Committee and a member of the subcommittee that had jurisdiction over the IRS, he started this legislation. It seems it was only yesterday, even though it was much longer. It was last year that Senators GRASSLEY, KERREY, and I stood to introduce this legislation.

When we introduced this legislation, we didn't have a lot of people who wanted to help us. There was a sparse group of people from the Senate supporting us—Senator KERREY, from Nebraska, Senator Pryor, from Arkansas, and Senator GRASSLEY, from Iowa. But I commend and applaud the Senator from Nebraska for his vision and, most of all, for his tenacity on this legislation. I am glad we are finally at a point now where we can pass this because this IRS restructuring and reform bill is important.

Mr. President, when I first came to the Congress, I came with the feeling that something had to be done about the IRS. I was elected in 1982. During that period of time, the State of Nevada was going through some very difficult times with the Internal Revenue Service. The reason for that is that the resort industry had been in a battle that had gone on for several decades as to whether people in the gambling business, when they received a gratuity from somebody who was playing cards

or dice, could treat that gratuity as a gift, or whether it was taxable by the Internal Revenue Service.

This battle was taken to the court structure and the courts determined that this was taxable income. It took several decades to do this. After the decision was made by the courts, many of the people in the resort field owed money to the IRS. They acknowledged their debt, and made arrangements with the Internal Revenue Service, saying I owe $20,000 or I owe $4,000, whatever the amount might be, and they would repay it at whatever rate they could work out with the IRS agent, for example, $200 a month or $600 a month. The problem was, the IRS would keep reneging on their deals. A new IRS agent would come along and say, ''You are not going to pay $200 a month, you have to pay $400 a month.'' They would say, ''We already made an arrangement with you to pay at $200 a month.'' The IRS agent would say, ''I'm a new agent; I will make the deal with you that I think is appropriate.''

This went on and on. The people in the resort business had their property seized and their bank accounts levied. It was a very chaotic situation. As a result of this experience, when I came to the Congress, I introduced a bill in the House called the Taxpayer Bill of Rights.

On the day I introduced that legislation, I appeared on the ''Charlie Rose'' show. At that time, Charlie Rose came on at 2 o clock in the morning. I thought the legislation I introduced had impact only on the people of the State of Nevada. I was surprised, amazed, and impressed to learn that it was not only a Nevada problem. After I appeared on this TV program that aired at 2 a.m., I came to the office the next day and to find hundreds of telegrams. The phone wouldn't stop ringing. This problem was a problem throughout our country, not just in the State of Nevada. All over the country the IRS had not been treating people appropriately.

I was not able to move the legislation in the House for various reasons. The chairman of the subcommittee in the House liked the IRS more than he liked my legislation. I was elected in 1986 to the Senate. My maiden speech in the Senate related to the same Taxpayer Bill of Rights that I introduced in the House and that I said I was going to introduce here. Very fortunately for me, and I hope for the country—I feel confident that is true—presiding over the Senate that day was the subcommittee chair of the Finance Committee subcommittee that had jurisdiction over the Internal Revenue Service, David Pryor, from Arkansas. Senator Pryor sent a note to me by a page, after I finished my speech, saying: I like what you have said. I want to work with you on this.

Also, that same day, CHARLES GRASSLEY, a Republican Senator from Iowa, made contact with me saying: I want to work with you on the Taxpayer Bill of Rights. So I had two very senior Members of the Senate who wanted to work with a brand new Senator's legislation that we now call the Taxpayer Bill of Rights. We conducted hearings and we learned some amazing things.

I would relate to the chairman of the Finance Committee, even back then we had some very courageous people who were the beginning of some of the people who came forward in the latest round of hearings relating to the IRS restructuring reform bill. For example, we had one IRS employee from Los Angeles who put his job at risk, because the IRS testified that they did not promote people on the basis of how much money they collected. This IRS employee came in and said, ''That's not true.'' He said, ''In our office there were big glass windows in the inner offices and there were big pieces of paper there saying: 'Seizure fever, catch it.' '' That was a message to all the IRS agents that they should go out and seize all the property they could. That would get them promotions. We therefore outlawed promotions on the basis of how much money was collected and we outlawed quotas.

The Taxpayer Bill of Rights passed, and on November 10, 1988, President Ronald Reagan signed into law the Taxpayer Bill of Rights that I had written. But I acknowledge I could not have gotten that done without the tremendous support from Senators Pryor and GRASSLEY. They were champions. They were on the Finance Committee, and they were the ones who were responsible for working with me and moving that legislation.

The Taxpayer Bill of Rights, signed by President Reagan, really did create new rights that taxpayers had never had before. For the first time in the history of the country, the taxpayer was put on a more equal footing with the tax collector. Note I say ''on a more equal footing with the tax collector.'' The tax collector still had some serious advantages. Because of that, Senators Pryor, GRASSLEY, and I moved forward with the Taxpayer Bill of Rights 2.

We had some difficulty with that. It was vetoed on a couple of different occasions, not because of the substantive nature of our bill, but because it was part of a tax bill. It was part of partisan wrangling which took place here, and President Bush vetoed the bill twice. Included in that bill was our Taxpayer Bill of Rights 2.

However, in July of 1996, we achieved a crucial milestone on the road to IRS reform when President Clinton signed the Taxpayer Bill of Rights 2 as Public Law 104–168.

I underline and underscore, President Bush did not oppose our bill when he vetoed the tax bill. I repeat, it was part of an overall tax problem that caused him to veto the whole tax package. So we had Taxpayer Bill of Rights 1 and 2. They both did things to help the taxpayer versus the tax collector.

I served as an appointed member, by then-Leader George Mitchell, on the Entitlement Commission. I served there with Senator KERREY and others. I came to the realization at that time that the IRS, even though we had Taxpayer Bill of Rights 1 and 2, still needed significant work, principally because of how much money it cost the American taxpayer and the government to collect the taxes. It was estimated during the entitlement hearings that it cost about $500 billion a year just to collect the income tax of this country.

In the autumn of 1997, Senator GRASSLEY, Senator KERREY of Nebraska and I introduced the IRS Restructuring and Reform Act of 1997. I was happy to join in that. Someone asked me in an interview, ''The President doesn't support this; why are you out on front on this?'' I said, ''I believe he is going to have to get out of the way or the steamroller is going to run over him,'' and, in fact, that was true. Within a few weeks, the President and many others joined in this legislation which initially had very little support.

The bill we introduced was referred to the Ways and Means Committee, and the chairman of the Finance Committee in the Senate, the senior Senator from Delaware—I say through the Chair to my friend, the chairman of the committee, as a matter of information, are you the senior Senator from Delaware? Yes, he is. Both Senators have served a long time, and I wasn't certain which one was the senior member.

The chairman of the Finance Committee, the senior Senator from Delaware, held some hearings that I thought were very probative, very important to get the American people behind this legislation. The witnesses were carefully chosen. I thought the timing of those hearings was very good to add impetus to this legislation.

In his State of the Union Address, President Clinton challenged the Congress to pass the IRS reform bill as its first order of business. I am glad it is one of the things that we have worked on very quickly.

This bill has been outlined on several occasions today. It shifts the burden of proof; it expands IRS authority to award administration and litigation costs; it expands current law to allow taxpayers to sue the Federal Government; it requires the IRS to fire an employee for misconduct relating to the employee's official duties; it creates an oversight board to watch over IRS administration, management and conduct; and it does something that I think is so important—it creates confidentiality between the tax preparer and the taxpayer. I think that is very important.

The bill also contains a provision addressing the meals tax. As a matter of good-faith bargaining between an employer and employee, if they say that an employee should have a meal on the premises, that meal is not going to be taxed by the IRS.

Also, there is something I call the ''rewards for rats'' program, where private citizens are encouraged to turn in those who they believe are not paying their fair share of taxes. The IRS is directed to examine the conduct of this program. It is important to find ways to prevent such things from taking place.

It also does very important work related to an innocent spouses. The other issues that are covered here have been elaborated upon in some detail, but innocent spouse status I want to talk about a little bit.

My daughter—I have one daughter and four boys—my daughter had a wonderful teacher. She was a second grade teacher who had moved from the Midwest to the Las Vegas area and had recently gone through a divorce. Her husband had been a bank officer, and had embezzled huge amounts of money. Totally unaware of this was the second grade schoolteacher in Las Vegas.

The fact of the matter is, though, the IRS—and I won't talk about the woman's name—were relentless in going after this woman's wages. She was a schoolteacher. She had no money other than her limited salary from teaching, and they just harassed and badgered this poor soul unbelievably. At the time I said, some day I hope I have an opportunity to prevent further acts against people like Mrs.—I won't mention her name. And we are doing that today.

In the future, innocent spouses will have an opportunity to explain their situation as innocent spouses. This is important legislation. Why should somebody who steals huge amounts of money from a bank, as in this example, shift the burden of proof to an innocent spouse? It is not fair, and this legislation will solve that problem.

I believe Congress works best when it works together. This legislation is bipartisan legislation. This legislation is a testimony to the power of bipartisanship and how we need to act together to focus on the problems that relate to the American public.

This legislation is legislation the American public wants. It is legislation in which this Congress has joined together in a bipartisan fashion under the leadership of the chairman of the Finance Committee. I am a member of the other party from this Senator, but I say publicly that under his leadership, this legislation has moved along to a point where we are now passing a bill.

I am sure the senior Senator from Delaware has many things that he is proud of having done in his long legislative career, but I hope today's resolution of this very important issue will be near the top of his legislative list of accomplishments. I am very happy with having worked with him, with the senior Senator from Nebraska, and with Senator GRASSLEY from Iowa, to the point that the legislation which we introduced a year or so ago is now going to become law. I also want to recognize the essential role played by my good friend the ranking member of the Finance Committee, Senator MOYNIHAN.

I, again think this legislation is reflective of how our country works when the people of this country speak out loud enough for us to get the message. We have gotten the message. Hopefully, we have answered the concerns of the American public. I am confident that we have.

Mr. KERREY addressed the Chair.

The PRESIDING OFFICER. The Senator from Nebraska.

Mr. KERREY. Mr. President, the Senator from Nevada and I have had the occasion to work together on a number of things. I appreciate his early support, not just of this piece of legislation, but his early support for changing laws giving taxpayers more rights when dealing with the Internal Revenue Service. This is just a continuation of Taxpayer Bill of Rights 1 and 2 with which I know the Senator from Nevada was very much involved.

I also thank him for bringing to our attention this issue of meals deductibility. That was a judgment that was being made by the Treasury Department. I understand it is one of those situations that sort of makes sense if all you are doing is pushing a pencil and trying to make your numbers and the law come together. Had he not brought that to our attention, we would have had one more example, one more situation where the Code becomes enormously complicated, enormously burdensome. What happens is, people just lose confidence in their government. They say, ''How could you do something so stupid?''

I appreciate him bringing it to our attention. It had not been brought to our attention. Not only would the people of Nevada have been up in arms about it, but I say throughout the country. I say to my friend from Nevada there would have been an awful lot of people knocking on our doors talking to us about ''How could you do something that required people of average means to reach even farther to try to stay on the right side of the law?'' I was happy to assist in this matter, but I assisted not just to help the people of Nevada who have such able leadership in the Senator from Nevada, but I believe everybody from the United States of America is going to benefit as a consequence of that change.

Mr. BRYAN addressed the Chair.

The PRESIDING OFFICER. The Senator from Nevada.

Mr. BRYAN. I thank the Chair. Mr. President, let me preface my comments by joining the senior Senator from Nebraska in commending my senior Senator from Nevada for his untiring efforts for taxpayers not only in Nevada, but across the country, in terms of his efforts on the earlier variations of the bill of rights and the strong support of the legislation that we are debating today and that will be signed into law very shortly by the President.

Mr. President, I come to the floor this morning as a member of the Senate Finance Committee to offer my strong support for this historic legislation. It has been a long time coming. It has been a difficult process, but it is clear that the American people will benefit greatly as a result of this legislation which will soon be signed into law by the President.

None of us really enjoy paying our taxes. But the vast majority of Americans do make a good-faith effort to pay their fair share. And while the IRS will never be popular, the legislation that we will soon vote on will go a long way in providing fairness to taxpayers in their dealings with the IRS and will assist Commissioner Rossotti to meet his goals of making the IRS a more efficient and customer-oriented service.

Mr. President, the American tax system is essentially one of voluntary compliance. And implicit in that relationship is a sense on the part of the taxpayer that he or she is receiving fair treatment. To the extent that that perception is diminished, it undermines the public confidence in our system, it reduces the level of tax compliance, and it creates problems for those of us who do comply with this system and who will be paying a disproportionate share, larger than our fair burden, for those who do not.

So it is a responsibility of the Congress to make sure, in its oversight capacity and the laws which we enact, that the IRS operate in a fair, evenhanded way in dealing with the taxpayer. And I must say, as a result of the hearings that the chairman of the committee held, the abuses that were pointed out, in several instances, are rampant. And I will comment on those in just a moment.

I think it is fair to put this in some perspective as well, and that is that the great majority of employees of the IRS are really very dedicated public servants. They try to do their very best in performing the duties that they have. Much of the criticism that is directed against them properly ought to be directed against us. It is the Congress that enacts the code, and it is by every standard extraordinarily complicated, complex. Each year that we seek to make improvements to the code, at the same time it is also fair to say that we add additional complexity to it.

That having been said, that their job, being the IRS and the employees of that Service have a very difficult job, there is absolutely no excuse for the kind of conduct that we saw evidenced in the hearings that the chairman had this year and last year. That is totally unacceptable conduct. I believe that several of the reforms that are addressed here in this legislation will help to alleviate those kinds of conditions.

In addition to the obvious problems that were pointed out in the hearings, other problems are a bit more subtle, but they are also damaging to the taxpayer. And that is poor and inefficient

management, inadequate and outdated computer systems, or the corporate culture that we saw much evidence of—the view of the taxpayer as the adversary instead of the customer. That has been deeply entrenched.

One example that comes to mind is the quota system. There had been an attempt, in previous legislation, to send clear, unmistakable direction to the IRS that a quota system is not to be employed. A quota system forces the revenue agent to look at a taxpayer who comes into his or her office, not as a customer who has a problem that needs to be dealt with, but as a quota, that is that he or she is to be viewed as an individual from which that revenue agent must collect a certain amount of dollars, much like a traffic cop who is told by his or her boss that some 15 or 20 tickets must be issued each day. And that is what creates this adversarial system.

We thought that we had eliminated that practice and that abuse. But no sooner had the chairman convened the hearings last fall that I received in my office, from an employee in the IRS office in Las Vegas, an internal document that gave every appearance of being a quota. Those in charge asserted that it was not a quota, but in point of fact, clearly, the revenue agent was given the impression that each individual was to be assessed a certain amount of money in terms of additional tax to be brought in. And clearly implicit in that direction was the fact that that employee's future and career prospects with the Internal Revenue Service would be judged based upon his or her performance. Hence, this confrontational relationship that I described continued to be deeply ingrained as part of this culture.

Now, those are not easy things to root out. I must say that Commissioner Rossotti and the interim director, in response to questions that I raised during the course of those hearings, reaffirmed the policy that no quota system would exist and that the practice which had been conducted in Las Vegas, and perhaps other district offices as well, was not to be continued. And to the best of my knowledge, there has been no indication that it has.

However, I do think that one of the fundamental changes made in this piece of legislation—the creation of a citizen oversight board, involving six members from the private sector—can be very helpful in monitoring the kinds of activity which comes to our attention as Members of Congress and, hopefully, will be helpful in eliminating that practice. Although it does not have the pizzazz of some of the other provisions, I believe the power that we invest in the new Commissioner to make changes at the top level of management will also have some far-reaching consequences.

It is clear that those who are steeped in this corporate culture, this deeply ingrained practice that I and others who have spoken on this issue have described, simply are unable to make that change, that the frame of mind that allows that to continue has been such a part of the daily operational conduct of the agency that in some instances at the top level individuals simply have to be replaced.

I think it is important to point out that in Commissioner Rossotti we have the first Commissioner whose background is not tax accounting law, but he is an individual who is a businessman, not a lawyer, who has committed to provide the kind of management reforms that we need to change that corporate culture. So the powers that we give him to make those kinds of changes, which no previous Commissioner has had, I think will help to send a very powerful message at the top that this is not business as usual and that we want not only a more efficient and a more responsive agency, but we want an agency that eliminates the kinds of abuses that were provided during the course of the hearings.

Some years back the Congress intended to provide an ombudsman, as it was initially called, later a Taxpayer Advocate, to represent the individual. Those intentions, I think, were well conceived. Indeed, in their implementation, I think an effort was made to create such a position. But in point of fact, individuals who were chosen to serve in this capacity came directly from the IRS, returned to the IRS, and because that individual's ultimate career plan in the IRS could be impacted by his or her performance as a Taxpayer Advocate, the Taxpayer Advocate Office did not achieve its desired purpose to provide independent representation and advocacy on behalf of the taxpayer.

I believe in the legislation that will be signed into law, as a product of this bill, that we have created that kind of independence by making it clear that this is not an individual who can come directly from the IRS and immediately, upon completion of his or her tenure in the Office of Independent Advocate, once again continue a career path within the IRS. That independence, in fact, as well as perception, I think, will provide invaluable help to America's taxpayers.

Much criticism is directed at the agency and much is warranted. Let me comment, in the interest of balance, on something that the agency has done an excellent job in doing and that is the implementation of telefiling. It is a paperless tax filing system. In 1997, nearly 5 million taxpayers took advantage of that by simply picking up their telephone and filing their return. Its calculation is done on the other end. It is paperless. It is fast. Those taxpayers who have a refund coming to them will receive that refund much more quickly than in the process in which one files a paper return that is processed. It also is less cumbersome for the IRS in terms of the paperwork which has been generated, thousands and thousands of different forms and millions and millions of returns. So it helps us achieve the goal of efficiency in terms of the IRS' response.

I am pleased to note in 1998, nearly 6 million taxpayers took advantage of the telefiling. That is an increase of nearly 27 percent. Indeed, that is just the tip of the iceberg. The potential is significantly greater. Other types of electronic filing have also been developed. In 1997, we had about 14 million who filed electronically. In 1998, some 18 million. That is 28 percent. That also provides for a faster evaluation of the return, provides less opportunity for errors, for misdirected paperwork, and I think will be extremely helpful in providing the standard of service to which the American taxpayer is entitled.

Among the more significant things, dramatically significant, is a shift in the burden of proof for taxpayers and small businesses when their dispute with the IRS reaches the Tax Court level. That shifts the burden of proof from the taxpayer to the IRS. That will be another significant change. Perhaps if there is any one change that more dramatically signals what we are trying to accomplish in this legislation in trying to provide fairness to the American people who are attempting to comply with a very complicated tax system, this is an indicator.

Having practiced law in years past, I am not unmindful of a situation which innocent spouses are frequently victimized by the conduct of their spouses, oftentimes in the context of separation or divorce, in which the spouse involved in business is involved in either concealing or fraudulently filing a return, that return is jointly signed by the other spouse who has no involvement in the business and no culpability. The offending or culpable spouse is no longer available and the IRS turns to the innocent spouse. By any fair standard, that is conduct we should not endorse. An innocent spouse truly not involved, not culpable, should not be victimized by the conduct of his or her spouse. This legislation provides expanded benefits and protection for the innocent spouse.

In addition, we do several other things. That is, we provide for additional authority to award litigation costs to taxpayers who prevail in court disputes with the IRS. It costs a great deal of money to engage counsel. Most American taxpayers are not in the position to afford that kind of expense. It is only fair when that taxpayer prevails that, indeed, the cost of the litigation be recovered in favor of the taxpayer. We send a very strong message that the kind of misconduct which was much in evidence during the hearings last year and this year is not to be tolerated. We say to the American taxpayer, to those who have been victimized by such conduct, that a cause of action for civil damages based on claims of negligence by IRS employees will now be available to such taxpayers.

We improve taxpayers' rights during audits, collections, including prohibiting the IRS from seizing residences for deficiencies of under $5,000 and prohibiting the IRS from seizing a residence without a court order, increasing the availability of taxpayer assistance, reducing penalties for taxpayers making good-faith efforts. I think this might require an additional word of embellishment.

For those taxpayers who for whatever reason have failed to pay their full amount of taxes due, who are on a schedule of payment, only to find that the compounding effect of penalties and fines makes it virtually impossible for them ever to reduce the amount of principal that is the original amount they failed to pay, nothing could be more frustrating, nothing could be more discouraging, and it is a disincentive to those taxpayers who say, look, I recognize I owe the money, but I don't have it all. Establish a schedule of payments so I can make my payments. We heard testimony of people who had paid for extended periods of time and after having made such payments really had not reduced their principal; if at all, very minimally. This legislation addresses such an issue, and I think will be an incentive and encouragement for taxpayers to, indeed, begin making payments and to see the proverbial light at the end of the tunnel.

Greater disclosure and notice to taxpayers, including details of the computations of any penalties and interest due; more detailed explanations of the entire audit and collection process in the first deficiency notice; disclosure of taxpayers' rights at interviews with the IRS; disclosure of the criteria for examination—all part of the process to make one's visit to the IRS less of a mysterious and frightful experience, but to provide the taxpayer a broader understanding of the circumstances that bring him or her to the office—rationale for the deficiency, for any that is assessed, what that taxpayers' rights are in terms of responding.

In sum, Mr. President, all of these provisions should result in a more efficient and friendly IRS in the future.

I want to commend the chairman of our committee with whom I have had the great pleasure of working in this Congress as a newly appointed member to the Senate Finance Committee, the ranking member, the senior Senator from New York, and my colleague who sits to my right, the senior Senator from Nebraska, Senator GRASSLEY and others, who have labored in the vineyards for many years to provide fairness to the Code. It has taken us a long time. I freely acknowledge that some of us have been frustrated and thought this ought to have been done last year, but there can be no doubt that our work product that will ultimately be signed into law will be a vast improvement for the American taxpayer, and it does enjoy the imprimatur of bipartisan effort and support.

Finally, I will address an issue that has been of concern for literally tens of thousands of Nevadans who work in the hotel industry in our State. It is not a provision that is confined or limited to Nevada only because the practice in the hotel industry not only in my own State but across America is to provide for the convenience of the employee, by the employer, a meal at the business location. For more decades than I can remember, that benefit has been provided and it has been viewed as a nontaxable benefit. That is to say that the meal is provided and that there is no tax liability attached to that benefit that the employee must pay as a result of receiving that meal at the employer's expense, on the job, at the employer's place of business.

A year ago, a decision of the Tax Court astounded most of us who are familiar with the practice and created a situation that would be monstrously unfair to literally tens of thousands of taxpayers in my own State where this issue was widely publicized, but would have the potential of affecting hundreds and hundreds of thousands of employees in every State in the Union. Not only would it be unfair to those employees who no longer would receive that benefit—and there would have been hundreds of thousands, as I say, across the country—but it would have created the anomaly that some employees in some occupational categories may continue to receive the benefit, their coworkers who worked alongside them in a different capacity would not have received that benefit, thereby creating an inherent morale problem within the workforce and a nightmare for employers to administer. That decision sent a shockwave throughout the hotel industry in my State, and employees were much concerned.

The consequence of the Tax Court's decision, uncorrected, would have imposed several hundreds of dollars of additional tax liability each year. We are not talking about those who are part of a senior executive class, whose salaries are six figures or greater. By and large, we are talking about people who tend to be at the bottom end of the pay scale in the hotel industry—those who are porters and maids and in other categories. So hundreds of dollars, for them, had a major impact.

I am pleased to say that as a result of the bipartisan support and the efforts of Nevada's delegation and the leadership on both the Ways and Means Committee and the Senate Finance Committee, and several of our colleagues who served as conferees—I acknowledge that the senior Senator from Nebraska and the senior Senator from Louisiana who, in addition to the chairman and ranking member on our side, were extremely helpful—that consequence is not going to be visited upon the tens of thousands of employees in my own State and the hundreds of thousands elsewhere.

In effect, a provision that is incorporated in this conference report will reverse the Tax Court's decision and will continue a practice that was established in terms of fairness and equity and will allow those employees to continue to receive those benefits without the additional tax consequences that the court decision would have imposed upon such employees. I want to publicly acknowledge all who were involved in helping to make that provision part of this provision.

So, finally, Mr. President, this will not make this code a perfect code. I suspect that this will not be the end of our endeavors to provide additional ways in which we can provide fairness to the American taxpayers. But, hopefully, as a consequence of this legislation, the word will come from this Congress to the American people that we heard the complaints, we understand their legitimacy, we recognize that in a system such as our own, in which the compliance is essentially voluntary, we have an obligation to make sure that those who are trying to comply with the provisions of our complex Tax Code are treated fairly and, when problems are called to our attention, we will correct them.

Again, I salute our colleagues who worked on this. I thank the chairman and the ranking member of the Finance Committee for their courtesies in hearing the concerns that I and other members of the committee brought.

I yield the floor.

Mr. HUTCHINSON addressed the Chair.

The PRESIDING OFFICER (Mr. BURNS). The Senator from Arkansas.

Mr. HUTCHINSON. Mr. President, I rise in strong support of the Internal Revenue Service Restructuring and Reform Act. I want to take this opportunity to commend Senator ROTH for the outstanding work he has done on this legislation. As a new Senator, I was impressed with the hearings that Senator ROTH conducted and which have galvanized this institution to move on something that was a compelling need. They were dramatic hearings not because they were highly choreographed or because there was sophisticated promotion; they were dramatic because of the impact and the gripping nature of the stories that were told to the committee and to the American people.

I think our country and this institution owe a great debt of gratitude to the Senator from Delaware for the role that he has played in calling the attention of the American people to the abuses. It became evident during the course of both sets of hearings that these stories were not isolated incidents but were all too typical, as we found from the response of the American people in calling our offices all over Capitol Hill about similar incidents that had occurred.

I want to take just a moment to praise my predecessor in the U.S. Senate, the former senior Senator from Arkansas, Senator Pryor. Senator REID

spoke of his role in taxpayer rights in the past. I think that the work Senator Pryor did as a Senator from Arkansas has helped to lay the groundwork for the step that we are taking as a body today. I want to express my appreciation on behalf of the people of Arkansas and on behalf of taxpayers across this country for Senator Pryor's unfailing efforts and untiring efforts to provide protections for the taxpayers of this country. And although the Taxpayer Bill of Rights was not the ultimate solution, and the Taxpayer Bill of Rights 2 was not signed into law, it helped to call our attention to it and to galvanize the American people to push for this action. I want to pay my highest regards to Senator Pryor, who I know is pleased with the action that the U.S. Senate is taking today.

I think the protection provisions in this legislation will take a big step toward assuring the American people that we are still on their side and that the tax system of this country is not stacked against them. We should remind ourselves of the things that this does not do. It would be, I think, a shame if this legislation were to be the release on the pressure that has built up over the years to demand comprehensive tax reform. This is an essential step, and it moves the ball in the right direction. It does not simplify the code. The code is still a labyrinth of confusion, incomprehensible to many people, tax preparers, and to many in the IRS themselves. It does not provide the lower rates the American people deserve, and it does not eliminate inequities in the code, like the marriage penalty and the exorbitant estate tax rates. I know Senator ROTH will continue to push for comprehensive tax reform for the taxpayers of this country.

I believe that one way we can do that is to set a sunset date, a date certain in which this Tax Code will be eliminated and we will require ourselves to take action in providing comprehensive tax reform, a lower tax rate, a fairer Tax Code for the American people. We may disagree on that, but it is imperative that this be one more step in moving toward what is essential, which is comprehensive tax reform for the American people.

I will conclude with a statement that President Clinton made during his recent trip to China, in which he addressed the students at Beijing University and spoke to them about the nature of freedom, about our heritage of freedom in this country. I believe that what he said—and said eloquently—applies to the ongoing debate about IRS reform and restructuring and making the Tax Code of this country fairer for the American people. He said:

> In America, we tend to view freedom as the freedom from Government abuse or from Government control. That is our heritage. Our founders came here to escape the monarchy in England.

Then he said this:

> Sometimes freedom requires affirmative steps by Government.

I simply say that this legislation, which Senator ROTH has led the way on, is an affirmative step that this Government must take to ensure that the American people truly enjoy the fruits of freedom, which is our legacy and heritage.

I yield the floor.

Mr. BREAUX addressed the Chair.

The PRESIDING OFFICER. The Senator from Louisiana.

Mr. BREAUX. Mr. President, I want to make a few comments on the IRS Reform Act, which is now on the floor. This is indeed, in my opinion, a very historic day. Never before in the history of the Internal Revenue Service have we ever had legislation that brought about massive changes to an institution that is not thought of too well by the American people. This legislation goes far beyond anything that Congress has ever done in trying to reform the Internal Revenue Service.

I want to join with others in commending a couple of people for the work they have done, particularly the chairman of our committee, the distinguished Senator ROTH, who chaired the hearings, which really woke up a number of Members of Congress to the massive problems that were out there. It was really very moving to hear American citizens come in and actually tell about their experiences and the abuses they had suffered as a result of the Internal Revenue Service.

I would, I think, fairly and properly add, however, that the vast majority of the people who both work for and work at the IRS are good, honest, decent citizens of this country, who are very loyal to what America stands for and respect the rights of taxpayers in this country. But as in any institution, whether it be government or private, there are abuses. What the hearings were able to do was to lay out in a public forum the problems with the current bureaucracy that represents the Internal Revenue Service.

I want to commend, in addition to Senator ROTH, Senator MOYNIHAN for the work he has been doing, and I think Senator HUTCHINSON was proper in pointing out also the work done by a former Member of this body who used to sit right about over there on the Democratic side, a member of the Democratic leadership, David Pryor. He is not with us today, he is residing in Arkansas, but he is with us in spirit in the sense that we are discussing today something that he started a long, long time ago with his Taxpayer Bill of Rights.

Long before the Roth hearings, David Pryor was working on this particular problem in bringing our attention to the defects that the IRS had. He always stood up for the individual taxpayers of America. I know that wherever he is in Arkansas, or wherever today, he is justifiably proud of the work that is being done today because he led the way in that area.

The final person is Senator KERREY in this body from the great State of Nebraska who chaired an IRS reform commission. As one who chairs a commission right now, I know how difficult it is to try to get people to agree and make recommendations on how to reform legislation. Many times a commission has so many experts on it that it is difficult to get any kind of consensus about change. But Senator KERREY led the way in getting a commission to focus in on this problem and help produce legislation and recommendations. Without his work on the committee itself this product would not be in the good shape that it is in today.

I am reminded of the old stories, which are repeated in Louisiana. You have various versions of this. One of them heard is about the two greatest lies ever told. The first one is people who say, ''I am from the Federal Government. I am here to help you.'' Of course, the second greatest lie could be just about anything that you want to add to it. And I have heard various variations, which I would not care to repeat on the floor of the Senate. But the first one is, ''I am from the Federal Government. I am here to help you.''

It is true in a sense that people have a great deal of mistrust in many institutions of government. That is unfortunate. When most people think of the Internal Revenue Service, they do not think of the word ''service.'' They think of fear, they think of intimidation, they think of threats, and they think of all sorts of things, none of which are very good. The last thing they think of is service.

This legislation today will go a long way to restoring service to the Internal Revenue Service and letting that agency of our government know that their principal function is to serve the people of this country. They work for the taxpayers—not the other way around. The taxpayers in Louisiana should know this is a major improvement in how that agency is going to have to operate in the future, so that no longer if you get a letter from the Internal Revenue Service should there be a fear of opening it. No longer if you get a call to come down and meet with someone from the IRS should you be intimidated about having to fulfill that request.

Some have advocated: ''Just abolish the agency.'' That is a good headline. That will get you 15 seconds of fame perhaps. But is it responsible? No. Is saying, ''We are going to abolish the Tax Code; and don't worry, sometime in the future we may replace it with something we hope might be better than we have now,'' responsible? How do you buy a house if you do not know what the Tax Code is going to be? How do you make a business investment if you do not know what the tax laws are going to be in 12 months? While it is very simple to say, ''Let's abolish everything and hopefully one day we will replace it with something that will be better than we have today,'' I question whether that is the responsible thing to do. It is much easier to, as they say,

kick down the barn than it is to construct a new one.

But what we are trying to do with the Roth legislation and people who put this package together is to say we want to repair what is broken. We want to reform what needs reform. We want to tell the American taxpayers there will be predictability in how and when and how much tax they legally owe to run the government functions that are important to this country.

This legislation accomplishes what I think is incredibly the most massive change in the IRS that we have ever had since the agency was created—to restore service, to restore confidence, to restore fairness to the American people when they have to deal with their government, which hopefully will treat them in a fashion that makes all of us much prouder of the work that we have done with this legislation.

Let me just make a comment about one particular aspect of the legislation which I think is important.

The government, it is clear, has thousands of lawyers working for the IRS on behalf of the government—when a taxpayer is called upon, and it is said that they are deficient in some kind of a way—to represent the government's interests. Now, under this legislation we will have a taxpayer advocate who will now be called the National Taxpayer Advocate. We have done more than just change the name. We have changed the functions. Taxpayers should know that they will have someone who will be on their side when they have a problem to discuss with the IRS—someone who will represent their interests, and not just represent the interests of the government against them, but represent their interests before their own government. I think that is incredibly important.

The National Taxpayer Advocate will be appointed by the Secretary of the Treasury, but only after consulting with the Commissioner of the IRS and the new IRS oversight board.

It is very important to further point out that the Advocate would have to have experience in customer service representing customers—not representing just the government. You will have a requirement that he also—or she—has to have experience in tax law and have experience representing individual taxpayers. You would think you would not have to spell that out. But we have to make sure that person who is going to be in that position has experience representing individual taxpayers, has a knowledge of the tax law of this country, and also has background in customer service, also getting back to the point that this is a service organization of our government.

I think it is particularly important to ensure their independence—that we have also required in this legislation that the Taxpayer Advocate cannot have been an IRS employee within 2 years of his or her appointment, and must agree not to work for the IRS for 5 years after serving in this position. Why is that important? I think it is pretty obvious—to ensure their independence. We just do not want to pull someone out of the IRS and have them serve in this position representing taxpayers knowing that one day they will go right back to the IRS, or to have a career in the IRS and have that mindset guiding what they do representing the individual taxpayers. No. We have done just the opposite. We say that the Taxpayer Advocate has to have experience in representing the taxpayer and have experience in customer relations and not be an employee of the IRS, and not go to the IRS within 5 years after they leave this job.

What that will ensure is that we will have a National Taxpayer Advocate who will be truly interested representing the individual taxpayer, so that taxpayer will know that there is someone on his or her side for a change when they have to present their case.

I also point out that people believe lots of Americans are audited. That is not true. It is not true at all. Less than 2 percent of the people in the country are ever audited by the IRS. Ninety-eight percent of the people, plus—more than 98 percent—file their taxes, pay their taxes, maybe get a refund, and maybe have to owe something. But that is it. Ninety-eight percent plus of the people in this country are never audited, and abide by the law. Less than 2 percent ever have a problem with having to be audited. But when a person falls into that situation, under the new IRS service they will be assured of the fact that there will be an advocate who will stand by their side and represent their interests, and not just be an IRS employee, saying, ''Don't worry, we will take care of you.''

This is a major part of the reform that we will be voting on today.

I would just say that this is monumental change. It is important. I think everyone who has worked and contributed to this effort, of which there have been many, would conclude with me that when we work in a bipartisan fashion we produce good results. And that is what we are voting on today—good legislation for all of America.

I yield the floor.

Mr. JEFFORDS. Mr. President, our passage today of the IRS restructuring bill is a tribute to the dogged and determined efforts of Finance Committee Chairman ROTH. This reform effort originated with the report of the bipartisan National Commission on Restructuring the Internal Revenue Service, filed just over a year ago. It was given further impetus by the historic Finance Committee IRS oversight hearings held last year. Those hearings were the first comprehensive oversight hearings ever undertaken by the Finance Committee. They showed us how miserable the lives of average, law-abiding taxpayers could be when they ran afoul of a tax collection agency that was at best uncaring, and at worst abusive. Many taxpayers' suffering was prolonged; their cases got lost in an IRS black hole and took years to resolve. These oversight hearings really struck a nerve with the public, which flooded our offices, and the Finance Committee, with further complaints of abuse, mistreatment, and inattention. There were widespread calls for IRS reform. This public response not only led to further oversight hearings, but it also showed that any reform effort needed to be comprehensive, addressing a range of issues broader than those that surfaced during our oversight hearings. To his credit, Chairman ROTH resisted calls for a quick fix, adopting instead a methodical, thoughtful approach to reform.

The result represents the most comprehensive reform of the Internal Revenue Service in more than 45 years. This bill contains over 50 new taxpayer rights, leveling the playing field for taxpayers. It calls for an innovative oversight board. It assures that Congress will no longer shirk from oversight responsibilities. It calls for innocent spouse relief for taxpayers, usually women, who were the unknowing victims of former spouses that underpaid their taxes.

There are three aspects of this bill that I believe are especially significant and on which I want to focus my remarks. The first is the new organizational structure at the IRS. Until now, the IRS has been administered by the Commissioner and his or her subordinates, many of whom have spent their entire career at the IRS. Since World War II, every commissioner has been a tax lawyer. Last year, Commissioner Charles Rossotti, a non-attorney, skilled in the areas of information management and familiar with the problems inherent in running a large organization, took the reins. With over 100,000 employees, the IRS presents a significant management challenge. Effectively managing an agency the size of the IRS requires skills other than those necessary for tax law enforcement. With a fresh viewpoint, Commissioner Rossotti has already made some proposals for reform that look promising. He has proposed to restructure the agency on a functional, rather than geographic, basis. This will allow functional units of the IRS to develop in-depth expertise in specific aspects of tax law and to provide more efficient service. The re-structuring bill builds on this fresh point of view, directing the Commissioner to implement an organizational structure with units serving particular groups of taxpayers with similar needs.

Further, this legislation bill will assure that the IRS continues to benefit from fresh ideas. Administration of the IRS will be supplemented by new nine-member board, responsible for oversight of administration, management, conduct, direction of the IRS, as well as administration and execution of the tax laws. The majority of the board

will be outsiders with expertise in such areas as customer service and management of large service organizations. These outsiders, not wedded to the current way of doing things, will be able to offer valuable input on new ways of doing business and will provide an important link to expertise from the private sector. To my knowledge, this type of public-private management partnership is unprecedented.

An IRS employee representative is also on the oversight board. The presence of an employee representative on the board generated a substantial amount of controversy. In my view, inclusion of this representative will be key to the success of any future reform efforts. Reforming the IRS is not going to work unless it enjoys the support and understanding of those charged with carrying out the reforms. The employee representative's input will be very valuable, enabling board members unfamiliar with the day-to-day IRS operations better assess the impact and workability of reform proposals.

Another aspect of this act that I think is particularly important is its emphasis on quicker and fairer dispute resolution. Taxpayers I have talked to are really bothered by the length of time it takes to resolve problems at the IRS. While cases await resolution, interest and penalties on unpaid taxes continue to accumulate. Frequently, the amount of interest due on unpaid taxes ends up exceeding the amount of taxes themselves. This bill contains several provisions that should make dispute resolution faster and more efficient. First, it provides that if the IRS doesn't contact taxpayers within a year after they file their returns, interest and penalties will not continue to accrue until the IRS sends the taxpayer a notice that additional taxes are due.

Second, the bill mandates that the Commissioner's restructuring of the IRS include an independent appeals function. This appeals unit is intended to provide a place for taxpayers to turn when they disagree with the determination of front-line employees. A truly independent appeals unit will assure that someone takes a fresh look at taxpayers' cases, rather than merely rubber-stamping the earlier determination.

This legislation also broadens the powers of the IRS Taxpayer Advocate. This will be especially important to taxpayers who find themselves facing immediate and serious harm as the result of actions taken by the IRS. In cases of hardship, the Taxpayer Advocate can intervene to issue taxpayer assistance orders, requiring the IRS to release seized property or otherwise refrain from taking action that could result in a significant hardship. The definition of ''significant hardship'' is expanded. This should make taxpayer assistance orders more widely available. In addition, the bill provides that persons appointed to the post of Taxpayer Advocate must agree not to accept employment with the IRS during the five-year period following their tenure. This will assure that they won't hesitate to overturn IRS actions out of concern about offending future bosses or co-workers.

These provisions represent important steps to cut down on the time it takes to resolve disputes. In addition, the bill provides for informal Tax Court proceedings in certain types of small cases, giving more taxpayers, usually without lawyers, a greater opportunity to resolve disputes that cannot be resolved administratively. Expanded criteria for installment agreements and offers-in-compromise should mean that more taxpayers will be able to take advantage of those settlement tools.

The last aspect on which I want to comment is the role that Congress will play in these reforms. With more frequent Congressional oversight, perhaps a bill of this scope might never have been necessary. With more oversight, we in Congress might better to be able to identify and address problems when they first arise. This bill imposes oversight responsibilities on Congress. It will assure that the Committees of Congress with jurisdiction over the IRS will hold an oversight hearing at least once a year.

In addition, this measure requires that when Congress passes a tax bill, it must consider the practical consequences of tax law changes. Our tax system is built on the principles of self-reporting and self-assessment. Luckily, we have relatively high compliance rates from individual taxpayers. The increasing complexity of our tax laws, however, threatens to undermine voluntary compliance. The more complex the law becomes, the more difficult we make it for taxpayers to comply. The bill provides that IRS should comment on the administrability of tax law amendments when they are under consideration by the tax-writing committees. The IRS must also submit an annual report on sources of complexity in administering the tax code. Finally, the bill requires committee reports to include an analysis by the Joint Committee on Taxation of complexity and administrability issues. When we considered the tax law proposals in the Taxpayer Reform Act of 1997, it would have been helpful to know how those proposals would translate into new record keeping and paperwork requirements for taxpayers. This analysis will be a helpful, welcome addition to the legislative process.

I suspect that nothing we do will make the IRS loved, but this bill makes it a kinder and gentler agency. It will be an agency guided by principles of fairness, rather than the bottom line and an agency held accountable for its actions, no longer out of control. Any organization the size of the IRS is going to experience some problems, and adoption of this conference report isn't going to solve every problem in our tax collection process. Still, it is our obligation here in Congress to see that those problems are minimized to the largest degree possible. This bill marks the beginning of fundamental structural changes at the IRS; it changes the way the IRS does business. It also provides important new protections for taxpayers embroiled in a dispute with the IRS. Most taxpayers pay their taxes and never again hear from the IRS. These taxpayers may not appreciate any immediate consequences of the new taxpayer protections. All of us, however, should benefit from a more efficient and effective tax collection process that I hope will result from the sweeping reforms we initiate today.

Mr. President, I yield the floor.

The PRESIDING OFFICER. The Senator from Florida.

Mr. GRAHAM. Mr. President, I believe in the order I was the next to speak, but our colleague from Utah has a committee hearing to chair, and so I would ask that he be recognized next, reserving my right to speak after Senator HATCH, in the hopes that my colleague from Montana could be recognized after my remarks so we maintain the balance of speakers on either side of the aisle. I also ask unanimous consent that for the duration of the consideration of this conference report Mr. Jason McNamara, Ms. Catharine Cyr, Mr. Brian O'Hara, and Mr. Michael Magidson of my staff be accorded floor privileges.

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

The Senator from Utah is recognized.

Mr. HATCH. Mr. President, I thank my colleague for allowing me to make my remarks ahead of his. It is very accommodative and I appreciate it.

Mr. President, today we will cast one of the most important votes of the 105th Congress. Today, we vote to enhance the power of the individual taxpayer and to reduce the opportunity for abuse by an arm of the federal government. We will vote on the conference report to H.R. 2676, the Internal Revenue Service Restructuring and Reform Act of 1998. This legislation is a tremendous leap forward in enhancing the credibility and effectiveness of the IRS.

But Mr. President, this bill is about more than just changing the way one federal agency works. This bill is about reflecting American values and priorities; it is about remembering who the federal government is here to serve and what it is here to do.

Of all the powers bestowed upon a government, the power of taxation is the one most open to abuse. As the agency responsible for implementing and enforcing the tax laws that we here in Congress pass, no other agency touches the lives of American citizens more completely than the IRS.

I believe that Americans understand and appreciate that they have to pay taxes. Without their tax dollars, there would be no national defense; no Social Security, Medicare, or Medicaid; no environmental protections; no assistance

for education or job training; no national parks, food inspection, or funds for highways and bridges.

But, everywhere I go in Utah, I hear from my constituents about their frustrations. My office receives numerous letters each month detailing taxpayer interactions with the IRS. It seems that everyone has had, or knows someone who has had, a bad experience with the IRS. This adds to the impression of the IRS as an unfeeling, impersonal machine that will run roughshod over anyone in its way.

I, myself, have seen abuses at the hands of the IRS. One of the reasons I ran for the U.S. Senate over twenty years ago was because of the abuses I saw. As an attorney, I had occasion to represent taxpayers against the IRS. The treatment these taxpayers received appalled me—and that was twenty years ago. The stories have not changed all that much over the years; in fact, they seem to be occurring more and more frequently.

The stories range from small annoyances such as unanswered phones or long periods of time spent on hold to shocking abuses such as unwarranted seizures of assets or criminal investigations being based on false information for the purpose of personal revenge. It is small wonder that the taxpayers are scared and frustrated. These stories illustrate a disturbing trend. They are dramatic reminders of the failure of Congress to exercise adequate oversight over a powerful federal agency.

I have been here long enough to know that we are never going to be able to achieve a system where people do not get frustrated about paying their taxes—both the process of paying taxes and the amounts. Let's face it: paying taxes is not something we will ever enjoy doing.

We must, however, achieve a system of collection that is efficient, fair, and, above all, honest. While not perfect, the conference report before us today moves us a long way toward a better system.

During our oversight hearings and through letters to my office, I have heard several horror stories from taxpayers, innocent spouses, IRS employees, and those who have been the subjects of criminal raids and investigations. While these are the minority of the cases dealt with by the IRS, they still illustrate the nature of the abuses occurring.

We are not talking about appropriate enforcement of the law. We are talking about heavy-handed abuses of enforcement powers. At best, such tactics are counterproductive; at worst, it is reprehensible behavior by big government. It must stop.

The conference report before us is a comprehensive approach to reforming the IRS. No one provision can stand alone as the silver bullet that brought down the bear. Taken as a whole, however, this legislation provides a strong foundation for a new IRS by changing the way the IRS operates and interacts with individual taxpayers.

The bill before us today gives the IRS Commissioner great flexibility to carry out a fundamental reorganization of the agency. But, it also places the IRS under an independent, mostly private sector board to oversee the big picture of operations at the agency. Through this board, the American taxpayer will now have a focused advocate examining the operations of the IRS and input into the way the agency runs. These are two very important elements to creating a new culture at the IRS: responsible leadership and accountability.

I commend the new Commissioner for the steps he has taken so far to rectify these problems at the IRS, and I encourage him to keep going. And, I hope he will not feel constrained by ''business as usual'' attitudes among those who have an interest in maintaining the current methods. I hope the new Commissioner will shake the dead wood out of the trees.

But, Mr. Rossotti needs to know that Congress will hold him and the agency accountable. And, our expectations—and the expectations of the American people—are not hard to fathom.

We do not expect tax delinquents or cheats to go undetected or unpenalized. But, we do expect the IRS to enforce our tax laws appropriately. We expect the IRS to assist taxpayers to understand and comply with complicated laws and regulations. We expect taxpayers to be treated courteously. We expect taxpayers' questions to be answered promptly and their returns processes efficiently. And, we expect any penalties to fit the crime.

Today, we will vote on a bill that takes a leap forward in eradicating a culture that has allowed corruption and abuse to occur over and over again and to taint the efforts of honorable IRS employees. There has been a lot of talk about changing the IRS into a service-oriented agency, and the bill before us goes a long way towards doing just that. We cannot stop there, however.

While customer service is an important part of the equation, we must go further and address taxpayer rights. The conference report removes taxpayers from the reach of IRS excesses by instituting over 70 new rights and protections. The way the taxpayer deals with the IRS, individual IRS employees, and the courts will be changed.

The conference report shifts the burden of proof in selected situations off of the taxpayer and onto the IRS. It also ensures that compromise is more accessible to taxpayers by making offers-in-compromise and installment agreements easier to achieve and the terms of these agreements more flexible.

The conference report also contains some much-needed assistance for innocent spouses. The understatement thresholds are lowered and it is now easier for taxpayers to receive innocent spouse protections. In addition, limited proportional liability will now be available to a spouse who is legally separated and living apart for at least one year from the person with whom a taxpayer originally filed a joint return.

Interest and penalty accrual will be suspended after a year in some cases when the IRS fails to notify a taxpayer of a liability for additional taxes within 18 months of filing a tax return. This period will be shortened to within one year of filing the tax return after the year 2004.

The conference report also makes significant changes to the Taxpayer Advocate's Office to ensure that it will be an empowered and independent voice for the taxpayers.

A long list of procedural due process safeguards are also provided in reaction to IRS collection abuses. These include a 30-day period to appeal before liens and levies are put into place, early referral to a strengthened and more independent appeals division, and implementation of fair debt collection practices.

The conference report increases congressional accountability for the performance of the IRS through provisions such as streamlined congressional oversight and an independent voice for the IRS in the tax-writing process.

This legislation also contains legislative incentives for tax law simplification by requiring a tax complexity analysis for new legislation.

In this vein, the conference report goes one step further and simplifies one of the most embarrassingly complex computations for today's taxpayers by retroactively reducing the holding period to qualify for the preferential capital gains tax rate from 18 months to 12 months. This provision not only simplifies the process, it also reduces capital gains taxes and encourages further investment.

The legislation before us today will fundamentally change how the IRS works. It is a necessary and bold set of initiatives. But, we cannot just declare victory and bask in the glow of a job well done. We must remember how we got to this point in the first place.

The IRS was not born evil, and it is not an inherently bad organization. Rather, it has suffered from decades of neglect and inadequate oversight. Once we have set the agency on the road to recovery and given it the tools it needs to move forward, we must continue to guide it and ensure that the agency continues down the right road. Passage of this bill does not mean we can pat ourselves on the back and tell ourselves what a great job we did.

We must continue to exercise our oversight responsibility. We must have continued hearings, reviews, and cooperation. We must remain vigilant in our search for areas where further reform is needed and ways to simplify the tax code. Left alone, any entity with power and authority will lose its way. Without continued oversight and cooperation, we will soon see this debate repeated on the Senate floor.

This legislation can be summed up in one word—accountability. For too

long, the IRS and its employees have operated in an environment with little or no accountability. This bill changes all that. The legislation before us makes individual IRS employees accountable for their actions. It makes management more accountable for the treatment given taxpayers and other employees. Finally, it makes the agency as a whole more accountable to the Congress and the American taxpayer.

This debate has focused largely on the negative—and there is plenty of negative to focus on. But, we must also put these abuses and misdeeds in perspective. I believe that they are the exception and not the rule. Just as a vast majority of the taxpayers are honestly trying to comply with the tax code, the vast majority of IRS employees are honest and hard working individuals doing their best in a very difficult and unpopular job.

Yes, abuses do occur, and we must reform the system to prevent improper activities. At the same time, we must make sure that we acknowledge those employees who are doing their jobs with competence and integrity. I have to look only as far as my own state of Utah to find numerous examples of this type of employee.

I'd like to take a moment to recognize the exemplary work of several IRS employees in the Ogden, Utah, office of the IRS. I daresay that my colleagues could find IRS personnel in their states who share this dedication to service.

Milt Flinders has worked with the IRS for 26 years, 13 of them as a manager. He currently has 20 IRS employees working under his supervision. Mr. Flinders has great management skills, and has a well-known reputation for being fair both to IRS employees and to the taxpayers with whom he comes in contact.

Avon Wales has worked with the IRS for 20 years. She currently works as an office collection representative/revenue officer aide. Ms. Wales is a very conscientious employee who makes sure she knows the relevant rules and procedures regarding each case she works on. She treats taxpayers with kindness and patience, often putting in hours at a time with an individual taxpayer who is confused about the rules or needs additional assistance.

Susan Vail, a revenue officer, has worked with the IRS for 31 years. She makes sure she stays current with the complex laws and procedures surrounding the collection of taxes—no easy task there. She is fair and evenhanded in her dealings with taxpayers. She gets positive marks from her supervisors and other IRS employees, but, perhaps most importantly from taxpayers themselves who have worked with her.

These three, and other employees like them, are the reason that most taxpayers today, even if frustrated by the forms and irritated with the amount of their tax bill, continue to comply with our voluntary tax collection system. Thank goodness for these employees.

Is this conference report perfect? No. There are some things I would like to see changed. For example, I have some serious concerns about the creation of an accountant-client privilege in this context. I am concerned that we are using the Internal Revenue Code to effectively amend the Federal Rules of Evidence. We have a clear procedure for amending these rules already set out. Changing these rules is no simple matter. It should only be done through careful, deliberate evaluation of the change and the effect it will have on the judicial system. It should only be done with input from the Judicial Conference of the United States and others.

Despite these misgivings, I want to reiterate the importance of the bill before us today. The IRS touches more taxpayers in more aspects of their lives than probably any other agency. The American taxpayers have every right to expect a higher level of professionalism, customer service, and fair treatment from an agency charged with enforcing the law in an area as important and pervasive as is the area of taxation.

The conference report before us stays true to the ultimate goal of the IRS reform legislation—it protects both the honest taxpayer trying to comply with our complex tax laws and those honest employees struggling to enforce an almost incomprehensible set of tax laws with integrity. This conference report takes on and accomplishes the difficult task of striking the right balance between granting taxpayers the experience of paying taxes without abusive treatment while providing the tools necessary to fund the Government.

There is no question that we have come a long way, with this bill, to resolve many of the conflicts and problems that do exist between taxpayers and those who serve the taxpayers at the IRS. This bill makes gigantic steps forward, to try to make the system more fair. I think we on the Finance Committee and those on the Ways and Means Committee in the House have certainly all worked very hard to get this done.

In particular, I commend Senators ROTH and MOYNIHAN, Representatives ARCHER and RANGEL, and my colleagues on the IRS Conference Committee for the hard work they put into crafting the conference report before us today. I was proud to add my name to the conference report as a conferee. I wholeheartedly support its passage and urge my colleagues to do the same.

This is the right thing to do. Once we have this done, then, it seems to me, Democrats and Republicans have to get together to see if we can simplify our tax system in whatever way is best in the interests of the taxpayers of America. This is only step one, but it is an important step. It is a step that will make a lot of difference in people's lives. It is a step that will make this system much more fair than it has been in the past.

But it is only the first step. If we can get together and come up with a way of simplifying the Tax Code so everybody can fill out their own tax forms, for the most part, and also make it more fair to everybody in America, then I think in the end we will have done things that no other group of people in the history of our country would have done. I know we have colleagues here on both committees, the Finance Committee and the Ways and Means Committee, who have the capacity to do this, both on the Democrat side and on the Republican side. I call on all our colleagues to do that, whether it be by a flat tax, a value-added tax, a sales tax, or any other of a number of approaches. We have to look into this and get this code so it is not the monstrosity that we all know it to be today.

Having said this, I thank again my dear colleague from Florida for his kindness and also my colleague from Montana. I appreciate their deferring to me so I could make these few remarks. I really appreciate it. Thanks very much.

I yield the floor.

The PRESIDING OFFICER. The Senator from Florida is recognized.

Mr. GRAHAM. Mr. President, I wish to express my appreciation to my colleague and good friend from Utah for his kind remarks, as well as for his excellent analysis of this legislation. I join him in the same enthusiastic reform of the Internal Revenue Service and see this as an important chapter in a longer book which will soon bring us to the pages of simplification of the Internal Revenue Code.

Mr. President, this legislation does mark a new era for the Internal Revenue Service. The hearings that we had disclosed some of the culture of the IRS as it has operated in the past. We focused on how to change that cultural orientation. Let me just mention three areas that we uncovered.

One was typical of many large organizations, public or private, and that is a loss of focus on the mission and a tendency to become too internal in the way in which issues were reviewed. That tendency to become incestuous, to answer questions based on what is in the best interests of the organization rather than what is in the best interests of the customers—in this case, the taxpayers served by the organization—is, unfortunately, a typical transformation and a transformation which we found that the IRS had succumbed to. The new IRS will begin to analyze issues from the perspective of their customers, the American taxpayers, and, with that new reorientation, will become more effective in carrying out its mission and will be seen by the taxpayers as being less intrusive in their lives.

A second aspect of the old IRS was its evaluation of employees based on how much money was collected. This is analogous to a police department which requires its officers to issue so many parking tickets or speeding tickets per day. It changes the priorities, it

changes the perspective, it changes the public respect of the organization. I am pleased that the new IRS will evaluate employees based on how they deal with taxpayers as well as on their collection efforts.

A third factor in the old IRS was the tendency to threaten taxpayers with enforcement action if they didn't agree to extend terms of payment or enter into other measures that would make tax collection easier for the IRS. We had an example of this recently, in which the IRS—and I commend them for having come forward with this—became aware that there were threats being made to taxpayers who already had entered into a multiyear installment payment, where a portion of that installment payment would be beyond the statute of limitations, beyond the reach of the IRS. Taxpayers in that circumstance were being threatened that, if they did not agree to waive the statute of limitations, they would be subjected to immediate cancellation of their installment agreement and required to make full payment at that time.

The IRS had uncovered that there were approximately 22,000 instances of that improper threat and are in the process of notification. I am pleased to say on June 29 of this year, in Tampa, FL, the first actual check of over $1,500 was paid to a taxpayer as a refund because of the consequences of such a threat.

Mr. Carl Junstrom, who was the taxpayer receiving that refund, has become a hero of American taxpayers because of his efforts to overcome the travails to which he was subjected and now has become a symbol that individual taxpayers can prevail in their own cases and can benefit many thousands of others.

One of the significant parts of this reform effort is that it was a grassroots-up effort. It was an effort that didn't start by Washington telling American taxpayers what their problems with the IRS were, but rather listening, understanding, and then being willing to act on what we had heard.

This is in the best tradition of democracy. Many of these individual issues came to the attention of the IRS and to congressional offices through taxpayers who had specific problems with the IRS, and they brought them to the attention of a taxpayer advocate in the IRS or to their Member of Congress.

That kind of information began to accumulate, and it was seen that the problems were not specific and focused, but rather began to disclose a pattern of IRS problems, a pattern of needs for taxpayers to have a new relationship with their tax collection agency.

Those individual taxpayer concerns then became the focus of hearings that were held by the Senate Finance Committee and the House Ways and Means Committee. Some of those were held here in Washington; others were held across the Nation. In January of this year, I participated in such a hearing with Congresswoman KAREN THURMAN in Orlando, FL, in which we heard, again, some of the specifics of taxpayer concerns which had previously been the subject of specific constituent complaints. Let me just mention a couple of those.

Karen Andreasen, from Hillsborough County, FL, when filing for divorce discovered that her soon-to-be ex-husband had failed to file tax returns for 1993 and 1994. She then found that the IRS, having launched its case against her ex-husband, swiftly turned its attention to her. Tax liens were placed on her home; the bank holding her mortgage threatened her with foreclosure.

A separation or divorce is painful enough for both of the parties and the children and others who are affected, without suddenly realizing—like Karen Andreasen, a spouse who had placed confidence in her ex-husband and signed joint returns—they are subject to a deficit of thousands of dollars in back taxes on income they never earned and on tax returns that they never understood.

Congress has now recognized the problem of Karen Andreasen and, in this legislation, we have provided that divorced or separated spouses can elect to be responsible for only their proportionate share of the taxes.

We have also liberalized the circumstances under which other taxpayers may obtain innocent-spouse relief, and we have made this retroactive to currently opened cases so that Karen Andreasen and thousands of other spouses like her will be able to get the benefit of these new provisions.

Thomas Jones was a decorated Naval veteran from Clearwater, FL. His business partner absconded with the company's payroll taxes. Mr. Jones did what a responsible citizen should do: He notified the authorities. IRS initially thanked him for his assistance, then proceeded to hold him 100 percent responsible for the partnership debt. Under pressure and unable to afford legal representation, Mr. Jones elected a monthly payment plan.

When I met with him at an IRS reform hearing in Orlando, he told me that he was bankrupt. Interest and penalties were piling up at a staggering $2,000 a month. Twice during his 13-year-long fight, Thomas had offered to compromise with the IRS, but was summarily rejected by the same collection agent who a few days earlier had been bugging him for additional money.

Good news. Thomas Jones may be the last taxpayer to suffer from such unfair conflict of interest, because this reform legislation expands the authority of the IRS to accept offers of compromise and guarantees to Americans an independent third party review of their offers and compromise. This will prevent the same IRS division from serving as prosecutor, judge, jury and executioner.

Mr. President, those are just two examples of Americans with specific problems who now have contributed to relief for themselves and for thousands of current and future taxpayers.

There are some lessons in this experience which I think we in Congress need to understand, appreciate and absorb into our future actions.

First, much of our success, in addition to taking advantage of the experiences of individual Americans, was the result of an IRS reform commission which was established 2 years ago. I applaud Senator GRASSLEY, who is with us this afternoon, and Senator BOB KERREY, for the work they did on that IRS reform commission. That gave to us the basis of thoughtful recommendations and analyses which substantially accelerated the work of the Congress and the effectiveness of that work.

This indicates to me that we need to commit ourselves as a Congress to ongoing oversight of the IRS; that we can't wait until there is an occasional commission formed to review this matter; that we must have an ongoing responsibility to see that this agency does not slip back into the patterns of conduct that necessitated the legislation that we will be adopting later today.

Second, we must recognize that this is but a chapter in the larger book of how to make the Internal Revenue Code more understandable, more appropriate, more taxpayer friendly. I suggest that the next chapter, which will be simplification of the Tax Code, use some of these lessons that we have just learned. That it, too, take advantage of the experience of individual Americans in what they would like to see, based on their own experience, in a more simplified tax structure for America; that we look to the use of expert panels, such as the IRS reform commission, to help give us indepth advice and advance our ability to engage in this next step of simplification of the Tax Code.

My own sense is that a third lesson learned is that Congress can make substantial steps if it does it in digestible increments. I suggest that as we look at the Internal Revenue Code we ask the question: What are the building blocks of the Internal Revenue Code? How can we take each of these blocks in turn and systematically have it reviewed based on taxpayer experience, based on expert review and then, finally, congressional hearings and congressional action?

I believe if we take that digestible, incremental approach, in a reasonable period of time we will be able to say to the American people that we have reformed not only the administration, but also the Tax Code itself, and reformed it in a way that will make it more understandable and more acceptable to the American taxpayer.

I conclude by applauding Senator ROTH for his great leadership and Senator MOYNIHAN in holding the hearings that first exposed the problems of the IRS. I urge that we continue our active involvement as we see that this legislation achieves its intended result and

move to the next chapter of simplification of the Internal Revenue Code.

Mr. President, this is a happy day. I will, with enthusiasm, join what I am confident will be a large majority of my colleagues in voting for this conference report which will move us substantially towards the goal of an IRS Code that all Americans, that all those affected by its administration, will feel prouder about as citizens and will make their task of compliance with their tax responsibilities somewhat easier. Thank you, Mr. President.

Mr. LOTT addressed the Chair.

The PRESIDING OFFICER. The majority leader, Senator LOTT, is recognized.

Mr. LOTT. Mr. President, will the Senator from Montana allow me to make a brief statement before he proceeds?

Mr. BAUCUS. The Senator from Montana is absolutely delighted to allow the majority leader to proceed.

## UNANIMOUS CONSENT REQUEST—EXTENDING TIME TO FILE FIRST DEGREE AMENDMENTS TO S. 648

Mr. LOTT. Mr. President, as all Members are aware, when a cloture motion is filed in the Senate, the provisions of rule XXII, the cloture rule, require all first-degree amendments must be filed at the desk by 1 p.m. the day before the cloture vote occurs.

Last evening, I filed cloture on the substitute amendment to the product liability bill. Realizing and observing how upset the Democratic leader was when cloture was filed last night, I checked with the desk as to exactly how many amendments had been filed to the product liability bill by our Democratic colleagues. To my dismay, earlier only two had been filed, but still a very small number, and only 21 Democratic amendments have been filed, and it is almost 1 p.m., the deadline time.

The Democratic leader stated last evening that many Members on his side of the aisle had amendments they wish to offer on this bill. And he also stated, ''It is the right of all Senators to fulfill the functions of their responsibilities to offer amendments.'' Well, where are the amendments? And why have Members on the Democratic side of the aisle chosen not to file amendments within the timeframe that is outlined under rule XXII?

Could it be that our colleagues had never been prepared to exercise their right to offer amendments when it comes to the legislation? Instead, have our colleagues on the other side of the aisle just decided they would vote against cloture with the intention of never attempting to offer amendments that would have been intended, I am sure, to ''improve the bill,'' as Senator DASCHLE suggested?

Since there have only been 21 amendments filed, it seems to me that maybe our Democratic colleagues are not serious about addressing this important issue which is, by the way, a bill that has been laboriously worked out. It is a compromise bill. Senator GORTON of Washington, Senator ROCKEFELLER of West Virginia, have spent hours, days, months working on this. And this legislation has been approved by the administration, by the White House. They have indicated they would sign it. So why in the world would there not be a serious attempt here to pass this legislation?

But having said all that, I am prepared to offer a consent agreement that would extend the filing time for first-degree amendments until 5 p.m. this afternoon, if that would help accommodate our colleagues on the Democratic side or, for that matter, on the Republican side.

Therefore, I do now ask unanimous consent that, notwithstanding rule XXII, that the filing deadline for the first-degree amendments with respect to the product liability bill be extended to 5 p.m. this afternoon.

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

Mr. BAUCUS. Reserving the right to object, I consulted with my Democrat colleagues, knowing this request would come up, and it is our belief that the consent should not be granted. Accordingly, I object.

The PRESIDING OFFICER. Objection is heard.

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

Mr. BAUCUS addressed the Chair.

The PRESIDING OFFICER. The Senator from Montana.

## INTERNAL REVENUE SERVICE RESTRUCTURING AND REFORM ACT OF 1998—CONFERENCE REPORT

The Senate continued with the consideration of the conference report.

Mr. BAUCUS. Mr. President, I would like to speak a little bit about the conference report that is before us, the IRS restructuring bill.

Today, the Senate reaches the end of a journey that has been 2 long years in the making. It is actually a journey that began a couple years ago when the National Commission on Restructuring the IRS was charged with investigating the IRS' repeated failure to modernize its computer systems. There are many stories of the IRS computer systems falling down, crashing, systems not meshing; and essentially the commission felt that it was their charge to try to find the answer to all these problems.

It became very clear, Mr. President, as the commission began trying to find a solution to the computer problems, that it was just touching the tip of the iceberg, that there are a lot more problems in the IRS that had to be addressed; namely, the abuse of too many agents, too many rogue agents, the insensitivity, too often, of its IRS employees toward taxpayers. Frankly, it led the commission to dig much more deeply into problems facing the IRS. Accordingly, the commission proceeded to look at other areas in addition to computers. The commission probed various problems that the taxpayers face in our country.

Under the leadership of Senators KERREY and GRASSLEY and Representatives PORTMAN and COYNE of the House, the commission, I think, produced a series of very good recommendations that have become the foundation of the bill before us.

Again, it was a restructuring commission. They spent a lot of time looking at the problems of the IRS. They presented their recommendations to the Congress, and essentially, the bill before the Congress today is the manifestation, the outgrowth of those recommendations by the commission.

In addition, Mr. President, under the leadership of our chairman of the Finance Committee, BILL ROTH, with his very extensive hearings, we were able to draw out many more abuses, many more problems that our American people were facing with the IRS. As a consequence, I think we have a better bill. We were able to fine-tune some of those Restructuring Commission recommendations. In fact, we were able to add a few more. So altogether, I do think it is a combination of very good effort on the part of both the commission and the conference. And I think, Mr. President, that the result is going to turn out to be quite good for the American people—not perfect, but certainly an improvement.

Justice John Marshall once said, ''The power to tax involves the power to destroy.'' We all know that the corollary to that is that the power of the tax collector must be very carefully balanced, because the tax collector, him or herself, has inordinate power when he or she tries to collect taxes. Any tax collection agency must be strong enough to make sure that everyone is paying his or her fair share of taxes, but not so powerful as to trample on the rights of ordinary citizens.

It is quite clear, through the testimony of our witnesses before our committee and comments from our constituents at home, that the IRS has lost that balance over the years.

Let me give you one example.

This is a plea for help from a constituent of mine in Montana. ''The problem with the IRS started in 1997. John''—that is not this person's real name—''and I''—in this case it is John's wife—''had just bought a house. I was a semester away from graduating from college, and we thought the [failed] business [that we had] was behind us. The last week in July 1997, I returned home after a day of working at my part-time job to find a nasty note on my front door from [an agent] stating that he had 'tracked' us down and expected a phone call or [else] action would be taken. I promptly called him to find out [what was going on]. He was very rude and reluctant to give me any information, [saying he could not talk to me, did not want to talk to me

because he was not talking to my husband].''

The long and the short of it is—and I am paraphrasing the letter here—''. . . he began talking to me in a [very] degrading manner. He said, '. . . I expect to [get taxes] in full,' [and said it in a very rude way]. When I asked him to explain, he . . . [treated me like] a criminal who was running [away] from the IRS.''

Continuing further, Mr. President, basically, the agent in this case put a lien on everything this person owned, also made many personal comments. He obviously investigated the personal lives of these taxpayers and basically was so rude and so arrogant as to performing almost Gestapo tactics against my constituents. My constituent ends up, Mr. President, in her letter by saying that very clearly the Government was not working for the people, but rather was working against the people.

I think this letter sums up the issue in a nutshell; that is, to make the Government work much more for people, not against them, that is, put service back into the Internal Revenue Service instead of being arrogant and degrading people as much as the Service has in the past.

Now, we certainly do not want to tie the IRS' hands so much that tax cheats are encouraged. The rest of us, as we all know, end up picking up the tab when someone else cheats. At the same time, we also can't have the IRS harassing innocent citizens and assuming everyone is guilty the minute they walk into the door. We have to find that balance. It is not an easy matter. I believe this legislation will help the IRS find its way back to that balance.

What does it do? It creates a board made up chiefly of private citizens, subject to the confirmation powers of the Senate, giving the Senate an opportunity to ask lots of questions of these new board members to see whether or not they fill the bill.

The board will also keep an eye on the IRS budget, report independently to the Congress its recommendations on IRS budget matters, and not have to go through the regular Government channels. The board will focus on long-term goals. It will also make sure the Service stays on track to meet these goals. It will also ferret out problems to help the IRS itself find solutions.

The bill creates much more personnel flexibility, making it easier for the new Commissioner, with his enthusiasm, who wants to get things shaped up, giving him flexibility to reward employees doing well. I think this flexibility will help the IRS attract competent people, people who are technically competent and management experts. You get what you pay for. If you want to get good people, you have to be able to pay them well and you have to give them the wherewithal to do the job right. There has not been sufficient flexibility to this point in the IRS.

This bill also reorganizes the IRS, somewhat in the same vein as a major American company, IBM, was reorganized when IBM years ago realized it was falling behind, that it was not serving customers, customers were not No. 1. It made dramatic changes. Mr. Rossotti was part of those changes at IBM, and we are hopeful some of the changes will work here.

What are some examples? One major example: Currently, when a taxpayer has a problem with the IRS and it involves several kinds of problems—say, income tax or payroll tax or a corporate tax is involved—the agent who handles the case transfers all the files over to the person responsible, say, for payroll taxes; if it is a corporate tax file, it is transferred to a corporate tax person; and if it is another problem, it is transferred to that person, essentially passing the buck. So when an individual taxpayer tries to find out what in the world is going on with his file, sometimes the file is lost, the person he or she calls doesn't know the answer to the question; it is just a mess.

How do we attempt to solve it? Essentially, the IRS now will be divided into four separate divisions: One for small business, one for large corporations, a third for tax-exempt institutions, and a fourth for individual taxpayers. Now, when you, a taxpayer, have a question for the IRS, one person is in charge of your file—one person, more accountability. If you are a small business person, it is the small business section; an individual taxpayer, the individual taxpayer section—even though you may have questions involving different parts of the code. That should help reduce ''buck passing.''

The bill also adds important new taxpayer protections to help protect citizens against arbitrary actions. There are penalty and interest provisions suspended or reduced. Too often, the IRS has taken advantage of the penalty and the interest provisions in the law to browbeat taxpayers. A number of due process requirements are created. For example, legislation would require the IRS to give a delinquent taxpayer 30 days' notice to request a hearing before property is seized. In addition, the IRS is required here to seize business property only as a last resort. That has not always been the case. It further prohibits the seizure of a personal residence without court approval. That is a major change.

The bill further makes it easier for an innocent spouse to get relief from tax debts that the guilty spouse may have accumulated. It shifts the burden of proof from the taxpayer to the IRS in court proceedings so long as the taxpayer keeps appropriate records and cooperates with the agency.

I am not positive this is exactly tailored the way it should be. Currently, in our judicial system, the burden of proof is on the Government when they bring an action against a citizen. That is the way it should be. Up to this point, that has not been the case with respect to our tax laws, the theory being that the taxpayer is the one who keeps the books and records so the taxpayer should have the obligation to show that he or she should not have to pay the taxes the IRS is seeking. The burden of proof still is on, probably, the wrong place. We have tried to find the right balance here. I hope this provision in the statute works. Only time will tell. If there are problems, we will have to address them.

The bill further extends the attorney-client privilege in most cases to accountants and to others authorized to practice before the IRS. Again, I am not sure how good an idea this is. It will make it more difficult for major accounting firms to sign off as to the financial statements of a company they are auditing. They may feel compromised because of this new provision. I hope this works. It may not. If not, we will have to come back and revisit it as well.

Finally, the bill before the Senate takes a first step toward addressing what may be the biggest contributor to taxpayer problems with our Tax Code; namely, all of us, Congress itself.

Witness after witness at our hearings complained about the complexity of the code. This bill requires that every tax bill in the future be accompanied by an analysis of whether it will further complicate the code, how hard it will be for taxpayers to comply with new laws. As we strive to achieve fairness in our code, we sacrifice simplicity. With this bill, we will theoretically be able to more clearly understand the extent of that sacrifice. I hope this works.

We need to address the complexity of the code. I am not certain this will work as well as it is cracked up to. This will only work if the Congress focuses with utmost intensity on this part of the change and focuses on how proposed change adds to the complexity. I worry that this will otherwise be window dressing, that the Service and the administration, Treasury, IRS, Congress, might gloss over this provision. It sounds good right now, but we will not follow up, do the hard work and heavy lifting, when the new provision is before us. It really depends upon us. It is like the Pogo cartoon, ''I have met the enemy, and he is us.'' This will work, the anticomplexity provision, only if we make it work. Time will tell.

This bill certainly clips the wings of IRS agents, but we all know that clipping the Government's wings too closely presents its own dangers. The Service estimates that the so-called tax gap, which is the measure of how much legitimately owed tax is not being collected, is now almost $200 billion a year. This amounts to more than $1,600 per year for every tax return filed by the rest of us—$1,600 per return, filed by the rest of us, is not being collected. Addressing this problem, unfortunately, is not in this bill. That has been left to another day.

I truly hope we have not done anything in this bill which will exacerbate

the problem further, because this bill may be sending a message to some American, ''Hey, the IRS' wings are getting clipped; I can get away with more; I don't have to report everything so much.'' That is not the message of this bill. The message of this bill is, the Service will treat individual taxpayers more like people and provide a service that it should be providing; that is, remembering that people are actually the employers in this outfit and the IRS is the employee.

We have a second problem not addressed in this bill, and that is the tax gap. I hope that is addressed in the not too distant future because it is a problem that is mounting with each passing day. Partly it is caused by the complexity in the code.

I am also concerned about how we pay for the lost revenues in this bill. I don't think it is the best result we could come up with. And I have further concern that the bill's provision may result in extended litigation, further slowing down our court system, because these are new provisions; they have to be interpreted. Lawyers are going to try to put one spin on it; another lawyer, another spin. A lot of the problems may end up in the courts.

I firmly believe we must not let another tax session go by without at least the taxpayer protections in this bill. I am pleased to support the conference report. I am pleased I can go back to my constituents, including the young lady who wrote that letter, to say: We have tried to fix your problem, we have gone a long way toward fixing your problem; it is not perfect, but it goes a long, long way.

In the end, Mr. President, the effectiveness of these provisions depends very much on the degree to which the White House, the administration, the Treasury, and the Congress continue to oversee the IRS, continue to have hearings into the IRS' operations, praising them when they are doing a good job, criticizing them when they are doing a bad job.

We are here today, passing this legislation, in many respects because both the administration and the Congress for way too many years have let the IRS drift.

There has been virtually no oversight. Treasury hasn't paid much attention to the IRS. Congress hasn't paid much attention to the IRS. As a consequence, they have kind of gone off in a direction that has not been as praiseworthy as we would like. So it is up to us, the people's representatives, to continue vigorous, aggressive oversight, if these provisions enacted today turn out to be as good as we all say they are and hope them to be.

I yield the floor.

Mr. GRASSLEY addressed the Chair.

The PRESIDING OFFICER. The Senator from Iowa is recognized.

Mr. GRASSLEY. Mr. President, there are two people I would like to mention before I make my remarks. I commend the chairman of the Finance Committee, Senator ROTH, for improving this bill as it has made its way through the legislative process. Too often, I see bills deteriorate as they are worked on by various subcommittees, committees, and on floors of the Houses of Congress. They sometimes deteriorate in the process to a lesser bill than we originally sought. This piece of legislation started out as a product of the National Commission on the Restructuring of the IRS and, for the most part, the recommendations of the commission were not changed as it went through the legislative process. But there were considerable additions made to this legislation. Senator ROTH needs to be complimented for making this a better bill as it is now in this conference report. Each step of the way it was improved, which is the result of the hearings that he had last fall and in the spring of this year.

The second person that I compliment is not part of the legislative process, but is the new Commissioner of the Internal Revenue Service, Mr. Charles O. Rossotti. He was appointed by the President last fall and confirmed and has been on the job now 8 or 9 months. I compliment him because he has not waited for Congress to act before making much-needed changes in the administration of the Internal Revenue Service.

What I sought when I wrote to President Clinton in December of 1996 was to urge that the President appoint a nonlawyer to be IRS Commissioner—the first time that that has been done in four decades. I recommended that it be somebody from the private sector, a nonlawyer, who would know how to run an organization. This person would know how to make the IRS should be: oriented toward serving the taxpayers. I didn't know that the President would take my suggestion so seriously. But he did. He appointed Mr. Rossotti.

Mr. Rossotti comes from a very successful career in the private sector, having formed a corporation of his own, from a few employees to thousands of employees. He left that environment—a very successful business—to serve the people of this country as IRS Commissioner. Being successful, as he was, would not have happened if he had not tried to serve his customer. So having that attitude come into the IRS will result in a breath of fresh air. It should make the IRS oriented toward consumer satisfaction. I have hope that he his insight will help the IRS respect the taxpayer, and as a result, it will make the collection of taxes much more efficient as well.

Mr. Rossotti has not waited for Congress to act until he started to institute a lot of reforms. I say that he, from day one, started to carry out the spirit of the commission's recommendations before they were ever enacted into law. He needs to be complimented for doing that.

On the first day that the Restructuring Commission met in the fall of 1996, various commission members were asked to tell what they thought we ought to try to accomplish through the coming year's work. When they got to me as one of the four congressional members of the commission, I said that I wanted to make sure that the IRS becomes more consumer friendly. If it became more consumer friendly, the taxpayer would honestly enjoy working with the Internal Revenue Service. I hope that is what this legislation does. Obviously, we won't know for several years if that sort of reform has been brought about, but that was my goal in the fall of 1996, and I think the commission's recommendations tended to go in that direction.

As I have complimented Chairman ROTH, I think the bill has even gone beyond our committee recommendations in that direction—ultimately, to eliminate the culture of intimidation within the IRS and to make sure that the IRS sets a standard for the taxpayers of this country. This bill will make the IRS deliver accurate information in a timely fashion and in a courteous way. In other words, this bill should make the IRS treat the taxpayer exactly as the IRS expects the taxpayer to treat it. The IRS expect prompt and accurate filing on April 15.

So today is a very proud day for me. It is a proud day for the U.S. Senate. Maybe it brings a little common sense to Washington nonsense as well. Today, we declare a victory—a victory for the American taxpayer and for Congress. We have done something very good in this legislation. This is Government serving the people at its finest. It is for causes such as this that I am in public service.

Let me explain why we did what this conference report does. I want to give you an example to explain why we found it necessary to pass a bill that comprehensively restructures and reforms the Internal Revenue Service. One Christmas Day, maybe 5 or 6 years ago, as I sat around the Christmas tree opening presents with my family, the telephone rang. On such a glorious day of good cheer and hope, I answered my telephone in high spirits. The woman at the other end of the line, a constituent of mine, was in tears. Her husband was critically ill and the IRS was coming after them for everything that they owned. I don't mean that they were coming after them on Christmas Day, but it was Christmas Day that this taxpayer of mine was bothered by this thought of dealing with the IRS.

The taxpayer of mine owned very little, but the IRS was after it. She had no idea what to do. She had nowhere else to turn. So on Christmas Day, that day of hope to us, she picked up the telephone and called me. I have my name listed in the telephone book, so I am easy to get ahold of. She called someone she had never met, someone she only knew by reputation. This woman was at the end of her rope and she had nowhere else to turn. She didn't understand what was happening to her. She only knew that the IRS was

harassing her to pay the debt that she didn't know they had, and it was not willing to work with her on that debt.

Let's think back to the hearings the Senate Finance Committee held in the last year. We heard from victims of the IRS, about harassment and about abuse. We heard from IRS employees about the culture of intimidation at the IRS, which results in taxpayer abuse and keeps good employees from climbing the career ladder. These hearings touched a nerve with the American public, and they did so for a very good reason. We all saw ourselves in those stories—either in the victim, or we knew that it could have been us.

There are critics of this legislation. To the critics I say this: We have different friends; we talk to different people. I am convinced that the critics have never spoken to a taxpayer facing the loss of his home, wondering where his family will sleep that night. They have never spoken with a woman who had IRS agents screaming and threatening her in front of her family. They have never spoken with the average taxpayer who works hard to make ends meet, pays his taxes on time and doesn't want to spend his kids' college fund on attorneys to fight the IRS. These are the people to whom I talk. These happen to be my constituents. These are the people who send me to represent them. This bill is for those constituents of mine.

It is for the average American taxpayer, who is neither an accountant nor a lawyer. It is for the average American taxpayer who is not sure how to navigate the system, but who wants to stand up for himself in true American fashion. It is for the IRS employee who wants integrity in his workplace and reward for a job well done.

This legislation is not a rash effort. It was not hatched overnight. Rather, it is the product of years of study and work. Senator KERREY and I were honored to serve on the National Commission on Restructuring the Internal Revenue Service. In June, 1997 this commission released an 80-page report of recommendations to radically restructure the IRS. These recommendations were turned into legislation, which Senator KERREY and I introduced in the Senate, and Congressman PORTMAN introduced in the House.

There are many people who worked on the effort you see before you today. I have already complimented Senator ROTH, the Chairman of the Finance Committee, for holding two series of important oversight hearings. These gave us further insight into the IRS and gave this legislation the momentum it needed. He also has shown great leadership in strengthening the House-passed bill, and navigating it through the conference committee.

Senator D'AMATO and Senator GRAHAM should be thanked for their leadership to provide relief for innocent spouses. Senator MACK should be thanked for his leadership in creating confidentiality between an accountant and his client. And, of course, my friends Senator KERREY and Congressman PORTMAN must be recognized for their untiring work, for endless hours on endless days, on the Restructuring Commission and this legislation.

Let's talk about what this bill does. First, it provides oversight and it mandates accountability. It was Justice Louis Brandeis who said, ''sunlight is said to be the best of disinfectants; electric light the most efficient policeman.'' This legislation provides sunlight and electric light throughout the IRS.

First, this bill creates a new Inspector General for Tax Administration within the Treasury Department. This new IG will be dedicated solely to oversight of the IRS. He or she will have all of the powers and responsibilities given by the Inspector General statute. This office will also assume most of the responsibilities now performed by the IRS' Inspection Service. This change moves the oversight function out of the IRS and into the Treasury Department where it can be more impartial and effective.

This bill also requires that this Inspector General for Tax Administration randomly audit IRS denials of public information requests. I have found, and have heard from others, that the IRS sometimes hides improprieties by claiming the information is protected for taxpayer confidentiality or law enforcement reasons. However, upon further investigation, it has been discovered that the redacted information has nothing to do with either taxpayer confidentiality or law enforcement. It simply admits IRS error and admits IRS error, and it gives them an opportunity to hide from public scrutiny. Claiming taxpayer confidentiality or law enforcement as a reason to redact or fail to release information lets the IRS avoid oversight by Congress, the press and the public.

To help guide this agency and keep it on track, this legislation also creates an Oversight Board. This Board should be comprised mainly of management experts, who will guide the IRS and keep it honest and well administered.

In addition, this bill makes it easier to hold IRS agents accountable for their actions—both good and bad. The bill makes it easier to fire bad IRS employees, and easier to reward outstanding IRS employees. It also makes it easier to sue the IRS for the actions of its agents. It expands the cause of action in civil court to permit up to $100,000 in civil damages or harm caused by an officer or employee of the IRS who negligently disregards the rules of that agency.

Another major achievement of this bill is that it increases taxpayer rights. As an author of the first two Taxpayer Bills of Rights, I am particularly qualified to testify to the importance of this section of the bill—the Taxpayer Bill of Rights 3, as we refer to it. This bill will help even the playing field even more between the taxpayer—particularly the average taxpayer who can't afford to spend a lot of money for counsel—and the IRS. It will help taxpayers to understand the process. It will help put customer service back into the Internal Revenue Service.

Specifically, this legislation shifts the burden of proof from the taxpayer to the IRS is many tax disputes. This bill also gives relief to innocent spouses. Innocent spouses are people who didn't take part in the tax shelter or tax planning that results in a tax assessment. Their marriage has broken down and they are left with little except the IRS pounding on their door—the door of the innocent spouse. It is important that we collect tax when it is due, but also that we don't collect money from people who are not at fault and who don't owe it.

Another important step—this bill increases the independence of the Taxpayer Advocate. The taxpayer advocate is renamed the National Taxpayer Advocate and the local problem resolution officers will become local taxpayer advocates. The local taxpayer advocates will report to the National Taxpayer Advocate rather than to the district director to avoid the intimidation that comes from such relationship with district directors.

This bill also gives the taxpayer relief from interest and penalties in some situations. For example, this bill suspends penalties while an installment agreement is in effect. It suspends the statute of limitations to file for a refund during times of disability. It gives taxpayers more due process rights before the IRS can levy or seize property, and makes it easier to contest the placement of a lien. And the IRS can't seize a principle place of residence or a small business until it has exhausted all other payment options.

In addition, this legislation makes important strides towards empowering taxpayers. I sincerely believe that educating the taxpayer is half of the battle. Americans are generally strong, self-reliant people. Letting them know their rights and responsibilities gives them the ammunition to stand up for themselves. For example, this bill requires the IRS to make extra effort to alert taxpayers to the joint and several liability incurred just by signing an income tax form. It requires the IRS to rewrite Publication 1, which is called ''Your Rights as a Taxpayer'' to more clearly inform taxpayers of their rights to be represented at interviews with the IRS, and if the taxpayer is represented, that the interview cannot proceed without the presence of the taxpayer's representative unless the taxpayer consents. The IRS also must include with the first letter of deficiency a description of the entire process from examination through collection, including the assistance available to taxpayers from the taxpayer advocate at various points in the process. And now any taxpayer in an installment agreement will receive an annual statement of the initial balance owed,

the payments made during the year, and the remaining balance.

This bill also provides greater taxpayer protection during the audit process. It extends the attorney-client confidentiality privilege to some communications between an accountant and a client. This bill makes it impossible for the IRS and the taxpayer to agree to extend the statute of limitations on collection actions beyond 10 years unless there is an installment agreement in place. Then the statute of limitations can only be extended until the end of the installment agreement, plus 90 days.

Further, the IRS must always inform the taxpayer of his or her right to refuse to extend the statute of limitation and to limit an extension to specific issues.

These are just some important aspects of this legislation. I think it is landmark legislation, at least landmark for the last 45 years. I am proud to be a part of this effort. This legislation reflects hard work by so many of us. This effort will be rewarded by the sunlight that will shine into the IRS, giving it the oversight that it needs and the accountability that the taxpayer deserves.

This is a great day. It will be a greater day if down the road a few years I come to the conclusion that this legislation has effectively eliminated the culture of intimidation within the IRS. Today this bill sets a standard for the IRS to treat the taxpayer the way they expect the taxpayer to treat the IRS. In other words, this bill helps the taxpayer get timely information, accurate information, and courteous service—because that is what the IRS expects of the taxpayer on April 15 each year.

I yield the floor.

Ms. MOSELEY-BRAUN addressed the Chair.

The PRESIDING OFFICER (Mr. SANTORUM). The Senator from Illinois.

Ms. MOSELEY-BRAUN. I thank the Chair.

I am pleased that we are finally completing action on one of the most important pieces of legislation this body will act upon, and that is the IRS Reform and Restructuring Act of 1998. This bill represents that first step toward restoring the confidence the American people have to have in our voluntary system of tax compliance.

Since its creation in 1862, the Internal Revenue Service has grown to become one of the largest Federal agencies, employing some 100,000 workers. In addition, it is an agency with massive responsibilities. In just 1997 alone, the IRS collected approximately $1.5 trillion and processed some 200 million tax returns. The revenues collected by the IRS are sufficient to fund the necessary activities of our Government. In concept, it is one of the most civilized tax systems in the world.

But it is no secret that taxpayers have lost confidence in our tax system. The public has lost patience with abuses that for years have been all too common within the IRS. In the interest of fixing this system, Congress created the National Commission on Restructuring the IRS almost 2 years ago. This important commission, which was made up of some 17 members and professional staff, examined the IRS for a year and developed a comprehensive report on changes that were needed to overhaul it. The work of this commission required hundreds of hours of private sessions with both the public and private sector experts, academics, and citizen groups to review IRS operations and services. The commission met privately with over 500 individuals, including senior level and frontline IRS employees across the country.

The work of this commission, which provided many of the recommendations included in this legislation, was invaluable in getting us to where we are today. I applaud my colleagues on the Finance Committee, and in particular Senator KERREY of Nebraska, for the leadership they provided as members of the national commission. I also thank our chairman, Senator ROTH, and ranking member MOYNIHAN for taking the next step and holding extensive hearings on this most important topic. Certainly without the hard work of these gentlemen we would not be here today.

The lack of confidence felt by the American people was made all too obvious during the many hearings that were held by the Finance Committee over the last 9 months. We heard from taxpayers, attorneys, accountants, and IRS employees who discussed their personal experiences with the complexities and frustrations of the IRS. I was outraged—I think we all were outraged—by the stories of armed raids on innocent taxpayers' property, unauthorized and unnecessary audits of working-class families, and excessive fees and penalties charged to taxpayers who were trying to pay their tax bills in a timely and responsible manner, and all sorts of other outrages.

The tales that were told at these hearings were appalling, but they were nothing new to thousands of taxpayers who themselves have had to experience it or know someone who has.

At one time in my legal career, back when I was an assistant U.S. attorney, I represented the Internal Revenue Service in its dealings with taxpayers. It was back then, frankly, I learned in dealing with the Internal Revenue Service the devil is in the details. I learned firsthand you have to focus on details when it comes to any issue when dealing with a bureaucracy as large as the IRS. And that is why I am so proud of playing a role in this legislative response.

I believe the details of this legislation will make a difference, a real difference. This bill attacks a big problem in sensible ways, and it brings much-needed change to the operation of the internal revenue system. It does it in ways that are fair, reasonable, and equitable for all taxpayers. It increases the protections and rights of American citizens in regard to the Service and the system.

I am pleased that one particular amendment I promoted was included in the bill. This provision will expand the ability of the taxpayer to recover their costs when involved in defending themselves before the IRS and the taxpayer wins. I think this provision is essential to ensuring that taxpayers are not forced to pay for IRS' mistakes.

There are other changes that I especially like. As the only woman on the Senate Finance Committee, I was particularly pleased that this legislation includes some relief for innocent spouses. All too often women are stuck holding the bills of their ex-husbands, only then finding out that their ex-spouse had not legally filed a tax return.

I was contacted by one of my constituents from Illinois who had been told by the IRS that she could lose her new home, be prosecuted for income tax evasion, and have her wages garnished if she refused to pay a tax bill that was owed by her ex-husband due to a fraudulent tax return he had filed during their tumultuous marriage, even though she had, in fact, signed it.

When she explained to the IRS that she had never been employed during the course of the marriage and could put them in touch with her ex-husband regarding that, the agent told her, ''What do we need him for? We've got you.''

Well, this legislation will make certain that those kinds of abuses against innocent spouses will no longer occur. This bill ensures that cases such as this never happen again, hopefully, and that the IRS will be encouraged to pursue both spouses and do the work that is needed to find out who owes what.

It provides greater protection for women by giving them notice of their rights and their obligations up front before signing on to a joint tax return.

The other list of positive changes that this bill makes to the current operation of the IRS, as well as the list of additional taxpayer rights, is quite extensive. This bill will allow taxpayers to enjoy a greater ability to sue the Internal Revenue Service when the IRS blatantly and intentionally disregards the law. It has a provision that will give the Secretary of the Treasury authority to provide up to $3 million annually in matching grants to assist low-income taxpayer clinics. There is a provision that will eliminate the penalty for failure to pay taxes when a taxpayer is paying those taxes under an installment agreement, which has been a huge problem. People find themselves with more penalties than they had to pay in underlying taxes.

For those taxpayers who undergo an audit, the bill includes procedures to ensure that due process is afforded to them. Also, with regard to seizures, before property is seized, there must be a process so that any lien, levy, or seizure will be approved by a supervisor.

Taxpayers will also be given greater access to installment payment agreements with the IRS, greater access to information about the appeals and collections process, and greater access to statements regarding payments and balance owed in installment agreements.

There is one other provision, Mr. President, that I am especially happy to see in the bill, and that is the provision that extends the confidentiality privilege to accountants in civil matters before the Internal Revenue Service. This provision, which some 78 percent of the American taxpayers support, will give all taxpayers equal confidentiality protections for their discussion, not just with their lawyers but also the federally authorized tax advisers. Low-income taxpayers who often cannot afford attorneys will, therefore, be provided the same privileges and benefits that other taxpayers have.

All of these changes are needed to amend the current operation of the IRS. The bill provides us with the historic opportunity to overhaul the Internal Revenue Service and transform it into an efficient, modern, and responsive agency. The IRS interacts with more citizens than any other Government agency or private sector business in America, and it collects 95 percent of the revenue needed to fund our Government. The bill we have before us is a thorough bill and makes vital changes to every aspect of the Internal Revenue Service's structure.

Mr. President, it is a sad reflection of the reality of our lack of confidence that, much like this cartoon, many Americans do not believe that this bill will cure what ails the system. I am sure the Presiding Officer can see it. The IRS is here as Dracula in the coffin with a stake through his heart, asking his gnome, ''You took names?'' ''Of course''—while the Senate celebrates. A lot of people think while we take the action we will take here, it is not going to really cure what ails the IRS —that after the Congress has had its say, they fear the IRS will go back to the bad old ways that undermined its reputation in the first place.

To that issue, I want to suggest to anyone listening that the answer lies, I think, in both cooperation and vigilance. We all need to work together to do our part to make sure that the accountability of the IRS remains assured. The Service has started to reform itself, and we have high hopes that the new Commissioner, Mr. Rossotti, will actually be able to implement the management changes directed toward putting the ''service'' back into the Internal Revenue Service, back into the IRS.

IRS employees, some of whom bravely stepped forward during the hearings to lament the state of affairs in the agency, can and must help with the healing and reconciliation of the Service with the American people. The Congress today is beginning to do its part. Much more needs to be done, to be sure. But because Congress, after all, is not blameless in creating the confusion and the complications that provided cover for excess and abuse, we need to take up tax simplification with the same purpose as we have taken up tax administration.

I am hopeful that the Finance Committee as a whole—or, if necessary, as a commission modeled on the Kerrey-Grassley commission—will take up tax simplification so the average citizen or small business will be able voluntarily to comply with our tax laws without incurring the huge transaction costs just to pay people to interpret the law for them. Tax simplification will also go a long way toward restoring confidence in our system of voluntary tax compliance.

In the final analysis, however, it will be the American people who do the most to keep the IRS on the right track. Abraham Lincoln once said, ''In this country, public opinion is all.'' He is right. The people got fed up with the abuse, and the Congress was moved to action. In this Republic, in this democracy, the Government is, after all, all of us. And so the passage of this bill will really be a reflection of public opinion operating in classic fashion in this country. It is, therefore, a victory that every citizen can and should celebrate. But keeping this victory will require our eternal vigilance.

Again, I commend the chairman of the committee for the brilliant hearings that gave rise to this legislation and for the purposefulness with which he has moved this bill to the floor.

I yield the floor.

Mr. ENZI addressed the Chair.

The PRESIDING OFFICER. The Senator from Wyoming.

Mr. ENZI. Mr. President, I, too, rise in support of the conference report to the IRS Restructuring and Reform Act of 1998. Passage of this legislation marks a monumental step in making the Internal Revenue Service more responsible to ''We, the people,'' the American taxpayers.

As the hearings before the Senate Finance Committee demonstrated, the IRS has all too often in recent years taken an adversarial posture against taxpayers. We in the Senate heard reports about IRS employees who were promoted based on the number of liens and collection actions against taxpayers. We heard stories about the IRS targeting low-income individuals and small businesses for audits, since they often did not have the resources to fight the IRS and are therefore forced to settle. We were told about audits and investigations based purely on political motives. We were informed of times the IRS had destroyed businesses, where they had wreaked havoc on private citizens' personal lives and seized assets based on accounting mistakes and clerical errors by the IRS itself. It is time these activities came to an end. This IRS reform bill will make the institution more service oriented and accountable to ''We, the people.''

Through the newly created oversight board, the Service will receive the direction and effective strategic planning it desperately needs. By shifting the burden of proof in factual tax disputes from the taxpayer to the IRS, this bill gives American taxpayers important procedural protections that even criminal defendants have enjoyed in this country for over 200 years. ''We, the people,'' will have due process before confiscation of personal property. The taxpayer will know the charges and have the right of appeal.

By expanding the confidential communications to cover accountants and enrolled agents as well as attorneys, this reform bill gives taxpayers greater freedom to seek tax advice from the tax adviser of their own choosing.

In requiring the IRS to collect allegations and document cases of employee misconduct and report this misconduct to Congress every year, the IRS reform bill requires the IRS to investigate itself and answer to Congress for any misconduct of IRS employees.

This reform bill even simplifies the Tax Code by reducing the holding period for optimal capital gains treatment from 18 months to the standard 12 months.

While the IRS reform bill does not provide all the solutions to our country's tax problems, it marks a significant chapter in bringing greater accountability to our Federal tax collection agency and greater respect for hard-working American taxpayers. The IRS reform bill moves us in the right direction, toward a system that is simpler and more fair for all Americans.

Yes, ''We, the people,'' have won a big one here. I congratulate Chairman ROTH and the Finance Committee. I also congratulate all the folks who shared—even though they were living in fear of their own Government. I am glad we were able to take these steps and look forward to the results.

I yield the floor.

The PRESIDING OFFICER (Mr. THOMAS). The Senator from North Carolina.

Mr. FAIRCLOTH. Mr. President, I rise to add my support to the IRS conference report. But before I do, one issue has just come to my attention that I want to mention. I have been told the IRS is challenging the charitable contribution status of funds used to purchase a special stamp, a stamp that I sponsored along with my colleagues, Senator FEINSTEIN and Senator D'AMATO, to fund breast cancer research. The IRS has now come along and challenged whether that contribution is going to be deductible or not.

I can tell them it will be. I hope the IRS does not fight the Congress and the American people in their effort to fight breast cancer. It is a worthwhile charitable cause, and it should not even be questioned. But I want to say to the IRS, if they continue to fight the breast cancer initiative, I will offer a legislative rider to the Treasury appropriations bill that will clarify and override their objections.

Turning to the bill before us, if ever there was an agency of the Federal Government that needed overhaul, it is the Internal Revenue Service. For years the American people have been telling the Congress that IRS was out of control, punishing taxpayers with crushing penalties and interest, and a nightmare of rules and regulations that no one understood, and that included the IRS. I held a hearing on IRS abuse in Raleigh, NC, last December. The stories I heard were absolutely heartrending. If we had not known they were true, we could not have believed them.

I introduced legislation to create a private citizens oversight board that would rein in the IRS. I propose giving the oversight board authority to cut through that impenetrable cloak of secrecy this agency has been showing the public for years. I want the board to have access to Internal Revenue working documents. I am pleased to see that much of what had been proposed has been put into this conference report. Chairman ROTH deserves tremendous credit for putting this bill together.

The IRS reform bill will create a new oversight board of private citizens.

The board will have authority to review the policies and practices of the IRS. It will have access to documents which were previously shielded from the public and the Congress.

This new board will help root out the abuses that were highlighted in the hearings that I held and the equally shocking hearings that the Finance Committee held. I don't think any of us were aware of what really was going on within the IRS and its relationship with the American taxpayers.

The bill will provide protection from excessive penalties and interest and protect the spouse from tax cheats.

This is not the end but the beginning of fundamental reform of the IRS—reform and a change of attitude.

Make no mistake, many in the Internal Revenue Service will not be happy with this bill, and they will either want to foot drag the changes or alter them. But let me say that one great thing has happened to the IRS, and that is the new Commissioner, Mr. Charles Rossotti. He is going to bring a breath of fresh air to a very stale-air organization. He has experience in the private sector, and he is taking this job at great personal sacrifice. He has spent a major part of his career in data processing and in the type of electronic data processing and handling that the IRS needs, but in which they are so woefully inadequate. In fact, they spent $3 billion for new equipment and found that it did not work after they had spent the money.

As a member of the Appropriations Committee which overseas the IRS budget, I intend to watch the IRS, and I will be there closely watching to see if they follow the reforms that this bill mandates. In particular, I am going to watch the IRS union representative who was made a member of the oversight board, despite my objections, as well as the objections of Senator ROTH and others. My message to the unions and to the union representative and the rest of the IRS personnel and bureaucracy is this: Do not oppose IRS reform, but accept and take it and get going with making it the law of the land. The Congress and the American people have spoken, and this agency is going to be cleaned up with or without your acquiescence. If you try to undermine these reforms, there will be more legislation and stricter legislation in future sessions of the Congress.

In summary, let me say to the IRS personnel and its representatives and the entire IRS bureaucracy that Congress is very closely observing the actions and will be observing the actions of the IRS in how it deals with the American people. Do not oppose us, support us, and we will have a great revenue collection service. Do not go back to the old ways, but move into the new law and do it with enthusiasm.

Mr. President, I thank you, and I yield back the remainder of my time.

Mr. WELLSTONE addressed the Chair.

The PRESIDING OFFICER. The Senator from Minnesota.

Mr. WELLSTONE. Thank you, Mr. President.

Mr. President, I bring to the attention of my colleagues a couple of issues that relate to this IRS conference report that is before us.

First of all, my colleague from North Carolina was conveying a message to labor. He was talking about the fact that he was going to be very vigilant and he was going to be watching closely what happens with the oversight board. I think we should be vigilant and pay attention to what happened in this conference committee.

I bring a couple of matters to the attention of my colleagues. I, first of all, will start out talking about veterans. I know that my colleague from West Virginia, who has been such a powerful advocate for veterans, will also speak about this, and I understand my colleague from Washington will be on the floor later taking action, and I will be pleased to join her.

Let me go through this very briefly. As the highway bill—called the ISTEA or TEA–21 bill—moved to the House, and Members of the House wanted to add on more projects, the question was how to fund it. The way it was funded was to take an estimate from the Office of Management and Budget having to do with whether or not there would be compensation to veterans for illnesses caused by their addiction to tobacco. Cigarettes were handed out like candy to veterans when they were in the service.

The decision was made that veterans should not receive this compensation. OMB said this would lead to a savings of about $17 billion. I think CBO said more like $10 billion, but conferees used the $17 billion. That money, I say to my colleagues, if not going to direct compensation for veterans, at the very least should go to veterans' health care.

I cannot even tell you how many calls we get in our Minnesota office from veterans. It is really shocking the number of veterans who fall between the cracks. We have an aging veterans population. We don't know what to do as more veterans reach the age of 85 or how they will be taken care of in the veterans' health care system. We have Vietnam vets suffering with PTSD who drop in our office who still need a lot of help. A third of the homeless people in this country are veterans, many struggling with substance abuse, who need help. We have a VA health care system that has been put on a flat-line budget that won't work. We are talking about whether or not we are going to live up to our commitment to veterans.

There was a technical corrections bill to this highway bill. Senator ROCKEFELLER and I intended to have an amendment knocking out this $17 billion transfer of funds that should be going to veterans and instead was put into the highway bill. That is correct, I say to my colleagues, that is exactly what happened. I didn't vote for the bill for that reason.

The majority leader did not want to afford us the opportunity to have an up-or-down vote on our amendment on the technical corrections bill. So he took the technical corrections bill and had the conferees put this into the IRS conference report. Therefore, we can't amend it.

I bring to the attention of my colleagues that this was outside the scope of conference, as I see it. I think Senator MURRAY and others will have more to say about this.

Certainly, in this IRS reform bill that passed the Senate and the House, we didn't do this, but in the conference report, things were loaded on, and one of them was essentially this technical corrections bill that did not give us the opportunity to knock out this transfer—OMB says $17 billion; I think that is too high. That $17 billion either should have gone directly into compensation for veterans, vis-a-vis their tobacco addiction, or at the very least should have gone into veterans' health care.

Therefore, questions should be raised about this conference report that is before us. I say to my colleagues, Democrats and Republicans alike, the VA-HUD appropriations bill, of course, has been pulled. But the first opportunity I get, I will be back with an amendment to knock out this provision that took $17 billion, or thereabouts, that should have gone to veterans and instead put it into highway projects. We will come back to this, and we will have an up-or-down vote. First point.

Second point. Boy, I will tell you, conference committees! I say to my colleague from Wyoming, I used to teach political science classes. I have to tell you. You know, I feel guilty. I need to refund tuition to students for

those 2 weeks I taught classes on the Congress. I was so off in terms of a lot of the decisionmaking.

I should have focused on the conference committees as the third House of the Congress, because these folks can do any number of different things. And the thing that drives me crazy is you can have a situation where the Senate did not have a provision in the bill, the House did not have a provision in the bill, and the conference committee just puts it in the bill. Then it comes back for an up-or-down vote. No opportunity to amend.

Or you can have a situation where the Senate and the House pass bills with a provision in them and the conference takes it out. It is, I think, the least accountable part of decisionmaking in the Congress.

Now, we have a couple of provisions of this bill that I think are worth talking about. One of them is a provision that was a drafting error. I would like to include in the RECORD a piece by David Rosenbaum of the New York Times of June 24: ''A Mistake Prevails, as Certainly as Death and Taxes.'' I ask unanimous consent that this be printed in the RECORD.

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

A MISTAKE PREVAILS, AS CERTAINLY AS DEATH AND TAXES

(By David E. Rosenbaum)

WASHINGTON, June 23—The tax code is chock full of benefits for the wealthy. Most of them were put in on purpose. But last year, one got in accidentally.

Now a powerful Congressman has used his influence to keep on the books this tax break for rich people that no one intended to be in the law in the first place.

The only beneficiaries of the mistake are the heirs of a few hundred people who die each year and leave estates worth more than $17 million. Each of those estates will be saved more than $200,000 in taxes. The Government will lose an estimated $880 million in revenue over the next decade.

After the mistake was caught, the Treasury Department and the Senate took steps to correct it before it could be taken advantage of.

But Representative Bill Archer, the chairman of the House Ways and Means Committee, blocked them. At his insistence, a House-Senate conference committee decided last week to keep the tax break in the law. Mr. Archer says he prevented the correction to express his fervent opposition to inheritance taxes, which he calls ''death taxes.'' Mr. Archer, a Republican, represents a district in Houston that is one of the wealthiest in the country and presumably one of the likeliest to have someone die and leave an estate worth more than $17 million.

This all started when someone on Congress' technical staff made a mistake in the drafting of the mammoth balanced budget and tax cut law that Congress approved and President Clinton signed last summer.

Such mistakes are common in big, complicated tax bills. Several years ago, for instance, a measure dealing with tax write-offs for race horses referred to ''houses'' instead of ''horses.'' Normally the errors are repaired in what is known as the technical-corrections section of the next tax bill to go through Congress.

The 1997 tax law increased the amount in estates that is exempt from Federal taxation. Under the old law, the first $600,000 of an estate's value went untaxed. The new law raised the excluded amount to $625,000 in 1998, to $650,000 in 1999 and, in continued increments, to $1 million in 2006.

The exclusion is particularly important to heirs because the estate tax rate is high, beginning at 18 percent and rising to 55 percent on the taxable amount over $3 million.

The old law required the value of the exclusion to be gradually eliminated, a process called a phase-out, on estates worth more than $17,184,000.

According to the Internal Revenue Service, about 300 tax returns were filed on estates worth more than $20 million in 1995, the last year for which statistics are available. Because stock prices on average have doubled since then, it is safe to assume that more such estates will be taxed this year. But the total number should not be more than several hundred.

Everyone agrees that the lawmakers who voted to increase the exclusion intended to retain the phase-out. But somehow in the drafting, that did not happen.

The error was quickly caught. A private tax lawyer apparently spotted it and called it to the attention of the Congressional tax staff. The tax staff recommended that it be corrected, and tax specialists at the Treasury Department agreed.

It looked like one of the dozens of mistakes that would be routinely repaired in this year's technical corrections bill before anyone's taxes could be affected. Indeed, the Senate included a correction in its version of the bill. But in the House, Mr. Archer balked. And when the measure—a small part of the legislation to overhaul the IRS—got to conference, he refused to budge.

Since no one in the Senate felt as strongly about correcting the mistake as Mr. Archer felt about about letting it go uncorrected, the conferees agreed last week to leave the tax break in the law.

Mr. Archer explained his position in a letter he wrote this month to the National Federation of Independent Businesses, an organization representing small businesses that opposes estate taxes but did not specifically lobby on the provision in question.

''While some might argue that the proposed change is a mere correction of a drafting error made last year, I view it as an increase in Federal death tax rates,'' Mr. Archer wrote.

The letter added: ''I believe we should reduce or eliminate the unfair death tax. Accordingly, I cannot support any change in law that would go in the opposite direction by increasing death tax rates.''

Mr. Archer's spokesman, L. Ari Fleischer, said the chairman's position well illustrated the importance in which party controls Congress.

''When the Democrats controlled Congress and drafting errors worked against the taxpayers, the Democrats let them stay in the law,'' Mr. Fleischer said. ''Now, when one works against the Government and for the taxpayers, we're in no rush to correct it.''

Mr. WELLSTONE. Chairman ARCHER wanted to make sure that for those Americans with estates worth more than $17 million, that we give them a special break. That is correct. Those Americans who are struggling with estates worth more than $17 million, they got, roughly speaking, an additional $200,000 break by mistake in last year's budget bill. The Senate corrected that mistake, but the correction got taken out in this conference committee.

I hear my colleagues talk about IRS reform. How does that add up to reform? We have these Orwellian titles. We call everything ''reform.'' To most people in the country, when they find out about it, they do not think it is reform. We have paycheck protection that does not protect the paycheck; we have the Family Friendly Workplace Act which isn't friendly to the family; we have the TEAM Act which has nothing to do with teamwork, so on and so forth. Now this is called reform, and we give this break to folks with estates worth more than $17 million.

The second issue in the conference committee had to do with capital gains. I ask unanimous consent that a piece by Richard Stevenson of the New York Times on June 24 called ''Break in Capital Gains Tax Is Added to I.R.S. Overhaul'' be printed in the RECORD.

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

BREAK IN CAPITAL GAINS TAX IS ADDED TO I.R.S. OVERHAUL

(By Richard W. Stevenson)

WASHINGTON, June 23—Congressional leaders agreed today on a plan to give investors a break on capital gains taxes, attaching the measure to an overhaul of the Internal Revenue Service that appears headed toward speedy final passage.

The change, agreed to over several days of negotiations among members of both parties, would reduce to 12 months from 18 months the period that investors must hold stocks, bonds and other assets to qualify for the most favorable capital gains tax rate. The change would be retroactive, effective for all sales as of Jan. 1, 1998.

Although the 18-month holding period was created by last year's tax law at the Clinton Administration's insistence in an effort to reward long-term investment and discourage speculation, Administration officials said tonight that they expected the President to sign the new legislation after final passage by both houses.

Republican leaders are trying to keep their tax-cutting efforts in the limelight as they begin gearing up for the Congressional elections this fall. So, now that they have won agreement to reduce the holding period necessary for the most favorable tax rate on capital gains, they plan to turn to efforts to reduce the rate itself. Speaker Newt Gingrich will propose on Wednesday that the top rate on capital gains be reduced to 15 percent from 20 percent, adding the proposal to an already lengthy tax-cutting wish list that Republicans have yet to find the money to pay for.

The change to the capital gains holding period was one of a number of issues settled today as House and Senate negotiators reconciled the slightly differing versions of the I.R.S. overhaul bill passed with overwhelming bipartisan support by both chambers. Republican leaders said they expected the final version of the bill to win passage in the House this week and in the Senate next month.

The bill would set in motion the most sweeping overhaul of the tax collection agency in four decades. It would create an independent oversight board, provide taxpayers a range of new legal protections in disputes with the I.R.S. and spur a broad internal reorganization of the agency.

It was precisely the bill's broad bipartisan support, and the likelihood that President Clinton would not dare veto it, that emboldened Republicans to add the provision shortening the capital gains holding period.

The provision was proposed by Representative Bill Archer of Texas, the chairman of the House Ways and Means Committee, who early this year made the change a top legislative priority. Mr. Archer said today that the measure would make calculating capital gains taxes simpler for millions of people who, as a result of the 1997 law, had to grapple this year with a three-tier rate system that many taxpayers complained was excessively complex.

But the change would also amount to a tax cut for people who sold stocks or other assets after holding them between a year and 18 months. Here is why:

Under last year's tax law, gains on investments held for 12 months or less were taxed as ordinary income. Gains on investments held from 12 to 18 months were also taxed as ordinary income, although only to a maximum rate of 28 percent. Gains on investments held more than 18 months were taxed at a maximum rate of 20 percent, except for people in the 15 percent income tax bracket, who faced a maximum capital gains rate of 10 percent.

But if the agreement struck today becomes law, only gains on investments held a year or less will be taxed as ordinary income, while gains on investments held more than a year will be subject to the 10 percent capital gains rate for people in the 15 percent bracket and the 20 percent maximum capital gains rate for everyone else.

The I.R.S. has not yet determined how many people paid the intermediate rate—the rate on assets held between 12 and 18 months—in calculating their taxes for 1997. For 1996, the most recent year for which figures are available, 16.6 million tax returns reported a capital gain.

Congressional aides said Mr. Archer's provision would cost the Government about $2 billion over 10 years, by effectively reducing the tax bill for people who sell investments after holding them between 12 and 18 months.

Capital gains taxes have been debated by economists and politicians for decades, and have been the source of bitter political disputes between Democrats, who say cutting the rates amounts to a giveaway to the rich, and Republicans, who say that lower rates spur investment and help improve the economy's long-term growth capacity.

In proposing a rate cut, Mr. Gingrich seems determined to reopen that debate. Aides say he will argue that Congress has more room to cut capital gains taxes than official revenue estimates would suggest because Congress has consistently underestimated how much revenue will flow into Government coffers after a rate cut.

Many Republicans believe that capital gains are no longer an issue only for the wealthy, given the wide-spread stock holdings among the middle class. But Republicans have already promised to push this year for a reduction in the so-called marriage penalty, the anomaly in the tax code that yields a higher tax bill for many two-income married couples than for two single people with the same incomes. They are also pressing for reductions in estate taxes.

But Mr. Clinton has signaled his opposition to any large-scale tax cut this year. And Republicans are feuding among themselves over how deeply they are willing to cut.

In all, the I.R.S. legislation will cost $13 billion over 10 years, mostly from revenue that the Government will not collect because of the new rules protecting taxpayers from aggressive collection action by the agency.

To help pay for the bill, House and Senate negotiators agreed to a provision offered by Senator William V. Roth Jr. of Delaware, the chairman of the Senate Finance Committee, that will encourage some relatively wealthy elderly people to shift savings from one form of individual retirement account to another.

While the shift has long-term benefits to the individual, it creates an immediate tax liability that will generate an estimated $8 billion over 10 years. Democrats had strongly opposed the provision, saying that by the second decade it would start costing the Government billions of dollars a year in lost revenue.

Mr. WELLSTONE. So now we have an addition, in the dark of night, where the conference committee sneaks in another indefensible tax cut to wealthy people. That was not the bill that passed out of the Senate. I do not think it was in the House version. But in the conference committee it was put in.

So, colleagues, I think there will be another effort on the floor, and I am pleased to join with my colleagues in doing this—with Senator DORGAN and others—which will essentially say this is outside the scope of conference. It was not passed by either body and should not be in there. We will have a ruling by the Chair, and maybe we will have an up-or-down vote.

But I just point out that while there are some very good things in this piece of legislation—my colleague from Nebraska was one of the leaders in this effort with very, very good things that people around the country appreciate. But then we go to the conference committee, and we have a couple things that happen which are not democratic, with a small ''d,'' not accountable, not decisionmaking that I think makes a whole lot of sense.

To the veterans, I say on the floor of the Senate: count on my support, working with Senator ROCKEFELLER, working with Senator MURRAY, and working with others to, one way or another, try to knock out this transfer of funding, however it is estimated, $17 billion or less, that should be going to veterans in direct compensation or should be going to veterans' health care, as opposed to being put into the highway bill for different projects.

And the second thing I want to bring to everyone's attention is cuts in capital gains for the wealthy, in the dark of night, added in the conference committee. And then finally the estate tax break—and I see my colleague from Nebraska here—which was actually corrected in the Senate bill and then dropped in conference. So we had a correction which would not have given the break to these poor folks with estates worth $17 million and more. And it could have easily been put in the conference committee. That is what we did on the Senate side. But, no, it was dropped.

So, colleagues, we are going to, I think, have some debate and some action on the floor this afternoon on this. I will be pleased to join other colleagues on both of these questions. And before you start calling this a reform bill, take a very close look at what was added to this bill, or what was dropped from this bill, in the conference.

I yield the floor.

Mr. DURBIN addressed the Chair.

The PRESIDING OFFICER. The Senator from Illinois.

Mr. DURBIN. Thank you, Mr. President.

I thank my colleague from Minnesota for the remarks which he has made.

The Internal Revenue Service, the agency we love to hate every April 15. We write out those checks. It is our responsibility as citizens of this country. But it hurts—all the money we send them. Then these hearings were held, and we found out that this agency, collecting taxes, has been using heavy-handed tactics, sometimes with not the most basic courtesy. We have a right to be upset, and because of that, Congress—the House and the Senate; Democrats and Republicans—and the President said, let us do something about it. And we set out to make some rather significant changes in the way the Internal Revenue Service does business.

I am glad to see that happen. But I have to be a little bit wary of what the result might be. You see, in my home office in Springfield, IL, I received a phone call in the midst of this debate. And a gentleman said to one of my staffers, ''Thank goodness this Senate has finally awakened to these thugs at the Internal Revenue Service. Their abusive conduct is just horrible. And now finally you're going to change this system.'' And my staffer said, ''Have you had a personal experience?'' ''Well, yes, I did,'' he said. ''And these people from the Internal Revenue Service just hounded me and my family to no end.'' And he said, ''Thank goodness you're finally doing something about it.''

My staffer said, ''Was it a serious problem?'' ''Well,'' he said, ''they made it out to be a serious problem.'' He said, ''I had a little problem with reporting on my income tax.''

My staffer said, ''What was the problem?'' He said, ''Well, I failed to file my income tax return.'' My staffer said, ''You didn't file your tax return?'' He said, ''Well, that's right.'' And my staffer said, ''Well, that can be serious.'' He said, ''Well, it was an oversight.'' My staffer said, ''How many times have you failed to file a return?'' He said, ''3 or 4 years,'' and added, ''You would think that was a crime by the way these people act.'' Well, it is a crime.

I hope that those who are critical of the Internal Revenue Service understand that we still rely on them and give them an important responsibility. The 99-plus percent of Americans who dutifully, willfully, voluntarily file their income tax returns each year are counting on the Internal Revenue Service making sure everybody else does, too. We are all part of the same American family. We all bear this responsibility.

So as we talk about reforming this agency, let us not lose sight of the bottom line. They have an important job to do to collect the money to provide for our national defense, education, highways, and so many other things on which we rely.

This bill went through a lot of different incarnations. I think the final bill, as it applies to the Internal Revenue Service, is a good one because it makes some rather significant changes.

I commend Senator GRASSLEY and Senator BOB KERREY of Nebraska, who was just with me on the floor. They headed the IRS Restructuring Commission. And under their leadership, the IRS commission produced a collection of very thoughtful recommendations, many of which are included in this conference report. Senators ROTH and MOYNIHAN have led a real truly bipartisan effort to make the commission's recommendations a reality.

I also commend the gentleman whose name was mentioned a moment ago, and that is the new IRS Commissioner, Charles Rossotti. His is not an easy job. He came from the private sector at great personal and financial sacrifice in the true spirit of public service to lead this important agency.

One of the first things that hit him between the eyes is the so-called Y2K problem, the computer problem that when we switch over in the next century, will the computers get it right? Will they know we are going to the year 2000 and not the year 1900? It sounds so simple. When you look at all the computers in America and all the programs and look at the Internal Revenue Service, you can understand that Mr. Rossotti and most of the people at the IRS are consumed with the responsibility of getting it right and making these computers understand we are headed to the 21st century and not to restart the 20th century.

There are parts of this bill that, I think, are very positive. The restructuring of the management and governance of the IRS so it operates more like the private sector—that certainly is a step in the right direction. The Commissioner asked for, and received, greater flexibility in managing his IRS workforce. We now make it easier for taxpayers to file their returns electronically by extending the due date for these returns from February 28 to March 31. The bill also requires the Secretary to develop a procedure that will allow taxpayers to confirm their return without having to send in their signature.

We establish taxpayers' rights. As a practicing attorney before I was elected to the House of Representatives, I represented clients before the Internal Revenue Service. That was no mean feat. It is one of the few experiences in the law in America where you are guilty until proven innocent, and we assembled the data necessary to prove our innocence and did our very best. I didn't understand the gravity of that challenge until my own small business was audited in Springfield, IL, and then I went through it personally. I am glad to say we didn't have tax liability added to it as a result of the audit, but I learned first hand how daunting it is to challenge the Internal Revenue Service.

Our bill says the burden of proof will be on the IRS in disputes that come up before the IRS Tax Court dealing with income, estate, and gift taxes, provided the taxpayer is cooperating by providing access to information and documents related to the return. So that gives the individual taxpayer, the business person, a little better chance of being treated fairly.

There was also a provision in the law which was brought out during the course of the committee hearings which was very troubling. A lot of innocent spouses who may have put their name on the tax return at the request of their husband or wife, not knowing the contents, found out in later years, even after a divorce, that if something was wrong in that return, they, too, could have been held liable—in fact, criminally liable in some instances. We have tried in this law to define ''innocent spouse'' in a way so that those who are truly innocent do not bear that responsibility.

We ease interest and penalties. Currently, for example, if a taxpayer makes an honest mistake—underline ''honest mistake''—it might be several years before the IRS discovers it. Even if it is an honest mistake, it makes sense for the IRS to impose a penalty just as any other business would if you were underpaying bills. What doesn't make sense is for the IRS to charge interest and penalties during the time in which the taxpayer is unaware of the mistake. That is corrected in this bill.

There is more congressional accountability, and that has been referred to on the floor. Yes, it is true, Congress will be watching the Internal Revenue Service more closely.

There is another provision which I think is important so that taxpayers across America don't get the wrong impression. We ask the Internal Revenue Service and the Treasury to report to us annually in terms of compliance; that is, what percentage of American taxpayers are meeting their legal obligations and filing their taxes and what percent are not. If we see an increase in those who are not meeting their legal obligation after we pass this, we are going to have to address it again, because, as I said, the vast majority of Americans do pay their taxes and pay them on time.

Those are the good parts of the bill, and they are extremely good parts of the bill. I think the bill, when viewed in this context, is a plus. Unfortunately, in the dead of night, in the depths of the conference, some people couldn't leave well enough alone. They thought this bill was so popular and so destined for success, they couldn't wait to put their own amendments on the bill, none of which has anything to do with reforming the Internal Revenue Service, but all of which have something to do with our Tax Code and our Treasury and whether or not we are creating breaks in this bill that we shouldn't.

One tax break has to do with a change in individual retirement accounts. I like IRAs. I think they have been good for America. A lot of people were able to save money, they are glad they did, and now it has grown over time and it will help them retire. I think we should expand IRAs, particularly for working families so they have a way to put a little money aside for their future needs. The Senator from the State of Delaware, Senator ROTH, created the so-called Roth IRA. I kid him so much about the publicity he is receiving. No one will ever be able to defeat him. He is the author of the Roth IRA, and he will be remembered for that and many other things for years to come. It expanded the idea of an individual retirement account and gave Americans more options.

Unfortunately, in this bill we have taken a new twist on this IRA, and created even more tax opportunities for those at higher incomes, under the name of an individual retirement account. Do you know what it will cost us when it is all said and done? It will cost the taxpayers some $13 billion—that is ''billion dollars''—$13 billion.

A year ago, this Senate was consumed with the debate over amending the Constitution to balance the budget. We had given up on the idea of balancing the books here and said, ''That is it, put it in the Constitution, and let the courts enforce it.'' That debate went on and on and on. The amendment failed by one vote. So here we are, a year later. Are we talking about the deficit and balancing the budget? No. Instead, in this bill and others, we are talking about a surplus and spending $13 billion we don't have to create tax breaks for wealthy individuals. I don't think that makes sense. I think that is very shortsighted. In the long haul, I think we will regret it.

There is a reference, as well, to a provision in this bill which has nothing to do with the underlying legislation about the Internal Revenue Service, a provision that will deny veterans medical benefits. Why? Why, in God's name, would that be included in the Internal Revenue Service reform bill? It shouldn't be.

So I find myself in a dilemma as a member of the conference. When I saw all of the baggage being loaded on to this bill, I refused to sign the conference report. I said I would not put my name to this, not because the underlying bill is bad—I think it is good—but because of all of the people who just couldn't suppress the urge to add another ornament to the tree, something they personally wanted.

Now this bill comes to the floor, and those of us who like the underlying bill and despise the amendments added to it are in a real dilemma. I will probably end up voting for it, but it will be reluctantly. I can guarantee you this: If this passes—and I guess it will—I hope that others will join me, Democrats and Republicans, to make sure that we strip out these little baubles that have been added to the bill that, frankly, are not in the best interest of

this Nation. They benefit a handful of wealthy people instead of Americans who deserve the real help and the real break in this legislation.

Mr. President, I yield back the remainder of my time.

The PRESIDING OFFICER. The Senator from Alaska.

Mr. MURKOWSKI. Mr. President, I ask unanimous consent for such time as I need to complete my statement concerning the Internal Revenue Service

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

Mr. MURKOWSKI. Mr. President, as a member of the conference committee, I rise in support of the conference report on this historic piece of legislation which will overhaul the agency that is most feared by the American people, the Internal Revenue Service.

However, I want to make sure that the RECORD reflects my compliments to those many dedicated IRS employees who were not, and are not, a part of the abuses or the horror stories that we heard during the Internal Revenue Service hearings held before the Finance Committee. These are the many dedicated individuals doing their job in a satisfactory manner.

With the Finance Committee hearings that began last September and ended in April, the American public heard some chilling testimony, testimony of an agency that is simply out of control and an agency with no or little accountability.

For fishermen in Alaska, the conference report retains an important change that was proposed by Senator STEVENS and myself. Under our amendment, it will be far more difficult for the IRS to seize limited entry fishing permits. IRS will have to factor in the amount of money a fisherman will earn if he kept his fishing permit before embarking on a seizure. And even if IRS determines that future earnings will not be sufficient to pay a tax debt, the fisherman will, for the first time, be able to appeal that decision—the point being, once the fisherman loses his or her fishing permit, they do not have a source of revenue for payment of taxes; as a consequence, the IRS is very unlikely to make a recovery.

Another important change we've made prevents IRS from harassing the divorced woman for her ex-husband's tax cheating. Under the Conference agreement, divorced or separated innocent spouses will only he held accountable for taxes on their own income, not on the taxes owed by their spouse.

We heard some horror stories in testimony, Mr. President, from women who were subjected to harassment by the IRS when, clearly, their husbands were cheating on their own taxes in an effort to evade taxes through tax shelters, and so on, without any knowledge of the spouse.

In addition, we've added a rule suspending interest and penalties when the IRS does not provide appropriate notice to taxpayers within 18 months of filing. Although I preferred the Senate provision suspending interest and penalties if IRS fails to notify the taxpayer within 12 months, I was persuaded to delay the 12-month rule for 5 years to enable IRS to update all of its computers to meet this standard.

The important thing for taxpayers to know is that long notification delays by IRS will no longer benefit the Service because it will not be able to stack penalties and interest on taxpayers who may have unwittingly made a mistake on their returns.

We've also changed the burden of proof in cases coming before the Tax Court. This is a long overdue change. When American citizens go into a court, they should be presumed innocent, not guilty until they can prove their innocence. That principle is enshrined in our Constitution and must apply in tax cases as well as any other cases. Now it will.

Mr. President, as I said earlier, the culture at the IRS must change. This bill makes very important changes that should give the American public more confidence that if they make a mistake on their tax returns, they will be treated fairly by their government and not subjected to threats and harassment.

But this bill is just a first step. It is incumbent on the Finance Committee to hold the agency accountable for implementing this bill. More oversight is needed because it is only through oversight that we can hold this agency accountable to the American people.

Finally, I note that problems between the IRS and taxpayers could be greatly minimized if we overhauled the far-too-complex tax code that is so intimidating that less than half of all taxpayers have the confidence to fill out their returns by themselves.

I ask each of my colleagues to address his or her own tax situation relative to how many Members of this body do their own tax returns. I must admit that I, for one, do not, simply because of the complexity.

I believe fundamental tax reform is the most important thing we can do to restore public confidence in the tax system. This conference report takes a small, but much needed step toward simplification. It changes the holding period for capital gains from 18 months to 12 months. I strongly support this change on both economic grounds and because this will significantly simplify tax filing for any individual who owns a mutual fund or shares of stock.

Mr. President, this bill is an historic milestone and I expect it will pass with overwhelming bi-partisan support. I hope that next year we can produce fundamental tax reform that will have similar bi-partisan support.

Mr. President, the conferees included a provision which is unrelated to IRS reform but will have an important effect in our on-going debates about international trade. We have included a provision that changes the name of ''most favored nation'' trade status to ''normal trade relations.''

This is a long overdue change that I strongly support. For many years, we have debated extending normal trade status to some of our former adversaries such as China. In determining whether to treat imports from these countries in the same way as we treat imports from our allies, such as Japan and Great Britain, the term ''most favored nation'' has historically been used.

That term ''MFN'' has caused confusion among many members of the public, for it implies that we are granting a special favored status that is better than what we grant our other trading partners.

As my colleagues in the Senate know, MFN—most favored nation—merely grants equal status, not greater status, for those countries. Changing MFN to normal trading relations should do a lot to clear up public confusion and allow us to debate the issues with a clearer focus.

Mr. President, my hope is that my colleagues will support the conference committee's report with regard to the IRS, and, as a consequence, I thank the President and I yield the floor.

Mr. COATS addressed the Chair.

The PRESIDING OFFICER. The Senator from Indiana.

Mr. COATS. Mr. President, I don't intend to speak for more than about 5 minutes. I thank the chairman of the Finance Committee for granting me this time. I also want to thank my colleague and friend, Senator ROCKEFELLER from West Virginia, for deferring so I can maintain a schedule. I will be brief.

I am enthusiastically supporting the product brought out of the Finance Committee that we will be voting on shortly to rein in what has been in many instances an out-of-control agency that has, I think, trampled upon some liberties of the American people. I commend the Finance Committee for doing this. It is much needed reform. I am glad that we are finally here on the floor debating and, hopefully, ready to pass this.

Former Chief Justice John Marshall, in a landmark case many of us learned in law school, McCulloch v. Maryland, said that ''the power to tax involves the power to destroy.'' We understand that the power to tax is a power that is granted to Congress. So we have no one to point a finger at in that regard other than ourselves. But the power to destroy, I am sure, Marshall was referring to was the fact that taxation, if improperly applied, can destroy.

But there is a second point to that which I think is important; and that is, if the administration of the power to tax is abused, it can also have the power to destroy.

We have heard about the documented, systemic abuse of taxpayers in the oversight hearings that have been held. This bill will, hopefully—and I believe will—effectively end the agency's disregard of taxpayers rights. We have heard the horror stories of taxpayer

mistreatment by armed IRS agents raiding taxpayers' homes and Americans being subjected to years of harassment, unsubstantiated audits, audits that are targeted at low-income and favor high-income, audits that are targeted at those of modest education, quota goals, disregard for rules and regulations, and even laws, in order to achieve a certain product goal. Those are abuses that have been documented, have been discussed, and really form the basis for the legislation that we are addressing today.

I would like to relate just one story that was relayed to me by one of my constituents in Indiana. He gave me permission to tell this story but requested that I only tell it if I did not disclose his name. ''Why?'' I asked. He said, ''Because I fear retribution.'' I said, ''You have nothing to fear.'' He said, ''No. I fear retribution. I have been through so much, I don't want to give that agency or anybody associated with that agency any cause to come after me again. I cannot go through that again. So use my story but don't use my name.''

The history is that as he was preparing for Christmas and shopping to purchase both gifts and food for his Christmas dinner for his family, he was shocked to learn that his credit was denied because he was told he had no money in his bank account. His entire savings had been wiped clean by the IRS for back taxes and penalties. He immediately called the IRS, and he was told that the reason for this was that 10 years ago, in 1987, the IRS discovered that his 1987 tax return was not on file and that he had not answered any of the registered letters that were sent to him. Of course, he never received those registered letters because he had not lived at that address since 1987.

Subsequently, he had filed returns for each year, which the IRS had processed, and he had received responses back from the IRS at his new address. So all of the subsequent years, the IRS knew where he was. But in 1987, with a previous address, because they had lost his return and because the registered letters notifying him of that were sent to his old address, the two computers didn't match, or the two agents didn't check with each other. And, therefore, my constituent found that his entire savings had been wiped out just before Christmas, and he learned about it when his credit was denied as he was shopping for his family.

That is just one tale. But it doesn't end there. That is horrific enough.

A few months later, after some paper shuffling at the IRS, this gentleman was told—based on the information that he had to provide again to the IRS—they actually owed him a refund of $1,500 for his 1987 return. He had supplied duplicate information again to the IRS. However, they said since the statute of limitations had run, he was no longer entitled to his refund.

That is the kind of thing that causes your mouth to drop open and I guess you pull your hair out. I don't think that is why I lost my hair. But had I been that taxpayer, the outrage that would have ensued I think is something that all of us can identify with.

After a lot of intervention and a lot more paper shuffling, he did finally get his $1,500. Only the IRS could pull off something like this.

These stories of abuse and mismanagement go on and on. I will not detail those in the interest of time.

It is unfortunate and sometimes, I think, disgraceful that an agency of the greatest democracy in the world could have attributes that could best be described or identified as a paramilitary wing of a despotic regime.

So it is past time, I believe, that this legislation pass the Congress, and be signed by the President, and that we urge the new Commissioner of the IRS, Mr. Rossotti, to conduct a thorough housecleaning based on what we have put in this legislation.

The IRS exists to serve the American people, not the other way around. There has to be accountability for this agency. There has to be more protection for the taxpayer. Efficiency and integrity need to be the twin goals of the IRS. Therefore, passing this legislation is a very important step to achieving this end.

I want to close, Mr. President, with a quote that is etched into the stone of the IRS building headquarters here in Washington. It is a quote from Supreme Court Justice Oliver Wendell Holmes, who said, ''Taxes are what we pay for a civilized society.'' If that in fact is the case, if taxes are what we pay for a civilized society, then we have every right to demand that the tax collector act in a civilized manner. The IRS has not done that. The tax collector has not acted in a civilized manner. We pay our taxes. We expect a civilized processing of those taxes. Hopefully, this bill will take us toward that end or achieve that end.

Mr. President, with that, I yield the floor.

Mr. ROCKEFELLER addressed the Chair.

The PRESIDING OFFICER. The Senator from West Virginia.

Mr. ROCKEFELLER. Mr. President, I am very happy to be making comments while the Senator from the State of Wyoming is presiding.

Mr. President, I wish to say that there may hopefully be some encouraging news with respect to the negotiations going on about product liability. As you know, the majority leader came to the floor and said that a cloture vote would continue as planned for tomorrow morning, and that amendments would be allowed up until 5 o'clock, which collectively allowed for about 4 hours of amendments.

I think it is very important, in the relationship between the majority and the minority, for the minority to be able to make amendments. And I think there has been some—no, not some, but a great deal of concern from our side about the pattern of using cloture motions, rather than as a chance to shut off debate, as simply a chance to shut off amendments. But now I understand that there is some consideration being given to perhaps postponing the cloture vote for a period of days so that there can be some discussion on the subject of amendments on the product liability bill.

It is actually very interesting. In all the years—I was reflecting on it this morning with Senator GORTON—that this Senator from West Virginia has been working on product liability, there has really been no debate about product liability, only speeches. There have been speeches on the topic or a filibuster would commence and continue, and a series of speeches, but really never debate, never questions and answers back and forth, people probing each other.

So I hope, anyway, that this possibility will come to pass. I think we do need debate. I think we do need a chance to offer amendments.

Having said that, however, the Senator from West Virginia wishes to reiterate his position that I reached an agreement with the White House. It was an arduous, long process, but one in which honor and faith was kept on both sides, and I feel bound by the position of the White House as it stands now, or however it develops—and it probably won't develop—but that has to be my position. I am a defender of the faith, so to speak, in terms of the negotiation that I carried out with the White House to produce a rather minimal bill with respect to product liability but, on the other hand, a bill which moves the subject forward.

Mr. President, my real purpose today is to speak about veterans' rights. I should start out by saying that I very much respect the chairman of the Finance Committee, whom I specifically and directly remove from any criticism which I might be about to make, because it should not be directed at him at all. That goes also for the ranking member, Mr. MOYNIHAN, for his part in bringing the IRS debate and bill to a conclusion. But I am not happy and I think my colleagues know that.

Veterans' rights have been bartered away, in deals without the full scrutiny of the Senate or even the authorizing committee. There are many here who believe very strongly in the authorizing process; not everything is appropriating. Authorizing has to come first. That is the way of the Senate. That has been quietly and very definitely thrown aside in this whole process.

I am referring to the denial of veterans' disability rights which were enacted as part of TEA 21, and in the process now going on with regard to the technical corrections bill needed to amend drafting errors which were admittedly made in that bill.

America's veterans, indeed, all Americans, are being subjected to what amounts to an unprecedented power

play, conducted behind closed doors, as part of the highway reauthorization process. This is a kind of process which one can talk about on the Senate floor and very few choose to listen to it, because it sounds like what everybody doesn't like about Washington and, in fact, it is what everybody should not like about Washington.

This is an example of a process run amok, where any provision, no matter how heinous or unrelated, can be added in conference under cover of darkness.

Now, of course, if you add something in conference, all of us understand that the conference report is unamendable. So you vote yea, or you vote nay on the report, but you cannot amend it; thus the power to use this process is a formidable power, and thus we need to do things correctly in this body.

I think the process that has gone on here is a process all Members are going to come to lament. This process is backroom, back-door politics. It is not democracy, and, Mr. President, veterans have earned better than this.

Veterans have earned more from their government than a process that denies their rights without any accountability. Veterans have earned more than a process where the denial of veterans' rights can be inserted into unamendable conference reports, under the cover of darkness. They have earned more than a process where, in the name of expediency, extraneous provisions are placed in conference reports to avoid accountability, and where the majority has, in effect, destroyed the normal protections.

Why is it, I ask myself time and time again, why is it that this Senate is willing to look the other way on this? Why is it that we are allowing such an abuse of power to go on?

It is clearly unfair. I do not think that it was the original purpose of the conferees or the original people doing ISTEA to deny benefits that are in the current law for tobacco-addicted veterans who have disabilities, veterans who have gone through an unbelievably difficult process at the Department of Veterans Affairs to qualify for service connection for their disabilities. But, in fact, under the highway bill, current law has been rescinded, wiped from the books, and nobody has done anything about it, and nobody can do anything about it. And we sit here, stand here, talk here, silently, knowingly doing nothing about it at all.

Now, IRS reform, highway spending, these are two things that I very much favor. I voted for the underlying bills. In terms of the IRS reform conference report, had that come up clean, I would have voted for it now. I voted for it in committee. I am on the Finance Committee. However, I cannot support its passage at the expense of America's veterans.

You say, well, but that is just one group of people and this is a very large issue. Well, veterans are more than just one group of people, Mr. President. They are symbolic of the tenor of a nation, the moral attitude of a country towards its citizens who have maintained its freedom. Veterans are at all times to be taken very seriously because of the sacrifices that many of them have made, and in this case in particular, where their disability has been fostered by the Government's actions in a number of ways.

My colleagues know I have been fighting for many months to correct the injustice that we did to veterans. It is my duty, it is my honor to do so, and I am going to continue to do so here. But I must stop and ask, why, why is it that the majority continues to use their power to deny full Senate consideration of H.R. 3978, the highway corrections bill?

If we brought it up, we could have a time agreement of a half hour, divide it in two, 15 minutes each side, and we could have an up-or-down vote. But, of course, all of that is just talk at this point, because we are on a conference report and it cannot happen, and I understand that. But that will not keep me from standing here and voicing my outrage at a process which so undoes veterans who have suffered, and does it so unfairly.

Why has the leadership endorsed, in fact induced, conferees to take such action? Why have they decided to totally ignore the needs of America's veterans on the way to what amounts to a 44-percent increase in highway spending over the last budget cycle.

I am all for highway spending. I remind my colleagues I come from the State of West Virginia, where only 4 percent of the land is flat, so if you don't have a highway somewhere around you, you are in pretty big trouble pretty quickly. So highways are important to me.

But instead of bringing this bill to the floor for debate and a single amendment, the majority simply said they would find another way to pass this bill, quietly, covertly, out of the light of day. And it turned out that the other way of doing this was the IRS conference report, which we are debating today.

We are evading the usual process that would have allowed this to be fully aired and debated in the Veterans' Affairs Committee, which has jurisdiction over veterans compensation matters. People say, well, jurisdiction, who cares? Well, jurisdiction matters, and there are a lot of people in this body who place great weight on jurisdiction. Authorizing committees have jurisdiction for some things; the Appropriations Committee has jurisdiction for other things, but jurisdiction is important.

Jurisdiction has been bypassed, abrogated, tossed aside in this whole process, and now we are taking away a benefit which was granted to disabled veterans under existing law. Some are going to argue we are giving veterans a new benefit. That is absurd. We have removed a benefit which was there under the current law for veterans who are tobacco addicted to the point of disability, after going through a series of VA tests which are so rigorous that at this point, only a relatively few hundred have been able to qualify for those benefits. So it is extremely unfair.

Once again, we sidestep the regular process. The IRS conferees failed to restore the benefits. Once again, I exempt the ranking member of the Finance Committee and the chairman of the full committee. I exempt them from blame for this. We failed to restore the cuts. And this is at the direction of the majority. This has been a complete mockery of our budget process and of regular order in the Senate.

So, this is what I have called a ''midnight raid'' on veterans' benefits. To put it bluntly, America's veterans have been wronged, deeply wronged, by backdoor trickery. Funding for veterans' benefits has been cut; imaginary savings have been diverted to pay for highways; and veterans' disability rights have been placed in jeopardy, to say the least.

I had hoped to offer an amendment to the corrections bill that would have struck the veterans' disability compensation offset from the underlying conference report. But that was all pushed aside. I no longer have that option.

I will say that the IRS restructuring conference report has slightly improved the language pertaining to veterans. I will give them credit for that, since credit must be given where credit is due. The conference report strikes references to smoking being ''willful misconduct.'' You understand I am talking about a veterans population, for the most part older, which was encouraged to smoke by the Government, told to take a smoking break, where they were sold cigarettes at a reduced price, and where the warnings about the dangers of tobacco were not even produced or shown on cigarettes used in the military until 5 years after that was happening as a routine matter for the civilian population in the United States.

So, this is another nail in the veterans' benefits' coffin. I am very, very angry about it. America's veterans will not be fooled by backroom, backdoor legislating, no matter how anybody chooses to try to clean up the record on this. They will see through this charade. They will remember it on Veterans' Day, on Memorial Day, on the Fourth of July, when we all give our speeches about veterans. And then we come in, in the darkness of night, and take away benefits from disabled veterans, who under current law have disability compensation rights, and we take them away. We take them away and will not restore them. I cannot be a part of that, and I urge my colleagues to join me in voting to oppose the IRS reform conference report.

I yield the floor.

The PRESIDING OFFICER. (Ms. COLLINS). The Senator from Rhode Island is recognized.

Mr. CHAFEE. Madam President, the conference report before the Senate includes the TEA 21, that is the Transportation Efficiency Act of the 21st century, which some call the ISTEA II Restoration Act. It includes a technical corrections measure to that bill. The technical correction measure, which is part of the legislation before us, remedies errors made in H.R. 2400, which was the surface transportation bill we passed just before the Memorial Day recess.

As everyone knows, just before we went out on that break for Memorial Day, there was a great desire to complete the legislation before us. We completed negotiations on Thursday evening and delivered a very complex bill that had over 900 pages the first thing on Friday morning. In other words, we completed the negotiations on Thursday night, and by the next morning we had a bill of over 900 pages before us. Inevitably, some errors were made.

We have before us legislation to correct those errors. I emphasize this is just a technical corrections bill. Many Members have come to us in the ensuing days suggesting new items or changes that they wanted to be made because they felt in the original legislation they did not obtain them. But we resisted all such requests. This bill merely carries out the agreements of that conference on H.R. 2400. I will refer to it sometimes by the number. That is the original transportation legislation that we passed.

The technical corrections in the legislation before us have been developed jointly by the House and the Senate conferees, with valuable input from the U.S. Department of Transportation. I think it is important to note this legislation before us does not change the formula allocations agreed to in the conference. The technical changes in this legislation relate to apportionments. Those that exist are made to ensure that the legislative instructions to the Department of Transportation on the formula will produce an apportionment to the States just as we agreed upon. In other words, the only changes we made in this legislation, so-called technical corrections, are to take care of things that were left out inadvertently or to clarify an intent that was there and clearly recognized in order to carry out that intent.

This bill also corrects drafting errors relating to veterans' smoking-related disability benefits. This is to what the Senator from West Virginia was referring. The provisions of H.R. 2400 were intended merely to reverse a recent decision by the general counsel of the Veterans' Administration, which decision had not yet been implemented. It is very important to remember that. We have been advised that the bill may be interpreted to deny benefits to some veterans who were eligible for benefits prior to the general counsel's decision. In other words, it has come to our attention there may be situations that have arisen that, as a result of the language as we drew it, denied benefits to some veterans who were receiving them. What we meant to do was to reverse the general counsel's decision as it might apply to future applicants in an entirely new category of benefits opened by the general counsel. And with this technical corrections bill, we reach that objective.

There was an article in the Washington Post several weeks ago that has caused serious concern. That article suggested that Congress had declared smoking ''willful misconduct'' by America's veterans. That was just plain wrong. That statement in the Washington Post, that we included smoking as ''willful misconduct'' by American veterans, gave great offense to some. I want everyone to know that was an incorrect reading of the legislation.

Section 1110 of title 38, which is the existing law and has nothing to do with the transportation legislation, entitled veterans to compensation if they are disabled by service-related illness or injury. There are two exceptions to this entitlement in current law. The first exception is ''willful misconduct.'' A veteran cannot get disability compensation if the illness or injury results from willful misconduct. That is the law. It has been the law a long time. The second exception denies benefits if the illness or injury resulted from alcohol or drugs. These two exceptions are in the current law. That is where they are.

Now, H.R. 2400, the transportation legislation, added a third exception. It would have denied benefits where the illness results from smoking. This did not make smoking willful misconduct. This was a third exception to the provision that entitles a veteran to disability benefits. The first was willful misconduct, the second was alcohol or drugs, and the third was smoking related.

From where did we get that language? That was suggested by the Senate legislative counsel as the most straightforward means to reverse the great opening of benefits under the general counsel's decision.

This language had the unintended consequence of denying benefits to some veterans who would have qualified prior to the decision. This bill drops the language suggested by the Senate legislative counsel. We just got away from all that language that we had in there and returned to the language which was suggested by the administration, which reverses the general counsel's decision as it might apply to future applicants.

No veteran now entitled to benefits as a result of adjudication, or who has applied for such benefits, will be affected.

This bill makes the following changes to the veterans subtitle:

One, it clarifies that veterans who file claims for smoking-related benefits are grandfathered. That filing isn't going to be eliminated.

Second, it makes clear that those active-duty service personnel who contracted a smoking-related illness while in the service continue to qualify for disability compensation. We don't change that.

Third, we ensure that survivors and their dependents will receive a 20-percent increase in education assistance benefits.

Madam President, we prepared a summary of this technical corrections bill, and I ask unanimous consent that this summary be printed in the RECORD after my remarks.

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

(See exhibit 1.)

Mr. CHAFEE. I also point out, Madam President, that we voted on the underlying veterans issue three times in this Senate. Each time it has approved the action that we took here.

HOME HEATING OIL PILOT PROGRAM

The Department of Transportation Secretary has been given new authority under section 4007, of the newly passed Transportation Efficiency Act for the 21st Century (TEA 21), for waivers, exemptions and pilot programs. Therefore, section 1221(j), the home heating oil pilot program is redundant and no longer necessary. Striking this pilot program is not intended to suggest that a home heating oil pilot program should not be conducted. On the contrary, because of the unique seasonal nature of the heating oil industry, it is essential that a pilot program be implemented on or before December 1, to be valuable the following winter. The home heating oil pilot program was first authorized in section 346 of the National Highway System Designation of 1995. However, this pilot program was never fully implemented by the Department of Transportation.

EXHIBIT 1

HOUSE/SENATE JOINT SUMMARY OF TECHNICAL CORRECTIONS TO TRANSPORTATION EQUITY ACT FOR THE 21ST CENTURY

This legislation: (1) restories provisions agreed to by the conferees; (2) makes technical corrections to provisions included in H.R. 2400; and (3) eliminates duplicative program authorizations.

This legislation does not change the formula allocations contained in the Conference Report to the Transportation Equity Act for the 21st Century.

The following is a section by section description of provisions included in the TEA–21 Restoration Act:

*Section 9001 Short Title*

*Section 9002 Authorization and Program Subtitle*

Adjusts funding levels for high priority projects to conform with list in the conference report and to correct other errors.

Adjusts funding levels for Highway Use Tax Evasion projects to allow for implementation of the Excise Fuel Tracking System.

Corrects the obligation limitation levels for mathematical consistency and conforms obligation limitation treatment to current practice for research programs.

Makes other conforming and technical changes such as renumbering sections and correcting cross reference.

*Section 9003 Restorations to General Provisions Subtitle*

Restores the National Historic Covered Bridge Preservation program.

Restores the Substitute Project for the Barney Circle Freeway, Washington, D.C.

Restores Fiscal, Administrative and Other Amendments included in both House and Senate bills.

Removes section 1211(j) regarding winter home heating oil delivery.

Makes technical corrections to section 1211, Amendments to Prior Surface Transportation laws and section 1212, Miscellaneous Provisions.

Clarifies program funding categories for Puerto Rico and continues current law penalties for Puerto Rico for non-compliance with the federal minimum drinking age requirements.

Clarifies that contract authority is authorized for provisions contained in section 1215, Designated Transportation Enhancement Activities.

Modifies Sec. 1217(j) to allow for effective implementation of this subsection. Modifies Magnetic Levitation Deployment Program to clarify eligibility of low-speed magnetic levitation technologies.

Corrects reference to Special Olympics.

*Section 9004 Restorations to Program Streamlining and Flexibility Subtitle*

Restores Discretionary Grant Selection Criteria provisions.

Conforms Environmental Streamlining provisions to include mass transit projects.

*Section 9005 Restorations to Safety Subtitle*

Restores the Open Container Law safety program.

Restores the Minimum Penalties for Repeat Offenders for Driving while Intoxicated program.

*Section 9006 Elimination of Duplicate Provisions*

Eliminates duplicate provisions for San Mateo County, California, the Value Pricing Pilot Program, and National Defense Highways Outside the United States Restores the Minnesota Transportation History Network provision.

*Section 9007 Highway Finance*

Updates the Transportation Infrastructure Finance and Innovation Act program to begin in 1999 rather than in 1998.

Conforms the credit levels in the Transportation Infrastructure Finance and Innovation program to agreed upon distribution levels of budget authority.

*Section 9008 High Priority Projects Technical Corrections*

Makes technical corrections, description changes and previously agreed upon additions to high priority projects.

*Section 9009 Federal Transit Administration programs*

Makes corrections to transit planning provisions to conform to provisions in title 23.

Clarifies eligibility of clean diesel under clean fuels program.

Makes technical corrections to section 5309 and clarifies the Secretary's full funding grant agreement authority.

Funds University Transportation Centers authorized under title 5.

Restores requirement that transit grantees accept non-disputed audits of other government agencies when awarding contracts.

Makes corrections to the authorizations for planning, University Transportation Centers, the National Transit Institute and the additional amounts for new starts.

Makes technical corrections, description changes, and previously agreed upon additions to new starts projects.

Makes technical corrections to the access to jobs and reverse commute programs.

Corrects funding level for the Rural Transportation Accessibility Incentive Program and makes other technical corrections.

Makes technical corrections to study on transit in national parks.

Makes corrections to obligation limitation levels.

*Section 9010 Motor Carrier Safety Technical Correction*

Conforms section references for the Motor Carrier Safety program.

*Section 9011 Restorations to Research Title*

Adjusts authorization levels for university transportation centers to conform with modifications made in the Transit title in section 9.

Restores eligibility of Intelligent Transportation System activities for innovative financing.

Corrects drafting errors to 5116 (e) and (f).

Makes technical and conforming changes to university research provisions.

Corrects references to the Director of the Bureau of Transportation Statistics.

Corrects drafting errors to Fundamental Properties of Asphalts and Modified Asphalts research program.

*Section 9012 Automobile Safety and Information*

Corrects reference to the National Highway Traffic Safety Administration.

Makes conforming changes to provisions in Subtitle D of Title VII.

*Section 903 Technical Corrections Regarding Subtitle A of Title VIII.*

Makes corrections to offsetting adjustments for discretionary spending limits.

Makes other technical and conforming changes to Title VIII.

*Section 9014 Corrections to Veterans Subtitle*

The TEA–21 Restoration Act corrects drafting errors to Sec. 8201.

The provision included in the Conference Report on TEA–21 to use the Veterans smoking-related disability benefits for transportation was drafted incorrectly and had the unintended consequence of identifying smoking as an act of ''willful misconduct'' by veterans. The provision in the TEA–21 Restoration Act corrects any reference to smoking as an act of ''willful misconduct'' by veterans.

This provision also clarifies that veterans who have filed claims for smoking-related benefits are grandfathered.

The provision also makes clear that those active-duty service personnel who contract a smoking-related illness while *in* service continue to qualify for disability compensation.

Another correction in this bill relates to ensuring that survivors and their dependents will receive a 20% increase in education assistance benefits.

*Section 9015 Technical Corrections Regarding Title IX*

Makes technical corrections to the Revenue title.

*Section 9016 Effective Date*

Provides for the effective date of this act to conform with the effective date of TEA–21.

MAGLEV DEPLOYMENT PROGRAM

Mr. MOYNIHAN. Madam President, the Maglev Deployment Program in the ISTEA reauthorization legislation contains contract authority of $60 million for pre-construction activities including investment analyses, environmental impact statements and other corridor development activities. The program then provides authorization of $950 million for construction of a project.

I wish to ask the chairman to confirm my understanding that these pre-construction activities are to be funded in the same fashion as other transportation programs, that is to say, with an 80 percent Federal match. The Federal role in the actual construction program, however, is limited to not more than a two-thirds match. Is that also the chairman's understanding?

Mr. CHAFEE. Yes, that is my understanding and that is indeed what the committee intended in passing this program.

Mr. MOYNIHAN. Madam President, I thank the chairman.

SECTION 105(e)

Mr. GRAHAM. Madam President, I commend the distinguished chairman of the Environment and Public Works Committee for his hard work and dedication to the Transportation Equity Act for the 21st century that passed the Congress on May 22. I am honored to have been a participant on the conference committee. Mr. President, I would like to enter into a colloquy with the distinguished chairman to clarify a provision in the TEA 21 legislation.

Mr. CHAFEE. Madam President, I will enter into a colloquy with the senior Senator from Florida to clarify a provision in the TEA 21 legislation.

Mr. GRAHAM. I would like to clarify section 105(e), special rule, that states if in any of fiscal years 1999 through 2003, the amount authorized under subsection (d) is more than 30 percent higher than the amount authorized under subsection (d) in fiscal year 1998, the Secretary shall use the apportionment factors under sections 104 and 144 as in effect on the date of enactment of this section. Does this provision jeopardize the 90.5 guarantee rate of return even if a State's gas tax revenues to the highway trust fund are to grow significantly over the life of the bill?

Mr. CHAFEE. No, my understanding is that the intent of this section is to prevent the dollar amount of the minimum guarantee from growing out of proportion far beyond that which the conferees anticipate. The intent of the Congress is that no State will receive less than a 90.5 percent rate of return on their gas tax contributions to the highway trust fund, of the funds distributed to the States which are covered by the minimum guarantee provision.

Mr. ROTH. Madam President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

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

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

Mr. MCCAIN. Madam President, I rise in support of the IRS Restructuring and Reform Act of 1998. I want to thank the Chairman, and other members of the Finance Committee for their work in crafting this much-needed measure.

This legislation is about more than merely reforming one Government agency. This bill is about fundamental fairness and the role of the Federal Government in our lives. The out-of-control IRS is a prime example of intrusive and unnecessary big government.

Madam President, I have spent 15 years in Congress fighting to lower taxes, cut spending, and shrink the size of our bloated and intrusive Federal Government.

Earlier this year, Senator COVERDELL and I introduced the Middle Class Tax Relief Act of 1998, which is a step toward a simpler, flatter, fairer Tax Code. The Middle Class Tax Relief Act would deliver sweeping tax relief to 29 million lower- and middle-income taxpayers by increasing the number of individuals and married couples who pay the lowest tax rate, which is 15 percent.

The bill raises the limit for the 15 percent bracket to $35,000 for an individual taxpayer. In addition, this bill significantly lessens the effect of one of the Tax Code's most onerous and inequitable provisions—the marriage penalty—by allowing married couples to earn as much as $70,000 and still pay only 15 percent in taxes.

It is essential that we provide American families with relief from the excessive rate of taxation that saps job growth and robs them of the opportunity to provide for their needs and save for the future. The Middle-Class Tax Relief Act permits individuals to keep more of the money they earn. With this extra income, Americans will be able to save and invest more. Increased savings and investment are key to sustaining our Nation's current economic growth.

Last year, Congress passed a major tax-relief bill, the Taxpayer Relief Act of 1997, which provided an estimated $96 billion in tax relief to Americans at all income levels. And I and others have sponsored numerous legislative proposals to eventually repeal the current Tax Code, and to lower or eliminate taxes on families, estates, charitable giving, farmers, Social Security benefits, tip income, Internet access and services, gasoline, and conservation efforts.

Cutting taxes is only a part of the solution to the problems of big government. We must also cut spending.

For 10 years, I fought to enact the line item veto legislation, which would have helped eliminate unnecessary and wasteful spending of taxpayer dollars from annual appropriations bills. When the Supreme Court struck down the 1996 law, Senator COATS and I introduced a revised line item veto authority, called separate enrollment. Our bill would avoid the Constitutional questions surrounding the original line-item veto, and we intend to push for its early enactment.

Clearly, the line-item veto is a necessary tool to curb the Federal Government's appetite for pork-barrel spending. Last year alone, Congress added more than $8 billion in wasteful, unnecesssary, and low-priority spending to the appropriations bills. This year, with only about half the bills done, nearly $7.5 billion has been set aside for congressional earmarks. I intend to continue to oppose such wasteful spending when these bills come before the Senate, because these earmarks take money right out of the pockets of the taxpayers.

In 1997, I supported the Balanced Budget Act which cut spending by $270 billion and led to the first balanced Federal budget in 30 years. In addition to refraining from adding unnecessary programs to the various agency budgets, we should be looking for savings and efficiencies in all areas of the Federal budget, including Congress' own funding. With the likelihood of significant budget surpluses on the horizon, we must now work to ensure that any extra money is returned to the people in the form of tax relief—not spent on pork-barrel projects or big-government programs.

Some are probably wondering what this discussion of tax relief and spending cuts has to do with IRS reform. On the surface, the IRS reform bill is simply about reforming a Government agency. But this bill is about more, it is about fundamental fairness and the role of the Government in our lives.

As the people's elected representatives, we cannot merely point the finger at this runaway agency. We have a responsibility to protect the American public's individual freedom and dignity from the IRS and any other agency that oversteps its boundaries and unduly infringes upon the American public's day-to-day existence.

The reforms in this bill are carefully crafted structural reforms. They are reforms that will not only change the practices and procedures of the IRS, but its fundamental culture as well. These reforms will ensure that the IRS treats taxpayers fairly and with the respect they deserve.

The IRS Restructuring Act of 1998 implants additional oversight and outside expertise into the management of the IRS. An entire title of this bill is devoted to taxpayer protection and taxpayer rights. Most important, this bill shifts the burden of proof from the taxpayer to the IRS. This measure has relief for innocent spouses from tax liabilities incurred by former spouses from whom they have been divorced or legally separated for at least 12 months. The fear of an audit looms over the heads of even honest taxpayers. After passage of this legislation, honest taxpayers will now have greater protections throughout the audit process.

These management and administrative provisions are key to restoring fairness and efficiency to the management and administration of our tax laws.

In addition, this conference agreement builds on last year's Taxpayer Relief Act. It provides $12.9 billion over the next 10 years in much-needed taxpayer relief for millions of hard-working Americans by eliminating the complex 18-month holding period that was required to realize the lowest applicable tax rate for capital gains. This provision is vital to America's middle class. Capital gains are no longer exclusively for the rich and powerful. The world of mutual funds, discount brokers, and the Internet has empowered the middle class with newfound prosperity. Simplifying and lowering the capital gains tax helps ensure the financial stability of our Nation's hard-working middle class.

Let me close by saying that the IRS Restructuring Act of 1998 illustrates our continuing effort to change the way we collect our taxes, and on a larger note, the role of Government in our everyday lives. This bill is a step toward smaller and more efficient Government—less taxes and less spending, means less big government.

Swift passage of this measure will send a loud and clear message to America. The message is that Congress hears your call for smaller, less intrusive Federal Government and for lowering the excessive tax burden, which saps job growth and robs Americans of the opportunity to provide for their needs and save for their future.

Mr. KYL. Madam President, I rise in strong support of the Internal Revenue Service reform bill that is before us today.

Mr. President, last fall, the Finance Committee held a series of hearings to expose problems in the Internal Revenue Service's dealings with taxpayers. Although we all knew that there were serious problems with the way the IRS does business, it is safe to say that all of us were truly shocked at what we learned from the hearings.

As Senator ROTH put it at the time, we found that the IRS far too often targets vulnerable taxpayers, treats them with hostility and arrogance, uses unethical and even illegal tactics to collect money that sometimes is not even owed, and uses quotas to evaluate employees. It is behavior that is not only unacceptable, but reprehensible.

Madam President, the IRS reform bill begins to address the kind of problems that were uncovered by the Finance Committee's hearings. For example, it shifts the burden of proof in tax disputes from the taxpayer to the IRS, and increases penalties for IRS violations of taxpayer rights. It provides relief for innocent spouses from tax liabilities incurred by individuals from whom they have been divorced, legally separated, or living apart for at least 12 months. It provides relief in certain interest and penalty situations. And it extends greater taxpayer protection in the audit process.

These are important changes, and they deserve our support today. There is no excuse for not reforming an agency that has too often abused innocent taxpayers. The House passed the IRS

reform bill on June 25 by the overwhelming vote of 402 to 8, and my hope is that it will pass by a similarly resounding margin here. I predict that it will.

But I also predict that even a good IRS reform bill will not solve the myriad problems that exist. Our nation's Tax Code, as currently written, amounts to thousands of pages of confusing, seemingly contradictory tax-law provisions. We need to reform the IRS, but unless that reform is followed up with a more fundamental overhaul of the Internal Revenue Code itself, problems with collections and enforcement are likely to persist. If the Tax Code cannot be deciphered, it does not matter what kind of personnel or procedural changes we make at the agency. Complexity invites different interpretations of the tax laws from different people, and that is where most of the problems at the IRS arise.

Replacing the Tax Code with a simpler, fairer, flatter tax would facilitate compliance by taxpayers, offer fewer occasions for intrusive IRS investigations, and eliminate the need for special interests to lobby for complicated tax loopholes.

There are a variety of approaches to fundamental reform that are pending before Congress: a flat-rate income tax, a national sales tax, and the Kemp Commission's simpler single-rate tax, to name a few. Each has its passionate advocates in Congress and around the country, and any one of these options would be preferable to the existing income-tax system.

But the fact is, there has not yet emerged sufficient public consensus in favor of a sales tax over a flat tax or some alternative. And it is likely to take a public consensus, the likes of which we have not seen in recent years, to drive a tax-overhaul plan through Congress and past the President. Realistically, it is probably going to take several more years to develop the kind of support that will be necessary to pass tax reform into law.

Until then, we can continue to lay a solid foundation for reform. We can continue to cut taxes every year. Last year, we cut taxes for families with children, for young people trying to get a college education, and for seniors who were looking for relief from heavy death taxes and taxes on capital gains. Another modest increment of tax relief is provided in the IRS reform bill today. It will give senior citizens more opportunities to participate in Roth IRA plans. It will simplify the capital-gains tax by eliminating the 18-month holding period that was added to last year's bill at the last minute without any debate.

Madam President, this legislation is not an end in itself. It is a step—a step in the direction of fundamental tax reform. Let us pass it and move on to the next stage in addressing the American people's desire for tax relief and a simpler, fairer Tax Code. Madam President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

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

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

Mr. DORGAN. Mr. President, let me begin by complimenting Senator ROTH from Delaware. He is a serious, thoughtful legislator who does some awfully good work. There are times when I disagree very strongly with him; there are other times when I agree with his proposals. I think he does some excellent work in the Senate. I appreciate it.

The conference report that is before the Senate contains some important legislative accomplishments. Some of the provisions in this conference report are useful, necessary, long overdue, and accomplishments that I very much support. I voted for this bill when we sent it to conference, and now it comes back from conference to the Senate as a conference report for our consideration.

While this legislation has much to commend it and addresses some very important issues, it also, as is the case with a number of conference reports, attracted some lint, some dust, and some other material as it was massaged and manipulated in conference.

One little provision that is, in fact, not so little, is Section 5001 of the bill. Page 332 of the statement of the managers explains this provision, and I want to read it for the RECORD. On page 332 of the report, it says:

TITLE V. ADDITIONAL PROVISIONS

A. Elimination of 18–Month Holding Period for Capital Gains.

And then it says:

House Bill
No provision.
Senate Amendment
No provision.

And it goes on to describe the ''conference agreement.''

That means, with respect to this issue, there was nothing in the House, nothing in the Senate, no debate, no discussion, no amendment, no vote. And all of a sudden, from the legislative darkness, a proposal emerged from the conference. It is like pulling a rabbit out of a hat, I guess. It is not surprising to those of us who watch conference committees. Senator BYRD was telling me today that he calls the conference committees ''the Third House.'' There is the House, the Senate, and then there is a separate body called ''Conference Committees.''

This is an example of what can happen in conference committees, of what can happen in that third body.

Let me describe what this proposal is. This proposal expands favorable tax treatment for capital gains—that is, the lower tax rate for capital gains. It does that by reducing the holding period for eligibility for the lower capital gains tax rate from 18 months to 12 months. To get the lower tax rate, you only need to hold onto an investment for 12 months under this provision, rather than 18 months, as the law stands now. This proposal costs about $2 billion—$2 billion.

Who will it benefit? Here is a chart that shows who it will benefit. Citizens for Tax Justice put these figures together. In shortening the holding period for capital gains from 18 months to 12 months, 90 percent of the benefit will go to taxpayers with incomes over $100,000 a year; over three-fourths of the benefit will go to taxpayers with incomes over $200,000 a year.

I suppose those who talk about capital gains a lot will say, gee, this benefits everybody. Yes, it is kind of the cake and crumbs theory, with the cake at this end of the chart and a few crumbs down here. But the chart is clear enough. The benefit, by far, will inure to those whose incomes are very large. And the reduction, therefore, of the holding period from 18 months to 12 months is, in effect, a reduction in revenue of $2 billion, the benefit of which will go to the folks largely making $100,000 a year or more.

As I indicated, that proposal was offered to the conference committee at the last minute, had never been considered by the House, had never been considered by the Senate, and was never debated or voted upon by either body.

One would probably ask the question: Well, if there is $2 billion that is available to be used for one thing or another, how might it be used? Perhaps reducing the Federal debt. That might be one approach. The Presiding Officer shakes his head vigorously at that. I assume that a number of people would think maybe using that to reduce the Federal debt would be useful.

Others still might say, well, this was done on about the same day, I believe, or within a day or two of the decision by the other body in this Congress—the House of Representatives —that they can't afford any longer to provide low-income energy assistance for home heating for poor people who live in cold climates. In the view of some members of the House majority, there is not enough money for that, so we will get rid of that.

Or there is not enough money really to fully fund summer jobs for disadvantaged youth. So, what we will do is, we will just cut back on that.

However, there are $2 billion available here, there is plenty of money for this—without debate, and without a separate vote in either the House or the Senate. But there is not enough money for some of those other priorities—priorities, for example, which I have come to the floor to talk about, of the needed investment in Indian schools.

Indian schools—those are schools that are our responsibility, under the federal trust responsibility. I have talked about the condition of those schools and the repairs and investment that those schools need. I have talked

about going into schools where the stench of sewer gas comes up into the classroom and requires children to be escorted out of the classrooms. I talked about schools I visited with 160 people sharing 1 water fountain and 2 bathrooms. It appears we don't have enough money to be helpful there. But someone found $2 billion all on its lonesome in the legislative darkness to be stuck into a piece of legislation, without debate in the House or the Senate, in a manner that will benefit a very few—benefit, in fact, those who probably need it least.

So, what do we do about that? The conference report comes to the Senate and we are told: There is nothing you can do about that; that is the way it is. It is true you didn't have a chance to debate or discuss or vote on it. That is life. That is the way the system works.

The problem is, there is a rule in the Senate called rule XXVIII, paragraph 2. I want to read the rule. This part of the Standing Rules of the Senate states that ''conferees shall not insert in their report matter not committed to them by either House.''

Let me read that again: ''Conferees''—talking about the conference committee and the conferees on the committee—''shall not insert in their report matter not committed to them by either House.'' That means if something isn't either in the House bill or the Senate bill, it is not an item that can be considered by the conference. That is the standing rule of the Senate, rule XXVIII, paragraph 2.

So how does this provision get here? How do we, in the legislative crevices of conference committees, as they finish their work and as the world isn't watching quite so closely, discover that $2 billion can be spent just like that when a Senate rule says ''conferees shall not insert in their report matter not committed to them by either House''?

Mr. President, I think the Senate will be advantaged, and I believe the other body will be advantaged, by a process that does not bring to us a piece of legislation dealing with the restructuring of the Internal Revenue Service that contains revenue provisions of this type.

I don't have a problem with someone coming to the floor of the Senate and saying let's debate changing the capital gains provisions of the current Tax Code, let's debate changing the holding period, let's debate changing the rate; that is not a problem. I think it is perfectly appropriate that we have that debate. But I think it is inappropriate that the debate be prevented, as is now the case, when they stick in, during a conference, a provision that was neither in the House bill nor in the Senate bill—literally in the last few minutes of the conference—and there it sits as a $2 billion revenue item that a good number of other Members of the Senate might have used much differently—as I indicated, perhaps to reduce the Federal debt, or perhaps to restore money for low-income energy assistance for the poor, or for a number of other things.

But this practice now exists that provides a way to avoid all the unpleasantness of debating these things on their own. So we now are in a situation where the conference report, which is a piece of legislation that has a great deal of merit and much to be commended, contains a provision to reduce the holding period for capital gains from 18 months to 12 months, which will provide $2 billion of tax reductions, 90 percent of which will accrue to those with over $100,000 in income, with no debate and no vote. In my judgment, that is not the best of what the Senate ought to be offering the American people.

POINT OF ORDER

So, Mr. President, with that in mind, I will make a point of order, and let me state the point of order. Section 5001 of the conference report contains matter that was not in either the House bill nor the Senate bill. Rule XXVIII, paragraph 2 of the Standing Rules of the Senate states that ''conferees shall not insert in their report matter not committed to them by either House.'' Pursuant to rule XXVIII, I make a point of order against section 5001 of the conference report.

Mr. President, before I formally make that point of order, let me say that those who will respond to the point of order saying, ''Oh, gosh, this will kill the bill,'' are wrong. This will not kill the bill. We have waited on this bill month after month after month after month. It is a good bill, and it has a lot to commend it. All stripping out the $2 billion item that was added in the legislative darkness at the end of this conference would do would be to require the conference to reconvene, take that portion out, and ship it back to the House and Senate. You might say the House is not in today, and that is correct. So it might take a couple of days. But this would not kill the bill. Those who will argue that it will kill the bill will argue something that is specious.

Let us decide as a Senate that this is not the way to do serious tax policy. This bill is too good for this provision. This is a set of circumstances where the chairman of the committee brings a bill to the floor, which causes me to commend him for the work he has done. I did that at the start of my discussion. But it is a bill that contains a provision that should never have been part of this bill.

I recognize that the chairman of the committee and the ranking member were not the authors. At least from press reports I believe they were not the authors of this legislation added in conference. I fully understand that some things are not necessarily within their control, as conferences work.

But I still feel strongly that this provision should not remain in the bill and, for that reason, Mr. President, I make the point of order under rule XXVIII of the Standing Rules.

The PRESIDING OFFICER. The Chair is constrained by the precedent of October 3, 1996, not to sustain the point of order.

Mr. DORGAN. In that event, I appeal the ruling of the Chair and ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second?

There is a sufficient second.

The yeas and nays were ordered.

Mr. ROTH. Mr. President, I do not wish to unnecessarily prolong the debate, but I would like to remind the Senate of the process by which the 18-month holding period became law. The 18-month holding period arose from the final negotiations between the congressional leadership and the administration on the conference agreement to the Taxpayer Relief Act of 1997. The 18-month holding period was not in either the House or the Senate bill. No House or Senate Member proposed this additional holding period. No hearing was held on its tax policy or compliance implications.

Therefore, from the standpoint of process, today, we are reversing what was done about 1 year ago. In this conference agreement, we are eliminating a provision that was added in conference, a provision that was itself not contained in any House or Senate bill before its enactment.

Mr. President, the most important factor to consider is this. If the point of order succeeds, the IRS conference report falls. All of the meritorious provisions that Members have addressed will also fall. One of the best chances to reform the IRS in over 40 years could well be lost if the appeal of the Chair's ruling succeeds. No one can guarantee what would happen if the distinguished Senator from North Dakota would prevail. Therefore, Mr. President, I move to table the motion made by the Senator from North Dakota, and I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second?

There is a sufficient second.

The yeas and nays were ordered.

The PRESIDING OFFICER. The clerk will call the——

Mr. DORGAN addressed the Chair.

Mr. ROTH. Regular order.

The PRESIDING OFFICER. The motion to table is not debatable.

Mr. DORGAN. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

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

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

UNANIMOUS CONSENT AGREEMENT

Mr. MOYNIHAN. Mr. President, I ask unanimous consent that the Senator from North Dakota be allowed to speak for 3 minutes in response to the remarks by our chairman, the Senator from Delaware, and that the chairman,

in turn, have 3 minutes, and that these two 3-minute speeches be the only comments made before we proceed to a vote on the motion to sustain the ruling.

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

The PRESIDING OFFICER. The Senator from Minnesota.

Mr. WELLSTONE. Mr. President, I had come down to join the Senator from North Dakota. I will not take more than a few minutes, but I wanted to speak on this. I don't mean to complicate matters, but I came down to speak on this question.

Mr. ROTH. I must object, Mr. President.

Mr. MOYNIHAN. Mr. President, I have to say to my friend from Minnesota that we entered into a very special arrangement to have the two comments and no more. And the chairman feels that if there were to be one more allowed that it would extend indefinitely. And the agreement having been reached, I feel that we will not be able to.

Mr. WELLSTONE. Mr. President, I regret objecting then, because I don't quite understand why it would be that we wouldn't want to have a discussion, I think, on the issue that my colleague raised, and as a Senator I certainly want to speak on it.

Mr. DORGAN. Mr. President, if I might respond.

The PRESIDING OFFICER. The Senator from North Dakota.

Mr. DORGAN. I didn't know of any intention of delaying this. I don't think it would be a problem giving a couple of minutes to the Senator from Minnesota. I know he spoke earlier on the floor on the subject. As far as I am concerned, we are almost ready for a vote, except that the tabling motion came almost immediately. My appeal of the ruling of the Chair is a debatable motion, and the Senator from Delaware moved almost immediately to table, which prevented this from being a significant debate. That is the Senator s right, and I made my comments. But I wanted to respond briefly to the comments the Senator from Delaware made. I mean it seems to me that it wouldn't be a problem if I am allowed to speak for 3 minutes and the Senator from Delaware and the Senator from Minnesota for a couple of minutes, and we can have a vote. It seems to me to be quicker to get it done that way.

Mr. MOYNIHAN addressed the Chair.

The PRESIDING OFFICER. The Senator from New York.

Mr. MOYNIHAN. I amend my unanimous consent request to have 2 minutes for the Senator from North Dakota, two 2 minutes for the Senator from Minnesota, and no other speakers other than the chairman.

Mr. WELLSTONE. Mr. President, if the Senator will yield for just a minute, the Senator from North Dakota can have the 4 minutes, and we will go forward. I did speak earlier. People will be accountable on the vote. The discussion is taking place. We can come back to it if we need to come back to it. My colleague has been taking the leadership on this. Just go ahead.

Mr. DORGAN. Mr. President, let me go ahead, and if that consent is agreed to——

The PRESIDING OFFICER. Is there objection?

Mr. ROTH. Point of order.

Mr. MOYNIHAN. The Senator from North Dakota has 4 minutes, the Senator from Delaware has 4 minutes, and no other.

The PRESIDING OFFICER. Is there objection?

Without objection, it is so ordered.

Mr. DORGAN. Mr. President, we are never going to be accused of legislative speeding around here. It is fascinating to me that this bill has been kicking around for what, 10 months or so? And all of a sudden in the last couple of minutes we are dealing with $1 billion a minute, if I get 2 minutes. If I get $1 billion a minute, and he gets $1 billion a minute, it is a $2 billion tax break provided in the closing minutes of a conference report. Gosh. Month after month after month has gone by. Then all of sudden we have to get to the intersection in a nanosecond.

That is fine. Some days I might have objected, but I am in such an awfully good mood today that I am persuaded to speak for 2 or 3 minutes and then sit down.

First point: It is not going to kill the bill if we dump a $2 billion provision stuck in the middle of this piece of legislation by folks that didn't want a debate on it, didn't want votes in the House or the Senate on it. Getting rid of that provision won't kill the bill. Do not be fooled by that. Nobody is talking about killing this bill. We are just talking about taking a sow's ear out of this bill. You know the old saying in my area, which is farm country, ''You can't make a silk purse out of a sow's ear.'' There is nothing in this provision that you can make a silk purse out of, I guarantee you.

This was not done in the regular way. The chairman indicated the 18-month holding period came not from the House or Senate. It came as part of a deal made by the White House and legislative leaders. That is true. That was a deal. It was a deal with respect to changing tax policy, and there was a lot of negotiation going on back and forth.

That was a tax bill. That was a big tax bill. This is an IRS restructuring bill. All of a sudden, you have substantive changes in tax policy with no debate. That is the point I am making.

Finally, it makes sense, in my judgment, to move in the direction of incentives for long-term holdings, not short-term holdings. That is precisely what the 18-month-rule did. It says there is a benefit to holding investments for the long term. Those who think in the longer term invest in the longer term. That is precisely what builds this country.

But today we hear people say let's go back to the shorter term, let's think short-term, and let's provide big tax breaks to upper-income people who think that way. Those that have a couple hundred thousand dollars a year or more, if they will just think in the shorter term they get a big tax break.

You talk about marching in the wrong direction. Get some drums and bugles here and just quicken the cadence. This doesn't make any sense at all.

The reason I appeal the ruling of the Chair is we never had a chance to debate this.

And I might add that the point of order that I raised would have been sustained prior to October 3, 1996, because for decades, going back to the 1930s, the rule that I cited had force. ''Conferees shall not insert in their report matter not committed to them by another House.'' That rule of the Senate would have persuaded the Presiding Officer to rule in my favor.

But on October 3, 1996, the Senate did something, in my judgment, that was very ill-advised. It overturned a ruling by the Chair, and we forever changed this rule until the Senate votes to change it back. This would be a good opportunity to do that, because this is precisely the kind of mischief—$2 billion worth of mischief—that occurs in a conference committee with an item that was never in the House bill, never in the Senate bill, never debated, and never voted on. But here we find it folded neatly between the covers of this bill, which was supposed to have dealt with IRS restructuring.

You got $2 billion you want to use for something. I say to Members of the Senate, you got $2 billion you want to use for something. What is your priority? What is your priority? To search out those with $200,000 or more in income and say, ''You know what you need. You need a tax cut, and that is the priority of the U.S. Senate. It is the priority of the U.S. House.'' Boy. I don't think that would match the priority most people would want to expose in the middle of the day here in the Senate in a debate.

So that is the reason I have asked for this vote.

Once again, I appreciate the Senator from Delaware and the work he has done. Much of what is in this piece of legislation I commend. It has great merit, but this provision should never have been stuck in that bill. I think everybody in the Senate knows it.

If we will vote to overturn the ruling of the Chair, we will solve this problem without killing the bill.

The PRESIDING OFFICER. The Senator from Delaware is recognized.

Mr. ROTH. Parliamentary inquiry: How much time does the Senator from North Dakota have left?

The PRESIDING OFFICER. He consumed all of his time.

Mr. ROTH. Mr. President, let me emphasize what I said earlier, that if his appeal should be sustained, there is no

question but what it kills the conference report. That is a matter of great seriousness. For no one can guarantee, if we go back to the conference table, what will come out of that negotiation. I can assure my friends on both sides of the aisle that I objected and fought many other provisions, some of which I think they would feel just as strongly about, if not more strongly.

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

Mr. ROTH. Yes.

Mr. MOYNIHAN. Is it not the case that once a House passes a conference report the conference committee is dissolved?

Mr. ROTH. That is correct.

Mr. MOYNIHAN. So it no longer exists. So we would have to create a new one.

Mr. ROTH. We would have to create a new one. The distinguished Senator is absolutely correct.

The other point I want to make, Mr. President, is that the 18-month holding period resulted from exactly the same process to which the distinguished Senator from North Dakota is objecting. But I recall no one from that side of the aisle objecting to the 18 months on the same grounds that it is objecting to the reduction of 12 months.

So, again, what I am saying is that we are correcting something that was done a year ago. And for that reason, I must urge that——

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

Mr. ROTH. I will not yield for any more time. I think we have had the 4 minutes.

I yield the remainder of my time and call for the regular order.

The PRESIDING OFFICER. The question is on the motion of the Senator from Delaware to lay on the table the appeal of the ruling of the Chair by the Senator from North Dakota.

On this question, the yeas and nays have been ordered, and the clerk will call the roll.

The clerk will call the roll.

The assistant legislative clerk called the roll.

Mr. NICKLES. I announce that the Senator from Texas (Mrs. HUTCHISON) and the Senator from Arizona (Mr. KYL) are necessarily absent.

The result was announced—yeas 76, nays 22, as follows:

[Rollcall Vote No. 186 Leg.]

YEAS—76

| | | |
|---|---|---|
| Abraham | Coverdell | Helms |
| Akaka | Craig | Hutchinson |
| Allard | D'Amato | Inhofe |
| Ashcroft | DeWine | Inouye |
| Baucus | Dodd | Jeffords |
| Bennett | Domenici | Kempthorne |
| Biden | Enzi | Kerrey |
| Bond | Faircloth | Kerry |
| Boxer | Feinstein | Kohl |
| Breaux | Ford | Landrieu |
| Brownback | Frist | Lautenberg |
| Bryan | Gorton | Leahy |
| Burns | Gramm | Lieberman |
| Campbell | Grams | Lott |
| Chafee | Grassley | Lugar |
| Coats | Gregg | Mack |
| Cochran | Hagel | McCain |
| Collins | Hatch | McConnell |
| Moseley-Braun | Santorum | Thomas |
| Moynihan | Sessions | Thompson |
| Murkowski | Shelby | Thurmond |
| Nickles | Smith (NH) | Torricelli |
| Reid | Smith (OR) | Warner |
| Robb | Snowe | Wyden |
| Roberts | Specter | |
| Roth | Stevens | |

NAYS—22

| | | |
|---|---|---|
| Bingaman | Feingold | Mikulski |
| Bumpers | Glenn | Murray |
| Byrd | Graham | Reed |
| Cleland | Harkin | Rockefeller |
| Conrad | Hollings | Sarbanes |
| Daschle | Johnson | Wellstone |
| Dorgan | Kennedy | |
| Durbin | Levin | |

NOT VOTING—2

| | |
|---|---|
| Hutchison | Kyl |

The motion was agreed to.

The PRESIDING OFFICER. The decision of the Chair stands.

Mr. ROTH. Mr. President, I move to reconsider the vote by which the motion was agreed to.

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

The motion to lay on the table was agreed to.

The PRESIDING OFFICER. Is there further debate on the conference report?

Mr. BOND addressed the Chair.

The PRESIDING OFFICER. The Senator from Missouri.

Mr. BOND. Mr. President, I rise to commend the chairman and ranking member for the excellent job that has been done on the Internal Revenue Service Restructuring and Reform Act. The conferees have taken very good ideas and have made the strongest possible bill.

Mr. MOYNIHAN. Mr. President, the Senator deserves to be heard. May we have order?

The PRESIDING OFFICER. If anybody wishes to speak, they may after the Senator from Missouri, but at the present time, he is speaking.

Mr. BOND. I thank the Chair. Mr. President, I have a loud voice, but not that loud, and I appreciate the chance to share my thoughts with my colleagues.

As I was saying, this measure is very important for the citizens of this country, all across the Nation. We have not only seen and heard of the abuses that were brought out before the Finance Committee, but I think each one of us in our home States has heard the concerns expressed. This is the time now for us to move forward, for the Senate to add its voice and pass this bill for America's taxpayers.

This is a historic opportunity to make some far-reaching changes in the operation of the Internal Revenue Service to strengthen taxpayers' rights. I believe the conferees have delivered, and it is now up to us to deliver. For too long, taxpayers have had to put up with poor service from the IRS, often to the tune of larger tax bills because of interest and penalties that accrue during the lengthy delays caused by the IRS in settling the disputes.

For my part, I have asked people across Missouri for their suggestions on how to fix the IRS and protect taxpayers' rights. And as chairman of the Committee on Small Business, I have also asked small businesses to give me their ideas. We have had hundreds of people who have taken the time and made the effort to share their views with us.

I introduced a measure, called Putting Taxpayers First, in February. In that measure, we proposed things that are included in this conference report:

No. 1, a requirement that the IRS restructure its operations to serve specific groups of taxpayers with similar needs, like individuals, small businesses, the self-employed, and corporations;

No. 2, greater due process protections for taxpayers to guard against unreasonable seizures by the IRS;

No. 3, expansion of the current attorney-client privilege of confidentiality to cover accountants and other tax practitioners who provide tax advice;

No. 4, reform of the penalty and interest rules so they do not stand in the way of taxpayers who try to settle their accounts and get on with their lives;

No. 5, clarification that a taxpayer may recover attorney's fees and costs when the IRS discloses information about the taxpayer without permission and when an IRS employee improperly browses a taxpayer's records.

In addition, I am delighted to see: A requirement that the IRS establish an independent appeals process for taxpayers; a prohibition against the IRS contacting third parties, such as a business's customers or suppliers, without notifying the taxpayer first; improvements to the offer-in-compromise program; and prohibition on communications between an appeals officer and the IRS auditor or collection agent handling the case without permitting the taxpayer to be present.

These are some of the abuses that we can and we will deal with in this bill.

During the floor consideration in the Senate, I worked with Senator MOSELEY-BRAUN on an amendment which would provide clear direction that the IRS expansion of electronic filing of tax and information returns will be voluntary and not another Government mandate on the taxpayers of America. I am sorry that the conference agreement omitted this important provision, but rest assured that we will be keeping a careful eye on the IRS to ensure that Americans use electronic filing because it is simple, convenient, and easy to do so, not because they are forced to do so.

While our ultimate goal must be simpler and less burdensome tax law, taxpayers need help today when dealing with the IRS. Like the bill introduced earlier this year, the IRS Restructuring and Reform Act provides that help by putting America's taxpayers first.

Mr. President, I appreciate the good work and the effort that has gone into this, the many people who have taken a lead in sponsorship of this, and the

work that has been done in the committees. I know that the big challenge will lie ahead of us in the next couple years to embark upon a full-fledged reform of the IRS Code. That is the next step. But today we are taking the very first step.

When I first argued for this bill, and pointed out that common criminals had more rights than taxpayers, my colleague from Texas asked if we really wanted to treat taxpayers like common criminals. And the answer is, we certainly do not want to treat them worse. This at least gives the American taxpayers the rights that all citizens should have in the United States. And we believe that it will end abuses in the IRS without curtailing the IRS' ability—an important responsibility—to collect the taxes that are owed.

I commend the measure, and I thank the leaders on both sides. I hope that we can adopt the measure and send it to the President without further delay or distraction.

I yield the floor and thank the Chair.

Mr. CRAIG addressed the Chair.

The PRESIDING OFFICER. The Chair recognizes the distinguished Senator from Idaho.

Mr. CRAIG. Mr. President, I will be brief, but I did want to recognize the chairman of the Finance Committee and the ranking member for the tremendous work they have done on this bill to reform the IRS. Many of my colleagues have come to the floor today to speak about the reforms embodied in H.R. 2676.

While the House moved very rapidly, the Senate engaged in a more deliberative process, appropriately, and reviewed in greater depth, in great detail, the changes we believed would be necessary. We did not want to make symbolic changes in the IRS, but wanted to change the very culture, the very thinking of the IRS, the way it functions, the way it treats the taxpayers of this country.

I have been in the Congress of the United States now a few years. And not by my vote, but by the collective vote of past Congresses, we have seen the Internal Revenue Code expand and expand and become more complicated. And every time the government decided it needed more money, it hired more IRS agents. Control spending? No. Demand a leaner, more efficient bureaucracy? No. Review policies and repeal or reform uneconomic ones? No. Raise taxes and encourage the tax collector to squeeze the taxpayer harder—that was the way 40 years of liberal Congresses claimed they were addressing the fiscal problems of our country.

So the IRS was an agency that Congress created and allowed to grow. And as the Tax Code became more complicated, the agency became larger, and by its very character it became a much more complicated and demanding agency.

Times have changed. I believe we are able to bring about reform of the IRS today for a variety of reasons, not just because we discovered abuses, but also because this Congress is committed to downsizing, to right-sizing, Government. For the first time, we are talking, not about budget deficits, but about surpluses. For the first time, we are succeeding in our efforts to create a less intrusive IRS. In fact, we are talking about tax reform, not in some symbolic way, but fundamentally changing the way we tax the American people are asked to pay for the Government services and programs for which they ask. That is why we are able to be here today in a bipartisan mode, to talk about the changes that are embodied in this very, very significant document.

So, I honor my chairman and ranking member here today, and my colleagues, who have stood forthright on this issue. When a citizen of our country, a taxpayer, receives a letter from the IRS, and it goes on the dinner table, with the family fearful to open it because they do not know what is inside, they are fearful there may be an audit announced, or that somehow they failed to comply with the code that is so complicated that they and their tax accountant, or even a tax attorney, cannot understand it. It is wrong for Americans to live in fear of their government like that. That bleak day is ending. The Congress well ought to have responded long ago to sense of dread on the part of American families. Some of us tried to. Because no American citizen, no taxpayer ought to fear their Government.

Without question, taxpayers have feared the IRS. Some of that will now change as the reforms embodied in this conference report are implemented and become functional, and as they are carried out in the regulation and enforcement process.

Two hundred twenty-two years ago, the American Revolution began, in large part, over an oppressive tax system. Today, for the first time in two hundred years, the Congress is taking significant power away from the tax collector and giving it back to the taxpayer. Today we reverse direction on a two hundred-year trend. Today we keep faith with the spirit that has been at the core American values and traditions from the start. Today, the Congress is taking long-overdue action to restore some of the liberty that an insatiable government has spent years eroding.

But the day of change is not over, nor should it be. I, like others, believe we should move now to significantly change our country's Internal Revenue Code. The tax laws of our country should not be used for social engineering, nor should they be designed in such a way to tempt and enable legislators and bureaucrats to manipulate social policy in this country, to decide for the taxpayers what is good for them, and to use the tax code and the IRS to force them to behave accordingly. That impulse for social engineering, directed from a Washington, DC, that thought it was all-knowing, is what grew the tax code and gave the IRS its power. Decades of tax-and-spend Congress empowered and encouraged the tax collector to step outside the due process Americans expect in every other encounter with their government, and went about structuring social policy through tax law; and they gained power and they gained control.

Today, we make a first step. This reform bill is an important symbol, but it is more than symbolic. It is the first installment on our commitment to do more. I believe if we restructure the tax code by reforming it in a significant way, by simplifying it and restoring a sense of freedom and fairness, we can come back to the very agency we are changing today and restructure it once again, because: As goes the code, so goes the character of the tax collector.

So once again, I stand, like many of my colleagues do today, ready to vote for this conference report as a major first step in doing what the American taxpayer has said needs to be done for a long while and maybe lessening the fear that the taxpayer has of their Government and of the IRS just a little bit.

I hope that we will return next year—in the very next year—not only to review the work we have done here but to reform the tax code in a more significant way and once again improve the tax collecting agency of our country, the Internal Revenue Service.

I yield the floor.

Mrs. MURRAY. Mr. President, I am so pleased we are finally acting to send this bill to the President. This important legislation has been delayed long enough. It has been over a year since the Kerrey/Portman IRS Reform Commission reported their findings to Congress and the American people. The Commission's report was extremely clear. The IRS had become a monster agency feared by law abiding citizens. It acted with total disregard for the rights of American taxpayers and ruled not through law or practice, but fear and fear alone.

I urge swift Senate action on the conference report to accompany H.R. 2676, the IRS Restructuring and Reform Act. The American people cannot afford any further delay or political grandstanding. The House passed their bill on November 5, 1997 and we passed a reform bill on May 7, 1998. We should have been acting on a final conference report months ago. Unfortunately, despite the extensive analysis contained in the Kerrey/Portman Commission's report, some in Congress chose to engage in partisan politics using IRS abuses as a mechanism for talking about the evils of ''big government.'' The American taxpayer deserved better.

The problems at the IRS are not about ''big government'' but rather an agency with a conflicting mission and little guidance from Congress. In each Congress, new and in some cases sweeping changes in the tax code are enacted

into law. The IRS must then swiftly implement these complex and difficult changes in the tax code. Excessive contracting restrictions and little managerial oversight results in an actions that border on the extreme.

I am pleased to have supported historic taxpayer Bill of Rights provisions in the 1993 deficit reduction plan. But, it became obvious from the Kerrey/Portman Commission report that additional taxpayer protection reforms were necessary. We could no longer allow the agency to rule by fear. American taxpayers should not fear challenging any decision made by the IRS. This should be the right of every American to challenge any decision by any federal agency. If an individual feels that the Social Security Administration erred in denying benefits, this individual can challenge this decision without fear of retaliation. No one should ever fear challenging the decision of any federal agency. But, sadly this had become the case with the IRS.

Many taxpayers simply were convinced that they had no choice but to submit and pay the often times excessive penalties and interest demanded by the agency. There simply was no assumption of innocence.

Taxpayers need this bill. This is not about those who do not honor their financial responsibilities. It is about protecting those that voluntarily pay their fair share. It is also about providing guidance to the agency responsible for implementing the laws that we pass. It is about leveling the playing field to ensure that taxpayers have the same rights and protections when dealing with the IRS.

The conference report adopts many of the provisions included in S. 1096, the original Kerrey/Grassley IRS reform bill which I cosponsored shortly after it was introduced. These provisions are essential if we truly hope to reform the IRS. The legislation will shift the burden of proof in many of the cases in U.S. Tax Court from the taxpayer to the IRS. Under current law, it is the responsibility of the taxpayer to disprove any charges brought by the IRS. This is counter to criminal law and makes it difficult for a taxpayer to disprove charges brought by an agency without almost unlimited resources. The legislation also mitigates interest charges and penalties for some tax cases. No longer with the interest charges and penalties significantly amount to more than that total taxes owned the IRS.

The conference report also includes new restrictions on the ability of the IRS to seize property. Too many times overzealous actions by the IRS resulted in the seizure of a business or the home devastating working families and leaving no means to repay taxes owed. What is even more outrageous is I have heard of cases where decisions to seize property were later overturned. The seizure of one's economic security cannot be part of a normal enforcement strategy for the IRS. It must be an extreme and final solution, not simply a compliance mechanism.

I am also pleased that the final agreement maintains an independent board to oversee actions within the agency. I have heard from many IRS employees about internal problems that create major obstacles to reform. An independent board drawing from the private and public sectors will provide some real strategic planning assistance for the Commissioner. It also ensures effective citizen oversight.

The IRS needs to put the idea of service back into the Internal Revenue Service. Its mission must be to serve the public and provide a cooperative environment for those voluntarily complying with their financial obligation.

The legislation will make a difference. No longer will a convicted criminal have more rights and protections than an honest taxpayer challenging the IRS. We should have acted many months ago. Every day the Republicans delayed this bill in the Senate resulted in more taxpayer abuses. More fear and more abuse. Today's actions will make sure this all stops.

Currently, honest taxpayers and business pay an average of $1,600 per person for those who do not meet their financial obligations. An estimated $120 billion a year goes uncollected by the IRS. We should be doing more to encourage more Americans to come forward and meet their obligations. But, so many taxpayers have simply given up. There is wide-spread belief that you cannot find fairness or respect at the IRS.

We need to give the IRS the tools and the guidance to bring respect back to the IRS. If we want American taxpayers to respect their government we must ensure that they are treated with respect and dignity. The legislation we are not considering meets this test.

I urge my colleagues to join with me in supporting effective and comprehensive IRS reform and restructuring.

Mr. LEAHY. Mr. President, I am gratified that the Senate finally has before it today the final language of The Internal Revenue Service (IRS) Restructuring and Reform Act. I continue to support this bill, which has been making its way through the Congress for many months and which is long overdue. I commend Chairman ROTH and Senator MOYNIHAN for their conscientious work on this legislation. I also commend Senator GRASSLEY and Senator KERREY for introducing the original IRS reform bill, of which I am a cosponsor.

I have heard from many Vermonters who support the reining in of the IRS. They want the IRS to be more responsive to their questions and more respectful of their rights, and that is exactly what they deserve from their government. I will be pleased to return home and tell Vermonters that the Senate has acted in their interests and passed legislation that will make the IRS more responsive to the average taxpayer and that gives the average taxpayer more rights when dealing with the IRS.

This bipartisan legislation will bring many significant reforms into reality, including:

Burden of Proof. The burden of proof is on the IRS in all court cases for tax years beginning after the date of enactment of this bill.

Innocent Spouse Relief. Innocent spouses and former spouses will no longer be held responsible for tax liabilities incurred by the other spouse.

Interest and Penalties. If the IRS fails to notify the taxpayer of a delinquency within 18 months, the taxpayer will not be held responsible for penalties and interest accrued during that time.

IRS Accountability. IRS employees will be held more accountable for their actions and advancement will be based on a system of merit.

Low-Income Taxpayer Clinics. $6 million will be provided in matching grants to establish taxpayer clinics to provide tax assistance to low-income taxpayers.

Oversight Board. A nine-member IRS Oversight Board will be established. This board will consist of the Secretary of the Treasury, the Commissioner of the IRS, a representative of IRS employees or a full-time Federal employee, and six members from the private sector.

Collections. This bill establishes formal procedures to ensure due process for any liens or levies placed on a taxpayer.

Confidential Communications. Privileged communications will be expanded to include tax advice between an accountant or tax advisor and a taxpayer.

I am also pleased that two amendments offered by Senator ASHCROFT and myself have been retained in the final conference report. One amendment, based on our bill, the Taxpayer Internet Assistance Act of 1998, requires the IRS to provide taxpayers with speedy access to tax forms, publications and other published guidance via the Internet. This legislation provides for online posting of documents created during the most recent five years.

The second amendment requires the IRS to treat an electronically authenticated document the same as a paper document. This is required as more and more people file their returns online and use electronic signatures. This bill will ensure that people who use an electronic signature will have no less or no greater status in the tax context than those using a physical signature. By retaining these two amendments, the Senate is recognizing the importance of the Internet and its potential to give taxpayers greater access to information and service.

In addition, Senator RUSS FEINGOLD and I introduced the Equal Access to Justice for Taxpayers Act of 1998, S. 1612. Under current law, many taxpayers are unable to recover their legal

fees and other costs when the IRS takes unjust actions against them. Our bill would modify the Equal Access to Justice Act to give taxpayers the same rights as other citizens to fight unjust governmental action. Provisions similar to the Equal Access to Justice for Taxpayers Act were included in the IRS Restructuring and Reform Act.

The bipartisan bill before us will institute a wide range of constructive and sensible steps to reshape the IRS and to improve the way it deals with the American taxpayers they are intended to serve.

Ms. SNOWE. Mr. President, I rise today in support of the conference report to H.R. 2676, the IRS Restructuring and Reform Act.

Mr. President, the people of this nation have watched as Congress has finally taken serious strides toward the reform of our federal tax collection arm—the Internal Revenue Service. They have watched and they have waited because they know that meaningful changes in the way in which we collect income taxes in this country is sorely needed and long overdue.

Well, today we have an opportunity to send to the President a reform package that is not only meaningful, but one that will strike at the heart of some of the most serious abuses exemplified by some of the real-life horror stories we've all heard over the past few months.

Indeed, the Senate Finance Committee in their hearings during the past year uncovered an agency that, in many instances, simply ran roughshod over taxpayers rights and the IRS' very own rules.

Agents misused files, violated privacy, made arbitrary decisions concerning the payment of delinquent taxes, demoted those who sought to report improper tactics. They were evaluated on statistics based on seizures of personal property and finances; they lied and misled the public. In short, the high level of trust that must exist when people's privacy, dignity, and very livelihood are at stake had disintegrated into a quagmire of duplicity and dishonesty.

Now, that's not to say that everyone at the IRS engages in such dubious practices. I have no doubt that the majority of Americans who work for the IRS are attempting to do an often unpleasant and thankless job with integrity and the best interests of the taxpayers at heart.

Unfortunately, as is always the case, it is the transgressions of the few that foster the decay of the whole. In fact, I'm sure that the majority of the honest, hardworking people of the IRS would welcome a cleanup of the system just as much as any American taxpayer.

This conference report provides such relief from the practices of the past and is a giant step forward in rebuilding the trust that has slowly but steadily been eroded over the years. It provides $12.9 billion over the next 10 years for reforms, which will include an oversight board to keep careful watch over the management and administration of the IRS. It shifts the burden of proof from the taxpayer to the IRS, where it belongs. It provides relief for divorced or separated spouses who unwittingly become embroiled in the tax liabilities of their estranged husbands or wives. It requires the IRS to report annually to Congress regarding employee misconduct. In short, it helps put government back in the hands of those it is supposed to serve.

We still have a long way to go in terms of simplifying our tax system—something we must do if we are to follow through on our promise to not only reduce the burdens of our archaic tax structure but to reduce instances of abuse. So, even with the passage of this legislation, our work will be far from done. But this bill will create a more level playing field between the IRS and taxpayers, and it will make the IRS more accountable to the American taxpayer. As I said when I spoke on this issue in May, the issue comes down to trust. The people of this nation must be able to trust that their government will be fair, will be discreet, will be responsive. Taxpayers should not fear the very institutions that are supposed to be serving them.

The House put their overwhelming stamp of approval on their version of the legislation with a 426 to 4 vote, and passed the conference report 402–8. In the Senate, there was not one vote against the measure when we last considered it. It's now time that we send this bill to the President with the message that it has strong, bipartisan backing in Congress and the overwhelming support of the American people. I hope my colleagues will join me in voting for this Reform Act and putting ''service'' back into the IRS.

TECHNICAL CORRECTIONS TO TEA–21

Mr. DOMENICI. Mr. President, Subtitle A of title IX of the conference report on H.R. 2676, the IRS Restructuring and Reform Act, contains a number of technical corrections to the Transportation Equity Act for the Twenty-first Century (TEA–21). This subtitle is essentially identical to H.R. 3978, which passed the House by voice vote but has been held up in the Senate due to objections chiefly over provisions concerning Veterans smoking benefits.

Mr. President, I want to focus my remarks on the technical corrections to title VIII of TEA–21. This title of the transportation bill did two things. First, it provided roughly $17.5 billion in offsets to pay for the cost of the additional highway and transit spending in TEA–21. With respect to the offsets in TEA–21, the technical corrections in this conference report make a number of changes in the Veterans provisions which will provide a net $959 million increase in Veterans spending as a result of correcting a drafting errors in TEA–21.

This technical corrections bill modifies provisions in TEA–21 that inadvertently labeled smoking an act of willful misconduct on the part of the veteran. Further, this bill reverses provisions included in TEA–21 that extended the change in compensation law to include those people who are currently serving in the military or have recently left the service but are still within certain statutory presumptive periods where any illness is presumed to be service connected. The technical correction also clarifies that the grandfather clause will include those veterans who have filed a claim before the enactment date, not only those with adjudicated claims upon enactment. Finally, the corrections bill adds a new section which extends the GI bill reimbursement increase to a veteran's survivor and dependents. This rate increase was intended to be included in the original bill but was inadvertently left out.

Second, TEA–21 established a rather elaborate regimen under our budget laws to ensure a minimum amount of discretionary funding would be set aside for highway and transit programs. The conference report on TEA–21 did not include an explanation of the budget process changes in title VIII and I did not have a chance to discuss these changes in detail when we considered the conference report on TEA–21.

TEA–21'S HIGHWAY AND TRANSIT ''FIREWALLS''

The Balanced Budget Act of 1997 extended through 2002 the spending limits, or caps, on spending provided in the annual appropriations process, what we call ''discretionary'' spending. The Balanced Budget Act also provided separate limits on defense, nondefense, and violent crime discretionary spending, which are frequently referred to as ''firewalls''. These separate spending limits, or firewalls, effectively segregate a specified amount of spending for defense and violent crime reduction.

Highways and transit spending are considered nondefense discretionary spending and must compete with other programs under the nondefense discretionary cap. While the Balanced Budget Act made transportation spending a priority, there was a strong desire to provide a means to allow the taxes collected by the Highway Trust Fund to be made available for highway spending. The House-passed transportation bill took highways off-budget. The Senate developed a mechanism in the budget resolution to direct savings from reductions in direct spending programs to the Appropriations Committees to pay for increased transportation spending.

Trying to find a mechanism to provide a guarantee for discretionary spending for highways without breaking the budget proved to be one of the more difficult tasks for the conferees on the transportation bill. We ended up with a complicated mechanism that kept highways and transit funding subject to the appropriations process, the budget process, and the discretionary caps.

Subtitle A of Title VIII of TEA–21 amended the Balanced Budget and Emergency Deficit Control Act to establish new categories on highway and transit spending at outlay levels for certain programs in TEA–21. The Act also made reductions to the nondefense discretionary limits by an amount equal to OMB's estimate of base level of funding for these programs.

These highway and transit categories are very similar to the current defense and violent crime categories in the Balanced Budget and Emergency Deficit Control Act with two notable exceptions. Unlike the defense or crime caps, TEA–21 amended section 250(c) of the Balanced Budget and Emergency Deficit Control Act to add a special rule that provides that any spending in excess of the highway and transit limits be charged to the nondefense discretionary or discretionary spending limits.

Next, TEA–21 amended section 251(b)(1) of the Balanced Budget and Emergency Deficit Control Act to provide for two adjustment to the highway outlay limits and one adjustment for the transit outlay limit.

One of our objectives in TEA–21 was to ensure that highway revenues would be spent. To meet this objective, the first adjustment ensures the highway outlay limit fluctuates with changes in gasoline tax levels. The highway spending levels and the outlay limits established by TEA–21 are based on the Congressional Budget Office's (CBO) February 1998 estimates of tax revenues to the highway trust fund. To the extent actual revenue levels are different than these 1998 estimated levels or the Office of Management and Budget's (OMB) updated estimates for the budget year is different than these levels, OMB is required to adjust highway obligation levels in TEA–21. Next, OMB is required to calculate the outlay changes that would result from the change in the obligation levels and adjust the highway outlay limits by that amount.

A second concern was raised that purely technical changes in outlay estimates could cause the highway or transit outlay limits to be exceeded. The second adjustment TEA–21 added to section 251(b)(1) of the Balanced Budget and Emergency Deficit Control Act was to provide adjustments to the highway and transit outlay limits due to purely technical estimating changes. This was a challenge to draft because it is difficult to distinguish between changes in outlays for technical as compared to policy reasons. Under this second adjustment, OMB is required to estimate the outlays that would result from TEA–21 in its final sequester report this fall. Each year, as part of the President's budget submission, OMB is required to update its estimate of the outlays resulting from TEA–21 and adjust the outlay limits by any change in outlays due to technical re-estimates.

On this technical adjustment for outlays, our intent is that OMB only adjust the outlay limits because of purely technical estimating changes. To the extent Congress makes changes in the appropriations process or takes other actions in legislation that effect the level of outlays for highways or transit, the resulting change in outlays should be absorbed by the respective limits and OMB should make no adjustments to those limits.

Mr. President, section 251(b)(1)(D)(ii) is vague with respect to how OMB is to adjust the estimate it is required to make pursuant to clause (i) in this fall's final sequester report of the outlays resulting from TEA–21. Our intent is that OMB adjust this estimate of outlays by the adjustments it will make to the outlay limits pursuant to subparagraphs (B) (to align spending with revenues) and (C) (adjustments for technical outlay re-estimates).

Mr. President, the highway and transit firewalls we established in TEA–21 was a compromise with the House and the Administration. I would have preferred a much simpler and much less rigid approach. I am particularly concerned, and share the concerns of the distinguished Chairman of the Appropriations Committee, that these new firewalls unnecessarily impinge on the appropriations process. Finally, I am troubled by the complexity of this mechanism and the reliance we have placed on OMB estimates, particularly with respect to the adjustments allowed for the outlay limits.

In conclusion Mr. President, let me say this. Even with my reservations and concerns about our new discretionary firewalls and the outlay adjustments that will be made to them, I strongly support TEA–21. The conference report is the culmination of over 14 months of effort by many members of the House and Senate. Our compromise allows for highway funds to once again be released to states and avoid delay in this year's construction season. Most importantly, TEA–21 provides increased funding for our nation's infrastructure while maintaining fiscal discipline and our balanced budget. I support this bill and am proud to have played an integral role in its development.

Mr. MACK. Mr. President, first I commend Finance Committee Chairman ROTH, and my Finance Committee colleagues Senator KERREY of Nebraska and Senator GRASSLEY, for their invaluable contributions to this important step in cleaning up the IRS. The IRS reform bill that we are about to pass would never have seen the light of day were it not for the efforts of the IRS restructuring commission and the determined leadership of Chairman ROTH, who presided over the first meaningful IRS oversight hearings that this body has had in decades.

The IRS reform bill is a landmark achievement, a shot across the bow to the IRS letting them know that ''business as usual'' will no longer be tolerated. But this bill—although it contains the largest assortment of taxpayer rights ever enacted into law, and reforms the IRS with such important innovations as the new Treasury Inspector General for Tax Administration—is only the first step in a continuing process to curb the abuses of the IRS. More important than the new taxpayer rights, more important than the procedural and structural reforms, is the process that we used to fashion this bill. Simply stated, the oversight power of the Congress is the single most powerful tool that we have to root out the abuses and injustices that have become ingrained in the corrupted culture of the IRS. I strongly support the concept of regular oversight hearings of the full Finance Committee to make sure that past mistakes are corrected, that past misconduct is punished, and that the attitude and modus operandi at the IRS are changed permanently.

The corrupt culture of the IRS can change only if the old regime at the IRS is completely swept away. I am encouraged by the recent announcement of a high-level resignation at the Service, in an office which seemed to be a black hole for disciplinary investigations completed against IRS officials. But one change in office is not enough. Our oversight hearings exposed a rogue agency that was literally out of control. We heard testimony that armed agents use SWAT-team tactics to raid businesses, that IRS officials callously ignored the life-threatening health problems of a taxpayer, that a sexual harasser was promoted to be national director of Equal Employment Opportunity, and that statistics of property seizures were used to evaluate the performance of IRS employees.

Most incredible but all-too-believable was the story of one of my constituents, an IRS employee who blew the whistle on a renegade special agent with a drinking and substance abuse problem. This renegade agent had fabricated allegations of political corruption against several public officials, including the former Majority Leader of this body. This renegade was protected instead of punished by his supervisors, and the IRS employees with the courage and public spirit to report the misconduct ended up being the targets of retaliation. In this instance, as in most of the horror stories brought before the Finance Committee, the misconduct could not have occurred without the encouragement or acquiescence of IRS management. Yet, we were told that one of the IRS managers responsible for this cover-up and retaliation was still on the job.

Congress cannot let up on the IRS. We must follow through on the misconduct exposed by the bright spotlight of our oversight hearings. I am calling on Commissioner Rossotti to testify again before the Finance Committee, prior to the end of this legislative session, to bring us up to date on the disciplinary actions taken as a result of our hearings. Has the member of IRS management who covered up the

scheme to frame Senator Howard Baker been fired? Have the IRS employees responsible for the abuses of power recounted to the Finance Committee been identified and terminated? Have the members of IRS management who condoned such behavior, or who ignored it through complete incompetence, been found and disciplined? We cannot fall into the trap of thinking that things are fixed at the IRS just because this reform bill will soon become law. The Senate has an obligation to continue its vigilance over the actions of the IRS, to follow through on the abuses that have been exposed and root out those that perpetuate. Experience has shown conclusively that the IRS cannot be trusted to police itself.

This IRS reform bill is a step in the right direction. The comprehensive taxpayer bill of rights section is of the most value to taxpayers, although it is my belief that these provisions could have gone further to strengthen the rights of our taxpayers. Unfortunately, under our rules, overly aggressive and abusive IRS collections activity is apparently built into the budget baseline, and can only be redressed by raising new taxes as an offset. Any system that requires us to raise taxes to replace money that the IRS picks from the pockets of our taxpayers is a system that is broken and needs fixing.

I am particularly pleased that the provisions of my Taxpayer Confidentiality Act are included in the conference report. These provisions afford uniform confidentiality protection to taxpayers for the tax advice they receive from federally authorized tax practitioners in noncriminal matters before the IRS and during subsequent court proceedings. Under current law, communications between taxpayers and lawyers concerning tax advice can often be protected from disclosure to the IRS by the common law attorney-client privilege, but communications with other federally-authorized tax practitioners—certified public accountants, enrolled agents, enrolled actuaries, and attorneys providing advice in the role of a tax practitioner—are not protected. The new tax practitioner-client privilege eliminates this unfair penalty imposed on taxpayers based on their choice of tax advisor.

I am concerned, though, about an amendment to this provision that was inserted at the 11th hour while the bill was in conference. The amendment was meant to target written promotional and solicitation materials used by the peddlers of corporate tax shelters, but appears to me to be vague and unfortunately employs an ambiguous definition of tax shelter that some argue could be read to include all tax planning.

I discussed the problems inherent in this last-minute attempt to create an exception for the marketing of corporate tax shelters in meetings and discussions with the Majority Leader, Chairman ROTH, their counterparts in the House, and the Speaker. It was agreed that the language would be clarified to alleviate these concerns and ensure that the amendment does not cover routine tax advice and normal tax planning designed to minimize a corporation's federal tax liability. The language of the conference report, however, could be interpreted in a manner which does not fully reflect our understanding and thus undermines the intended benefit to taxpayers.

Our oversight hearings have given us ample reason not to trust the IRS to interpret this exception to the new privilege in a narrow manner. Nor can taxpayers rely on timely clarification through judicial interpretations, as these will be many years in the making. This is an item we will have to address at the soonest possible instance, in the next tax bill.

One excuse we often hear from apologists for the IRS is that our tax laws are too complicated, and that this is the source of the tensions between taxpayers and the Service. I cannot accept this as the reason why armed raids are conducted on the homes and businesses of peaceful citizens, or why laws and internal IRS rules are broken with gusto and impunity. But it is true that the complexity of the code is a drain on the resources of our taxpayers, and is one of the reasons I support tax reform. In this regard, it is a big relief to all taxpayers, big and small, young and old, that the provisions of my Capital Gains Simplification Act have been incorporated in the IRS reform bill. Restoring the 12-month holding period for long-term capital gains will dramatically reduce tax compliance costs, lessen the punitive lock-in effect on capital, and yield additional federal revenues in the first 2 years.

There is one final point I would like to make concerning the IRS reform bill, as one of the primary advocates of the Sense of the Senate Resolution and the moratorium on Notice 98–11 regulations. Notice 98–35, issued by Treasury to announce its intention to withdraw the proposed and temporary regulations issued under Notice 98–11, has raised some concern for high-tech industries. For instance, Notice 98–35 does not make clear the grandfather rules for licenses—it is important that this be clarified, as the income of many high tech businesses comes from royalties tied to licensing agreements. Also, the asset test described in Notice 98–35 may put high tech businesses at a disadvantage—as the assets of high tech business consists mainly of intangible assets, which the Notice does not adequately take into account. It is my hope that the Treasury Department will clarify these and other issues unique to high tech businesses.

Mr. President, final passage of the IRS reform bill is an important step in the on-going process of reining in the IRS. Let no defender of the status quo at the Service be mistaken on this point: This is the beginning, not the end, of our reform efforts.

Mr. KERRY. Mr. President, I join my colleagues in support of the Conference Report on the IRS Restructuring and Reform Act of 1998. This legislation is a victory for the American taxpayer, and I applaud the work of my colleagues, Senators ROTH, BOB KERREY, GRASSLEY, and others, who have demonstrated such determination, vision and leadership on this important issue.

I believe that the average American taxpayer is fundamentally honorable, willing to play by the rules and carry his or her fair share of public obligations. Most public servants at the Internal Revenue Service (IRS) perform their jobs responsibly. But, sadly, there are exceptions on both sides of this equation, and those exceptions lead to contentious circumstances which must receive careful IRS management attention. Regrettably, that has too often not been forthcoming.

It is clear that the Internal Revenue Service is subject to some difficult challenges. After downsizing in recent years, the remaining IRS agents are strained as they try to meet the demands of increased audit and collection work. The management structure within the IRS has made these problems even more difficult to solve. Regardless of the reason, the abusive and humiliating tactics which were brought to light during the Senate Finance Committee hearings are intolerable and must be stopped. This legislation is an important step in the process of reinstituting control at the IRS.

I have previously supported reform efforts that were intended to make tax collection fairer, and the IRS more accountable. In 1988, I cosponsored the Taxpayers Bill of Rights which expanded the procedural and disclosure rights of taxpayers when dealing with the IRS, prohibited the use of collection results in IRS employee evaluations, and banned revenue collection quotas. During the 104th Congress, I cosponsored the Senate version of the Taxpayers Bill of Rights II, which created the Office of Taxpayer Advocate, allowed installment payments of tax liabilities of less than $10,000, and imposed notification and disclosure requirements on the IRS. Last year, we enacted the Taxpayer Browsing Protection Act, which imposes civil and criminal penalties on Federal employees who gain unauthorized access to tax returns and other taxpayer information.

The Internal Revenue Service Restructuring and Reform Act of 1998 will restructure and reorganize the Internal Revenue Service. It will create a new IRS Oversight Board to review and approve strategic plans and operational functions that are crucial to the future of the agency and will ensure the proper treatment of taxpayers by the IRS.

It would allow taxpayers to sue the IRS for up to $100,000 in civil damages caused by negligent disregard of the law. It also expands the ability of taxpayers to recover the costs of such litigation, including the repeal of the ceiling on hourly attorneys' fees.

The Conference Report expands the protections provided to ''innocent spouses'' who find themselves liable for taxes, interest, or penalties because of actions by their spouse about which they had no knowledge and could not have reasonably expected to know.

I remain concerned about the provision included in the Conference Report that shifts the burden of proof from the taxpayer to the IRS in court if the taxpayer complies with the Internal Revenue Code and regulations, maintains required records and cooperates with IRS requests for information. This provision could give comfort to a small number of Americans who will do anything to avoid paying their taxes but may make the system of tax collection even more complicated.

I support the idea of expanding every American's ability to save for retirement and I was a cosponsor of the Roth IRA bill to promote savings for every American. However, I am concerned that the proposed changes to the IRS included in the Conference Report are being paid for not by reducing spending or by eliminating an unnecessary corporate tax break, but instead by giving a tax reduction to allow some elderly taxpayers to convert their existing Individual Retirement Accounts into Roth IRAs. The Joint Committee on Taxation estimates that this tax change will not provide enough revenue to cover the cost of IRS reform after the year 2007. I would have preferred that a more suitable offset were included to pay for the important changes in this Conference Report and I believe that this offset should have been included in a tax bill.

Americans merit an efficient and a respectful government. In the course of history, we have fought for freedom from despotic bureaucracies. At the essence of our democracy is our right to alter any public institution which fails significantly to deal respectfully and competently with American citizens. I believe the changes this legislation will make will regain the balance that has been lost in the relationship of the taxpayers to the IRS while permitting the IRS to do the difficult job it was created to do.

Mr. D'AMATO addressed the Chair.

The PRESIDING OFFICER. The Chair recognizes the distinguished Senator from New York.

Mr. D'AMATO. Mr. President, first, I would like to thank my colleague, who has been waiting so patiently, for giving me the opportunity of sharing some thoughts with respect to the IRS reform package. I assure you I will keep my remarks to a minimum.

But I would like to congratulate the manager of the bill, the chairman of the Finance Committee, Senator ROTH, and the ranking member, my friend, the distinguished senior Senator from New York, Senator MOYNIHAN. They have done an outstanding job. I would like to commend Senator BOB KERREY for his work. His work truly has helped bring together the Senate and the Finance Committee in a way in which we can pass this legislation that will be helping millions of taxpayers and change, I think, the culture—the culture—in which the IRS has been operating.

Indeed, the litany of witnesses and stories—anecdotal and otherwise—that demonstrated that there seemed to be a pattern that none of us could be proud of—the abuse of the little guy, not the big corporate giant, but the small business entrepreneur, the average-day citizen who lived in fear and, indeed, tyranny, and in some cases was rampant tyranny. And in no case was it worse than as it related to the innocent spouse. And every year approximately 50,000 cases were opened. And the revenuer was after a spouse who had little, if anything, to do with not paying their fair share of taxes—innocent of the fact—and in 90 percent of the cases they were women. They signed a joint return, and in some cases didn't even sign a return. We had some cases where their signature was forged, but we were so desperate for money, they were hunted down. Indeed, some had to give up their jobs and some had to live in fear, and some even left their spouses, their new spouses because they were afraid that the new spouse and his family would have the revenue agent after them. Horrendous. Incredible.

I take this opportunity to salute a courageous person who came and testified before our committee, a citizen of New York, Beth Cockrell, who epitomized this tragedy and whose case went all the way up to the Supreme Court. And because of the manner in which the law was written, why, the court ruled against her. But nonetheless—nonetheless—she is a person who was abused by the revenue code and the agents who pursued her.

Indeed, now they will be free, hundreds and hundreds of thousands—mostly women—who have lived for years with open cases against them, who had accumulations of interest and penalties, in some cases that go into the hundreds and hundreds of thousands, if not millions, of dollars, and they can hopefully now begin to resume a more normal life and clear away that pattern of abuse with which they have had to live. Hundreds of thousands will be free. And, yes, tens of thousands on a regular basis no longer will have to face this because they were married, and someone—their mate—did not pay his or her proper taxes, they were then held responsible. They would be totally innocent and unaware of this fact.

I have heard colleagues speak to many issues in terms of what this bill does. I think it is important so the culture, hopefully, will be changed.

I think one of the most significant provisions, one that I was proud to author along with Senator GRAHAM of Florida and Senator MOYNIHAN, the Innocent Spouse Relief Act of 1998, a bill that would give protection to innocent spouses, and is supported by all of our colleagues, will now be the law of the land, and those who are innocent will no longer have to live in fear for the actions of someone else.

I thank my colleague for giving me this opportunity, Senator MCCAIN of Arizona, to make these remarks.

I yield the floor.

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

Mr. MCCAIN. I ask unanimous consent to address the Senate as in morning business.

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

## UNITED STATES RELATIONS WITH CHINA

Mr. MCCAIN. Mr. President, our relationship with the People's Republic of China is perhaps the most complex of any within the realm of foreign policy. Absent the scale of confrontation the United States experienced with the Soviet Union throughout the Cold War, U.S. diplomacy must, for the foreseeable future, walk a very fine line between cooperation and challenge with the world's most populous nation. The very nature of the Soviet threat provided a level of clarity absent in our attempts at formulating a long-term policy for dealing with China. There is no justification for a policy of containment when there is no reason to believe that Chinese foreign policy is inherently expansionist. Indeed, there is no reason to believe that China's external ambitions extend beyond those with which we are already familiar: island chains in the South China Sea and the most dangerous issue of all dividing our two countries, the status of Taiwan.

The complexity inherent in U.S.-China relations simply allows for neither the demonization of China, as many here would have it, nor the kind of alliance we enjoy with our closest allies. The issues are too varied, and the emotions surrounding them run too deep. The issues with which the United States takes exception relative to China, especially in the area of human rights and religious persecution, are too central to our values as a nation for us to ignore. With every dissident thrown into prison, for every item produced with forced prison labor, for the memory of those killed in Tiananmen Square, those charged with the conduct of American foreign policy must take the government in Beijing to task and demand, not ask, a measure of justice none of us really expects to materialize soon enough. And therein lies the dilemma we face in dealing with China: We demand of it something it has never had—freedom.

President Jiang Zemin made clear the high priority his government places on social stability at the expense of personal liberty. President Clinton, to his credit, offered an articulate defense of the emphasis the United

States places on freedom, and he placed it squarely in the context of an emerging world power struggling with the dichotomies of economic development and dictatorship. Economic freedom cannot forever coexist with authoritarian dictates in the political, social and cultural realms.

The kind of technological innovation and rapid transition from laboratory to marketplace common to advanced industrialized countries is not possible when individual freedom is constrained and lacking essential legal protections. China's poor record on protection of intellectual property is symptomatic of this phenomenon. Furthermore, that it views religious and political freedom as a threat is a sign that it has some distance to go before it can join the community of nations represented in the G–7, as no nation can reach its full potential that fears the free expression of ideas by its own people.

To a very large degree, the ongoing controversy involving technology transfers to China has its seeds in the inability of dictatorial societies to draw upon reservoirs of talent that cannot be created where the flow of information is tightly controlled and where the kind of intellectual exchanges that resulted in the great technological innovations of the 20th Century are constrained. It is no accident that the wealthiest nations on Earth are those that, since the Second World War, have pursued market economies within the framework of democratic forms of government. Japan and Singapore are completely lacking in natural resources, yet enjoy among the highest standards of living in the world. The Asian economic crisis is a serious warning of the need to reform certain government policies and business practices, but the accomplishments of the economic systems still warrant respect.

President Clinton's trip to China has to be viewed within the context of what could realistically be expected of China. In one significant respect, his trip was a success. The access afforded him to the Chinese public was unprecedented, and the President did a fine job of expressing the importance of democratic values to the Chinese people. He further deserves gratitude for his denunciation of the Tiananmen Square massacre, an event of singular importance for post-Cold War relations between the two countries. The events of May and June 1989, occurring as they did while the central front of the Cold War was undergoing dramatic transformations that would reshape most of the world, were a sad reminder of the extremes to which governments that do not rule with the consent of the people will go to maintain their hold on power. By conveying the message directly to the Chinese people that the leader of what has historically been known as the ''Free World'' condemns the events of 4 June 1989, President Clinton communicated to pro-democracy elements in China the vital message that the United States supports their efforts.

To the extent the President is criticized for a mission for which the only success was symbolic, it must be admitted there is little of substance to show for the effort. It is apparent that his sights were set low, and his achievements accordingly modest. To be fair, the kinds of change we hope to witness in China will not materialize over night; China is a country that thinks in terms of its thousands of years of history, and that history is replete with repression, foreign invasion and civil war. It is a deeply scarred nation, neither willing nor able to lose sight of its legacy of exploitation at the hands of others. But China today stands on the brink of becoming one of the world's premier powers and, as such, must understand that more is expected of it. The role it seeks to play, regionally and globally, must be firmly rooted in a moral foundation in which the worth of the individual lies at the center of its system of governance. Repression is alien to such a system, as is the insecurity all too often manifested in expressions of external aggression. If its goal is to instill in its neighbors a fear of its looming shadow, all it will have to show for its efforts is an element of regional hegemony in a region where countries have fought ferociously to resist such intimidation. It will then suffer economically, with the risk of social instability that President Jiang emphasized is one of his greatest concerns.

The areas of trade, proliferation, the status of Tibet, and the future of Taiwan all remain largely unresolved—the latter dangerously so. The President's rejection of Taiwanese independence is consistent with previous Administration statements and U.S. policy going back to 1972, but only if loosely interpreted. United States policy remains ''one China,'' but the context in which the President's statement was made and the manner in which it was declared were painfully close to resolving the issue of Taiwan's status by fiat and in Beijing's favor.

Taiwan is a complex country. It is torn internally between an historically indigenous Formosan population that claims independence from mainland China, and the large segment of the population that represents the mass migration from the mainland following the communist victory in 1949. The latter claims to be the legitimate government of all of China. The reality on the ground, of course, does not allow for a policy predicated upon such a claim. To have reaffirmed as the President did the so-called ''three noes'' policy, however, served only to exacerbate concerns in Taiwan about its security—legitimate concerns irrespective of where one stands on the issue of its independence—while possibly emboldening Beijing. Given how close our two nations came to armed confrontation in March 1996 over Taiwan's security and right to exist as a democratic country, a more sensitive articulation of U.S. policy was in order.

Since coming to Congress, I have been a staunch advocate of free trade. The unprecedented period of economic growth that the United States has experienced is owed in no small part to our level of trade. We cannot and should not, however, expect the American public to countenance a level of Chinese imports that is not reciprocated. Trade deficits that result from the natural dynamics of free market mechanisms should not be feared; deficits that occur as a result of systematic imposition of barriers to free trade must be confronted. In this respect, the President's trip was an abject failure. U.S. companies must have unfettered access to the Chinese market, and ought not be compelled to compete with companies owned by the Chinese military, which comprise a disappointing number of those in the southern economic zone.

On the extremely contentious issue of technology transfers, an entirely separate discussion is warranted to do it justice. At issue as far as U.S. exports are concerned is dual-use technology that, by its nature, presents considerable regulatory difficulty. As we in the Congress press the Department of Defense to make more use of commercial technologies, we should not be surprised that the Chinese are doing precisely that. The Commerce Committee will be holding hearings into the export licensing process, and I am aware of the number of hearings held in both chambers of Congress by various committees. Suffice to say for now, though, that we need to get a better handle on this issue. For American companies, the stakes are high; for our national security, they are higher. The latter must take precedence. It is questionable whether the President agrees with that supposition.

This Administration's handling of export controls warrants close examination, as there is considerable evidence that dual-use technologies are finding their way into Chinese weapon systems. While I do not fear the kind of global confrontation with China that existed relative to the Soviet Union, I fear the threat to regional stability that can and will arise should Chinese military modernization enable it to project military power at the expense of its neighbors. And I fear for the future of Taiwan should China develop the means to militarily subdue that democratic bastion. China has a right to defend itself; it has a right to a modern army. The Pacific Rim is too fraught with tension, however, to ignore the regional and global implications of modernization untempered by moral or practical constraints.

In the area of proliferation, the outcome of the China summit is unclear. China's continued refusal to join the Missile Technology Control Regime augurs ill for our ability to rein in its

export of destabilizing military technologies. The recent nuclear detonations by India and Pakistan were testament to the dangers implicit in policies that seek to resolve border disputes through the brandishing of ever more destructive forms of weaponry. China's support of other countries' nuclear weapons programs is extremely dangerous. Its support of their development of the means of delivering those weapons is even more so.

The one true consensus in the realm of national security affairs is the danger of proliferation of weapons of mass destruction and their means of delivery. A cloud will continue to hang over U.S.-China relations until we are confident that China respects our concerns, as it expects us to respect its concerns. We should certainly not be exacerbating that problem through exports of our own to China that benefit its military-industrial complex. Administration policies in this regard deserve the close scrutiny they are now receiving.

China will always act in its self-interest. It will always view the world through the prism of its own unique history, and through its own unique culture. Such perspective does not excuse its repressive domestic policies, and U.S. policy ought not make allowances for those policies. We should be under no illusions that China will be a strategic partner; in all likelihood, it will not. It is a relationship that should be managed, and that should start from the premise that Chinese foreign policy will, at times, run counter to our own. Our export policy must take that into account, even if that comes at the expense of business.

Mr. President, it is sometimes said that the business of government is business. It is not. There is no constitutional prerogative for governmental intervention in the marketplace. There is a constitutional prerogative to provide for the common defense. As in any area of life, to some degree there is an element of balance that needs to be maintained. The current Administration's great failing is its inability to appreciate that fundamental requirement and to provide for the common defense. We should and do work with China for our mutual benefit. We must do so, however, without losing sight of the nature of the Chinese regime. President Jiang may prove an able leader; effusive praise usually reserved for Jeffersonian democrats, however, obscures the depth of the chasm that remains in the Sino-American relationship and the origins of the leadership of the Chinese Communist Party. That is not ideologically-driven rhetoric; it is a view of a dictatorial government through the prism of history.

I yield the floor.

Mr. WELLSTONE addressed the Chair.

The PRESIDING OFFICER. The Senator from Minnesota.

Mr. WELLSTONE. Mr. President, I thank my colleague from Arizona for his remarks. For a moment, I want to respond to some of what my colleague from Arizona said. He need not stay, but I did want to amplify on some of his remarks.

I have had the honor of being able to work closely with Congresswoman PELOSI, who I think has been a very courageous leader in the human rights area. I have worked with a lot of human rights organizations, and Wei Jingsheng and others in China, who have had the courage to speak up. I, too, want to give credit where credit is due. I think it is terribly important that the President speak out about human rights—terribly important. I think it was perhaps even more important that this was on television and radio and people in China had an opportunity to hear this discussion.

I also believe, however, that really the question is, What next? I think that is really the question in regard to the whole issue of weapons of mass destruction and exporting of technology—dangerous technologies—in regard to trade. I think last year China exported something like $40 billion worth of products to our country and we exported $15 billion to China. That is clearly a policy that doesn't serve the people in our country well at all.

I think also in the human rights area, which is very near and dear to my heart, I wish the President had met with some of the human rights advocates in China. I wish he had met with some of the families of the victims of Tiananmen Square or, for that matter, of those who are now in prison. But most important, on the ''what next'' part, I really hope that we will see some changes. There are, at minimum, some 2,000 men and women in prison in China just for the practice of their religion or because they have spoken out; many have spoken out for democracy, which is what we cherish in our country. We just celebrated 222 years of our noble experiment in self-rule. Those prisoners of conscience should be released.

We meet all the time in our country very courageous men and women, now living in the United States of America. Many of them can't go back to China. They have been ''blacklisted.'' They should be able to go back to their country. It is not enough to say, because the Government released Wei Jingsheng, who served 16, 17, 18 years in prison because he had the courage to stand alone and to speak out for democracy, that this represents progress, because he is now in exile. He can't go back to his country to see his family, to see his loved ones.

Quite clearly, the discussion about Tibet was good, but what we absolutely have to see are some negotiations with the Dalai Lama, a specific timetable to put an end to what has been absolute pressure on the people in Tibet. Last year, things got worse in Tibet. There has been no improvement whatsoever in human rights. Every time I have an opportunity to speak out about human rights on the floor of the Senate, I don't miss that opportunity.

I say to the President that I appreciated someone who was pushing and pushing the President to speak out on human rights. I am glad he did. I think the credit should be given to the President for raising a lot of other terribly important questions that deal with our national security and our national defense. I also believe, however, in the human rights equation, which I think should be part of the foundation of our foreign policy. The whole way we need to measure the success of the President's trip is, what next? What next? The proof will be in the pudding. We have to wait and see. We have to continue to press and press and press.

## INTERNAL REVENUE SERVICE RESTRUCTURING AND REFORM ACT OF 1998—CONFERENCE REPORT

The Senate continued with the consideration of the conference report.

Mr. WELLSTONE. Mr. President, I know I am going to be joined on the floor in a moment. I had a chance to speak earlier today on the floor of the Senate. But unless there is some tabling motion—and there may not be opportunity for full debate and discussion—I told my colleague from Washington that I would just begin to speak about an issue that she is going to raise on the floor of the Senate. I guess the Senator from West Virginia, Senator ROCKEFELLER, will also speak to this because he has been raising this question over and over again. The three of us really have focused on this.

This, again, has to do with what I talked about earlier today on the floor of the Senate—compensation to veterans with tobacco-related illnesses.

There was the hope on the part of the veterans community—the Chair, I think, would be interested in this—that there would be compensation to veterans having to do with addiction to tobacco. That is to say, in many ways it was handed out like candy. These veterans say, ''Look, if there are going to be rules for compensation, the same rules should apply to us.'' That seems fair to deal with some of the health care struggles and illnesses with which they have to deal.

That was the first preference. I want to go on to add—now I am speaking for myself—if not direct compensation for veterans, then at least the money that is saved by not providing that compensation should go to veterans. The Office of Management and Budget, I think, estimated savings of something like $17 billion. I personally think that is too high an estimate, but that is a whole other issue. But if not the $17 billion for compensation, then at least it seems to me that money ought to go to veterans' health care.

I could spend hours and hours—I will not—talking about all the ways in which veterans fall between the cracks. I actually found this to be, I think, probably the greatest education I have

had since I have been a U.S. Senator, having to do with my dealings with veterans. I have been just amazed by how much veterans really need health care coverage, and it is not provided; veterans that are homeless; veterans struggling with PTSD, on and on. I think there is a whole lot that needs to be done.

Let me say to those who follow veterans' health care issues that we have a flat-line budget that does not take into account really the inflation in medical costs, and I don't think takes into account demography, because more veterans are living to older age. We have a reliance on third-party payments that I am not sure is going to come through. If we ever get back to the VA housing bill—I hope we will—I will have an amendment that deals with that. We have, as I said before, a population that is living to be 85 and beyond, and I don't think we have figured out yet what to do about that.

We also have the problem of compensation for atomic veterans who have been waiting years for justice. I intend to be out here with a piece of legislation for an up-or-down vote on this. These are men and women that went to ground zero in Nevada and Utah without any protective gear. So many of them have died from cancer. So many of their children and grandchildren have had illnesses. So many of them have struggled. We should expand the list of radiogenic diseases that are covered, that are presumptive diseases, because they still aren't getting compensation. It was a terrible thing the government did. It was a terrible thing. We lied to them. They should have been given protective gear. They should have been told what they were going to be exposed to. They weren't.

My point is that on each and every one of these issues, whether they get direct compensation or not, at the very least that money ought to be put into veterans' health care. Instead, what happened is when the ISTEA highway bill went from the Senate to the House, all of a sudden a whole bunch of new projects got added on. The question becomes, How can we afford it? What is the ''offset''? For those watching this discussion on the floor of the Senate, that means, Where do you get the money from? Where the money was taken from was the $17 billion that the veterans community thought would, in fact, go to direct compensation for them and their families, or at the very least would go into veterans' health care. That is exactly what happened. That is what happened on the bill.

When that bill came back here, when it passed the Senate, I voted against that bill. Then for complicated reasons there were some changes that needed to be made in a technical correction bill, and Senator ROCKEFELLER stepped forward. I was pleased to join him. And he said, ''Look, when that technical correction bill comes before the floor of the Senate, I will have an amendment to essentially knock out the provision that took $17 billion, or however you score it, away from the veterans community.'' We went through a debate on this. We reached an impasse.

The majority leader then decided the way he would deal with this is we would just put the technical corrections for the highway bill in the IRS conference report. So this conference committee dealing with this Internal Revenue Service bill essentially took the technical corrections for ISTEA and put it into the IRS conference report, which means we can't amend it.

So when Senator MURRAY comes to the floor of the Senate, she is going to be, I think, appealing the ruling of the Chair. She is going to talk about what happened having been outside the scope of the IRS conference committee. In other words, there was no chance for discussion on the technical corrections bill about what happens to veterans compensation and health care, and so on and so forth. The technical corrections just got put into the IRS conference committee.

So we will have that debate on the floor of the Senate. Senator MURRAY will be out here taking the lead. I thank her for that, because I actually think that what was done was a real injustice.

Let me say to colleagues, I think the Congressional Budget Office scored this at about $10 billion, and then the OMB scored it at $17 billion. In some ways, it gets to be sort of funny money. But in any case, the higher figure was chosen because that gave some of our colleagues the opportunity to load more projects onto the ISTEA highway bill and gave them more of an offset. But in all due respect, I say this to all of my colleagues, the veterans community is going to hold us accountable on this.

I hope people will listen very carefully to what Senator MURRAY has to say, and I hope we have an initiative similar to the initiative which Senator DORGAN took. And we will have a very strong vote.

For my own part, if we don't win on this—and I hope we do—I think it ought to go back to conference committee. I think this provision dealing with the technical corrections should be knocked out because I think we should have a separate vote on the technical corrections bill. Then we should be able to come out here with an amendment and have an up-or-down vote as to whether or not the $17 billion that should have gone to compensation for veterans and their families, or at least into health care for the veterans community, should or should not be there as opposed to transferring it to the highway bill.

That is the issue. There is no way people here are going to be able to avoid it. One way or another, I think people are going to hear from the veterans community. And they should hear from the veterans community.

So we will shortly, when Senator MURRAY returns, have this discussion. I assume that this question will be before the Senate.

For my own part, if we don't win, though I hope we do win, I think what I want to do is keep coming back over and over again and basically raise the same question and forcing votes. We can have the same votes over and over and over again. People can play around this however they want to. People can vote against the proposition that we honestly ought to have taken the $17 billion that should have gone for veterans' compensation and health care and kept it there, or people can vote whether it should be transferred to the highway bill for different projects that were added on in the House. We should have a strong vote in the Senate on this question. Or people can vote one way, and then kind of just look the other way while in the conference committee it gets done.

But regardless of what we do procedurally, regardless of what we do process-wise, I want to remind colleagues one more time on the floor of the Senate that this was a real injustice. I don't know how people justify it. I don't know how people justify it.

First issue: The veterans community says, ''Look, if we are going to be talking about compensation for people who are addicted to tobacco, do you know what happened to us when we were serving our country? Cigarettes were handed out to us like candy.'' So we asked for some compensation. We are paying the price for that addiction to tobacco. We asked for the compensation. They don't get the compensation. Then I say, and I think other veterans say this as well, if not the direct compensation, at least over the next 5 years put it into veterans' health care. Put it into the veterans' health care system. There is not one Senator here who spends any time back in his or her State with the veterans community who doesn't know that this is a system in need of reform. Dr. Kizer has moved forward with some good initiatives; some other initiatives I question. I think he has provided good leadership. But we should be doing much, much more. Much, much more.

What about Vietnam vets? More drop-in centers? Senator AKAKA has done a great job of leading the way for drop-in centers for Vietnam vets and other veterans. What about other veterans who struggle with post-traumatic stress syndrome? What about veterans who are homeless, many of them struggling with substance abuse? What about elderly veterans? What about veterans who fall between the cracks, and they don't have a direct service-connected disability illness and they are not low-income and therefore they are not eligible? And so on and so forth.

This is a system that needs to be put on a more solid financial footing. This is a system that needs to do better by way of veterans. This is a health care system that faces many challenges. And what we did is we took the $17 billion that should have been direct compensation for these veterans who are

addicted to tobacco—or at a minimum should have been put into veterans' health care—and we used the money to offset the cost of a whole variety of different projects, mainly highway projects added on to the ISTEA bill in the House of Representatives. And then when Senator ROCKEFELLER and some of the rest of us wanted to amend the technical corrections bill to knock out that transfer of funds away from the veterans community to highways, we never had the opportunity to do so. The majority leader didn't want an up-or-down vote.

You can do all you want with procedure and process. But you still have to be held accountable. But instead, we got another end run. We have the technical corrections bill folded into the conference report, completely outside the scope, as far as I can see, of any IRS reform bill, thus denying us the opportunity to have an up-or-down vote.

Senator MURRAY will come here and challenge that, saying it was beyond the scope of the conference committee, and we will vote on this issue. I look forward to when she comes out in the Chamber and when we have that vote. And I say to colleagues, please, focus your attention on what was done, because I do not see how we explain this away to people in the veterans community.

I hope I am not boring people with this argument. I keep repeating it over and over again, but I don't see how you explain to people that the money which should have gone to them by way of compensation—and, as a second choice, at least into their health care system—instead got transferred to paying for people's highway projects.

Does anybody want to debate anybody in the veterans community about this? Does anybody want to defend this in any VFW hall or American Legion hall? How about the Vietnam Vets of America? How about the Paralyzed Veterans of America? How about the Disabled American Veterans? How about the Atomic Veterans? How about the Military Order of the Purple Heart? Do any of my colleagues want to defend this? I think this is a tough one, and I hope that we can take corrective action.

I yield the floor.

Mr. CHAFEE. 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.

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

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

Mrs. MURRAY. Mr. President, let me begin my remarks today by reiterating my strong support for the underlying bill that is before us to reform the Internal Revenue Service. This is a good bill and it is really long overdue. I want to join my numerous colleagues who have complimented Senator ROTH and Senator MOYNIHAN and others who have worked very hard and long on this legislation. I have listened to my colleagues all day talk about the benefits of that bill, and I add my comments to that in support of that as well.

Despite my strong support for this underlying bill, I am deeply concerned about title IX of this conference report, because hidden deep within this bill in title IX is language to take some $17 billion from America's veterans. Several of my colleagues have been addressing this issue today, and I associate myself with the remarks of Senator ROCKEFELLER, Senator WELLSTONE, and Senator DURBIN. I know Senator WELLSTONE has taken quite a bit of time to outline what is in this bill, and I thank him for his words, his comments, and his support.

Title IX is the technical corrections language for the transportation legislation. Hidden within that is a provision that takes away disability benefits from veterans whose illness resulted from smoking. Many of these veterans, as my colleagues know, were encouraged to smoke during wartime service with free cigarettes that were provided by our armed services. I am outraged by this language, and I am sure that many of my colleagues in the Senate are as well. I know Senator CHAFEE, who is the distinguished chairman of the Environment and Public Works Committee, has spoken to this issue. I have immense respect for Senator CHAFEE and for his leadership in crafting the very important TEA 21 legislation, the transportation bill that passed. Transportation is a critical and important issue.

However, let me be very clear. I continue to oppose the veterans offset used to fund the increases in transportation. The chairman argued that this is not a controversial matter, that the Senate has already spoken. With all due respect, I disagree. If this issue is so noncontroversial, why are we debating it within the IRS reform bill? This legislation has nothing to do with the veterans bill. If this issue is truly noncontroversial, then let's have a standalone debate on the issue of cutting $17 billion in veterans' benefits. The technical corrections bill is at the desk. We could have a time agreement on that. It could pass very quickly. It does not need to be included in the IRS reform legislation. It has nothing to do with the IRS reform legislation.

I ask, and I believe all of my colleagues should ask the question, Why on Earth is the IRS reform legislation used to take money from our American veterans? It is a very legitimate question. The original Senate version of the IRS reform did, of course, not target veterans, and neither did the House bill, the IRS reform bill. Somehow the conference committee agreed to add the technical corrections for the highway legislation to this bill on IRS reform. I am assuming that this action was taken at the direction of leadership, since I know that the Finance Committee does not have jurisdiction over the veterans funding issue. The IRS bill is viewed as politically popular and a cinch to pass. That, I would guess, is why the veterans cuts were added to this bill. The proponents of this veterans grab want to avoid accountability. That is wrong, and that is why I am opposed to title IX of the underlying bill being included in this bill. The proponents figured that we would just roll over and accept these wrongful cuts because everyone wants to reform the IRS.

I have been fighting this veterans grab all year. It was in the President's budget, and I opposed it. At the Budget Committee, I voted against Democratic and Republican proposals that included these disastrous cuts to veterans health. On the Senate floor, I voted against the budget one final time in opposition to these cuts to veterans. During consideration of the budget, I was pleased to join with Senator ROCKEFELLER and others to fight against these cuts. I voted against the Craig-Domenici amendment to validate the $10 billion cut in veterans funding. Sadly, the Senate budget resolution paved the way for the transportation bill to use the veterans savings to offset the increased transportation funding.

I want to be sure that my colleagues are aware that the technical corrections language punishing veterans that is included in this IRS bill is opposed by virtually every veterans service organization. Many of them have written and contacted me in opposition to the cuts, including the American Legion, the Veterans of Foreign Wars, the Paralyzed Veterans of America, the Vietnam Veterans of America, and the Disabled American Veterans.

Senators need to know that this issue has touched a nerve with America's veterans. They are deeply offended that the Congress and the administration would divert money targeted to care for sick veterans to pay for other spending priorities. This issue is not going to go away. America's veterans and many in Congress will continue to fight this battle. We simply must revisit this issue and do the right thing for America's veterans, and the time is now. The best way to do that is to remove the language from this nonrelated IRS reform bill and vote on the issue separately.

I ask unanimous consent now to have printed in the RECORD a letter from the American Legion that I recently received.

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

THE AMERICAN LEGION,
*Washington, DC, July 2, 1998.*

DEAR SENATOR: The American Legion ask you to recommit the IRS Restructuring conference report back to the conferees with instructions to strip out H.R. 3978, the technical corrections language to the Transportation Equity Act for the 21st Century (TEA 21).

Urge the Senate leadership to allow H.R. 3978 to be debated on the floor as a stand along bill. Also encourage the Senate leadership to allow an ''up-or-down'' vote on Senator Rockefeller's amendment to H.R. 3978 that would strike the veteran's disability compensation offset included in the TEA 21 highway legislation. The TEA 21 correction bill should not be part of the IRS Restructuring conference report.

Subsidizing the highway trust fund with $15.4 billion in offsets from veterans compensation is just plain wrong. This is a grave injustice to America's disabled veterans who became addicted to tobacco during military service. The suggestion that approximately 500,000 veterans would file tobacco-related claims each year is ridiculous. Since 1993, approximately 8,000 veterans have filed claims for tobacco-related illnesses and less than 300 claims have been granted.

The American Legion fully acknowledges that Members of Congress recognize and appreciate veterans' contributions to our country. Unfortunately, many legislators have not been provided an honest opportunity to cast a fair vote with regard to veterans suffering from tobacco-related illnesses as demonstrated by the recent vote on the TEA 21.

Once again, The American Legion ask you to recommit the IRS Restructuring conference report back to the conferees with instructions to strip out H.R. 3978, the technical corrections language to TEA 21. Encourage the leadership to debate H.R. 3978 as a stand alone bill and ask for the opportunity to have an ''up-or-down'' vote on the Rockefeller amendment. Veterans and Members of Congress deserve a fair vote! Thank you for your consideration in this matter.

Sincerely,

STEVE A. ROBERTSON,
*National Legislative Commission.*

Mrs. MURRAY. Mr. President, the Legion again urges all U.S. Senators to reject this language targeting veterans. I implore all Senators to review this letter before casting a vote today on this issue. I am here to urge my colleagues to join me and others to free America's veterans from the IRS reform legislation. Free the cuts in Veterans Affairs to a genuine and a very public debate.

We are going to have a vote on this issue today. Regardless of whether it is procedural or a straight-up vote, one thing is very clear—it will be a veterans vote. I ask my colleagues to vote with me and with America's veterans.

POINT OF ORDER

Therefore, Mr. President, I make a point of order that title IX of the conference report is outside the scope of the conference, pursuant to paragraph 2 of rule XXVIII of the Standing Rules of the Senate, which states:

Conferees shall not insert in their report matter not committed to them by either House. . . . If new matter is inserted in the report . . . a point of order may be made against the report, and if the point of order is sustained, the report is rejected. . . .

The PRESIDING OFFICER. The point of order is not sustained.

Mrs. MURRAY. Mr. President, I appeal the ruling of the Chair.

Mr. President, I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second?

There is a sufficient second.

The yeas and nays were ordered.

Mr. CHAFEE addressed the Chair.

The PRESIDING OFFICER. The Senator from Rhode Island.

Mr. CHAFEE. Mr. President, at the proper time I will move to table the appeal of the distinguished Senator from the State of Washington, but I want to let people debate on this. Obviously, a motion to table is not debatable, so I am not going to raise the motion to table until everybody has had a chance to have his or her say here.

Mr. President, I would make a correction, if I might, to what I understood the Senator from Washington was saying. She seemed to indicate that this technical corrections measure that is included within the IRS reform—she indicates it takes $17 billion from veterans. I argue, of course, whether there is any taking from veterans at all, period. But the important point is that the technical corrections measure is strictly a technical corrections measure. The $17 billion that the Senator from Washington is referring to was a provision that was in the conference report on H.R. 2400—in other words, the conference report on the transportation legislation which I like to call ISTEA II.

That was adopted by the Senate here, 88 to 5. That is where we handled that particular measure. Then we came to the technical corrections, and there, those technical corrections indeed do deal strictly with technicalities.

As perhaps some will recall, we finished that bill on a Thursday evening; we finished the negotiations with the House of Representatives. Everybody was anxious to get off on the Memorial Day recess, and the staff and all worked all night long and came forward with the so-called H.R. 2400, the ISTEA II, if you would, on Friday, the day after we negotiated late into the evening.

There we voted on the printed version, which was, to the best of our ability, correct. But there were technical mistakes in it. At the time, we recognized that there would be. But there is nothing, no technical mistake about the money that, through a general counsel's opinion, had been going to the veterans. That was taken care of, in the legislation that we voted on, on that Friday. And this technical corrections measure has nothing to do with that.

So I am not quite sure why the distinguished Senator from Washington refers to this technical correction measure as taking $17 billion from veterans. It just plain does not do that. We believe that the technical corrections that are included in the IRS reform bill are strictly technical and noncontroversial.

By the way, I didn't flesh out the part about what a monstrous job this was, not only finishing it on that Thursday evening, the negotiations and voting on the bill, but it is a 900-page bill. It presented tremendous challenges, and inevitably some errors were made.

This technical corrections bill which has been developed jointly by us—the Senate and the House conferees, with some input from the U.S. Department of Transportation—is truly a technical corrections measure. It doesn't do anything with formula allocations.

It is true that this veterans thing gets very, very confusing. The general counsel of the Veterans' Administration came forward with a decision that would have greatly enlarged the benefits that were available to those who had smoking-related illnesses.

By the way, that never truly went into effect. There were some who made applications for grants or benefits under it. But to the best of my knowledge, I don't believe anybody actually received benefits. Their requests were being considered.

The administration itself realized that this went way beyond anything they were intending, and the administration itself pulled back from that general counsel's decision and reversed it. We—that is the Senate of the United States, the Congress—went along with that reversal and used those funds that would otherwise have been available for general purposes for this transportation legislation.

Mr. President, I think it is a mistake to suggest that this technical corrections measure is anything other than what it is labeled, a technical corrections measure that covers some of the problems that were raised as a result of the haste that we were under with this massive legislation when we were trying to recess for the Memorial Day recess.

I don't know whether there is further debate to take place on this. I am not trying to cut people off peremptorily. If the Senator from Washington has further comments, I will give her an opportunity to speak if she wishes.

Mrs. MURRAY addressed the Chair.

The PRESIDING OFFICER. The Senator from Washington.

Mrs. MURRAY. Mr. President, let me simply say the chairman states correctly that the transportation bill did go through in a hurry right before a recess, and we are now looking at technical corrections to that bill. That bill is at the desk, and we should have an opportunity to take a look at it, offer amendments, and vote it up or down.

Being as it is included within the IRS conference report, we don't have the ability to do that. I think many Members would very much like the opportunity to speak out on this issue. As we went home for the Fourth of July recess, many people heard from veterans in their States who are outraged this was included in the transportation bill. They would like the opportunity to make their voices heard on that.

If we are able to override the ruling of the Chair, we will have the opportunity to do that. That is simply what we are asking for today. It will not hold up the IRS reform bill. We can simply move that next week. It will allow Members to make their statements known and their views known on

a very critical issue to many veterans in our country.

Mr. DOMENICI addressed the Chair.

The PRESIDING OFFICER. The Senator from New Mexico.

Mr. DOMENICI. I wonder if I might ask the floor manager a question.

Mr. CHAFEE. Certainly.

Mr. DOMENICI. Is it not true that one of the technical corrections has to do with the fact that those who helped write the provisions of the law that attempted to rescind the general counsel's regulation expanding benefits for those who smoked while in the military, that in doing that, actually the drafter expanded that to reduce other benefits that were for veterans who were never even intended to be covered? That is one of the technical corrections, to return it to what it should be, rather than to have an expanded reduction in benefits that go to veterans. Is that not true?

Mr. CHAFEE. The Senator from New Mexico is absolutely correct: Set aside the big expansion of the program that took place as a result of the general counsel's opinion. Set that aside. There were some veterans receiving benefits under other programs that were related to smoking disability problems that occurred while they were on active duty.

Inadvertently, the language in the original legislation—that is the ISTEA conference report—eliminated some of those benefits. This technical corrections bill that we have before us will straighten that out and restore those benefits. In an odd way, should the Senator from Washington prevail and this technical corrections measure be eliminated in some fashion, it will result in a failure to cure a problem that has arisen inadvertently.

Mr. DOMENICI. I thank the Senator.

Mr. MOYNIHAN addressed the Chair.

The PRESIDING OFFICER. The Senator from New York.

Mr. MOYNIHAN. Mr. President, I rise to note with great pleasure that I will have to support the conference committee report for the reason that the Senator from Rhode Island has just stated in response to the question from the Senator from New Mexico. As now provided, absent these technical corrections, we will have existing benefits to veterans taken away.

I am correct in my understanding, am I not, that there are existing benefits which would be canceled in this way. I am not the least happy about the administration's decision to override the ruling of the general counsel of the Veterans' Administration, but that is history. What we have here is the correction that will really be a clear injustice to a many great persons, never intended by anybody.

So, Mr. President, I will have to support the conference report and vote for the motion to table.

Mr. ROCKEFELLER. Mr. President, I thank the distinguished Senator from Rhode Island. I happened to be upstairs in the Hart Building working on something else and listening to Senator PATTY MURRAY from the State of Washington raising this very strong argument about veterans. I previously spoke on veterans; therefore, one might think I wasn't going to come down and give the same speech again. But when I heard the powerful argument from the Senator from Washington and I heard some of the responses, the Senator from West Virginia had to come down, because this is really the only way that we can protect veterans. We have no other choice.

I believe the Senator from Rhode Island—although I didn't hear him say it, I know he said it in the past—this is somehow expansion of the benefit, this is some new benefit that goes to veterans. I don't know how to make this clear, but what we are talking about here is that, through however it worked, the legislators who were working on this particular piece of legislation, that started out with ISTEA and now has come to the IRS conference report, rescinded current law.

They took current law which says that if you go through all the steps that you have to go through in the VA to prove that you are a disabled American veteran by virtue of your addiction to nicotine and that it was caused and continued and it was because of your service, and all of these steps that you have to go through, that you are entitled to appropriated funds.

I will agree it is not money that comes from highways. I have always said this is not money that comes from highways, either ISTEA I or ISTEA II. But we have rescinded current law and, therefore, veterans are being denied and will be denied—unless as the distinguished Senator from Washington is trying to do in making a point of order—disability benefits which are rightfully theirs under current law.

How do we come to this point? How do we allow ourselves not to correct this? It is not a matter of spending money. It is not a matter of taking money away from this or that highway project. It never has been. It is simply reinstating current law which, in fact, at this particular moment only affects 300 veterans throughout the United States of America, because out of the 8,000 who have applied for this disability, only 300 to this point have made it.

Now, I think we are probably talking about $200 or $300 million total. The administration, of course, participated in this sham by coming up with this $17 billion. Then it was $10.5 billion. And who knew what it was, which was basically to pay for programs which they wanted. Unfortunately, the majority party joined in on this.

So here are the veterans with nobody to speak for them, with no legislative tools available to them, left on an unamendable conference report on IRS which has nothing to do with veterans. And the Senator from Washington is doing the only thing that she can do in her desire to protect veterans, keeping their current law ability to use appropriated funds to pay for their disability benefits. That is what the Senator from Washington is trying to accomplish.

Mrs. MURRAY addressed the Chair.

The PRESIDING OFFICER. The Senator from Washington.

Mrs. MURRAY. I know the Senator from Rhode Island wants to move to a vote on this. Let me just conclude by saying that veterans know this issue very clearly. They know that the language we have included in the IRS reform validates the cuts to their ability to get health care, if they were smoking when they were young and they now have disabilities due to that.

They are very clear on this vote. They are very clear in what they are saying to us. They were very clear to me over the last month. This bill, if we vote on it this way, will cut the health care benefits of many of our service people who started smoking when they were young.

I think that the veterans are going to be watching this issue closely. I hope that my colleagues will support me on this so that we can move to separately deal with the technical corrections bill in a way that does not undermine the health care benefits of the many veterans across this country who served our country well.

Mr. CHAFEE. Mr. President, I do want to stress, once again, as I said before, that killing the technical corrections bill is not going to restore any $17 billion. The technical corrections bill has nothing to do with that. It does not mention it, does not involve it at all. That was all taken care of in the conference report.

Indeed, we voted three times on that measure. We voted on the whole matter of the $17 billion being used in connection with the ISTEA II legislation. We voted on it twice in connection with the budget, and we voted on it once when we did the conference report here.

So, Mr. President, I do want to stress that should Senator MURRAY's appeal of the ruling of the Chair be successful, the entire IRS reform bill would effectively die. And so I urge my colleagues to uphold the ruling of the Chair.

I now move to table Senator MURRAY's appeal of the ruling of the Chair.

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

Mr. ROCKEFELLER. Would the Senator yield?

Mr. CHAFEE. Yes.

Mr. ROCKEFELLER. Would the Senator not agree that if the Senator from Washington prevailed on her point, that, in fact, it would not vitiate the IRS bill, but would simply mean that the conferees would have to go back, the conferees themselves, and do this work and perhaps straighten out the veterans situation and then come back to us?

Mr. CHAFEE. My understanding is there are no House conferees. The conference has been dissolved.

Mr. ROCKEFELLER. That does not mean there could not be new conferees. I mean, this is an important point.

Mr. CHAFEE. Well, it is a complicated way of proceeding, but it is my understanding that this would actually kill the IRS reform.

Mr. ROCKEFELLER. This Senator believes that is incorrect. It would simply be the reestablishment of the conference committee, which could then clear up this matter which the Senator from Washington is trying to clear up.

Mr. DOMENICI. Mr. President, would the Senator yield for 1 minute?

Mr. CHAFEE. Sure.

Mr. DOMENICI. Let me make a point to the Senate. If you do not table this, and you accept the proposal of the distinguished Senator from Washington, you have done two things—both of which are probably very, very bad for our country: One, you will kill this bill; secondly, you will dramatically cut veterans' benefits beyond anything anybody intended. Because to eliminate these technical corrections, you leave in place a law that is signed. The highway bill is signed into law, and it has a mistake in it. And the mistake dramatically cuts veterans' benefits beyond what was intended.

So it may not be the intention of the sponsors, but you will accomplish two things, and I just stated them. And I believe that is the case.

I yield the floor.

Mr. ROCKEFELLER. Would the Senator yield——

Mr. CHAFEE. No. I would like to press forward with the——

Mr. ROCKEFELLER. Simply because it is this Senator's judgment that what the Senator from New Mexico has said is in two respects incorrect. This Senator would like to simply give his opinion, and that would be that, No. 1, the ISTEA bill would in no way be affected. That is signed. It would in no way be affected. Second, the IRS bill would in no way be affected at all. It is simply a matter that the conferees—again, new conferees—would come back, not debating the IRS bill, but simply clearing up this matter which is of extreme importance to this country's moral obligations to veterans.

Mr. CHAFEE. Mr. President, at this time I move to table Senator MURRAY's appeal of the ruling of the Chair. And I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second?

There is a sufficient second.

They yeas and nays were ordered.

The PRESIDING OFFICER. The question is on agreeing to the motion to table the appeal of the ruling of the Chair. The yeas and nays have been ordered. The clerk will call the roll.

The assistant legislative clerk called the roll.

Mr. NICKLES. I announce that the Senator from Texas (Mrs. HUTCHISON) and the Senator from Arizona (Mr. KYL) are necessarily absent.

The result was announced—yeas 50, nays 48, as follows:

[Rollcall Vote No. 187 Leg.]

YEAS—50

| | | |
|---|---|---|
| Abraham | Frist | Moynihan |
| Allard | Gorton | Murkowski |
| Ashcroft | Gramm | Nickles |
| Baucus | Grams | Roberts |
| Bennett | Grassley | Roth |
| Brownback | Gregg | Santorum |
| Burns | Hagel | Sessions |
| Campbell | Hatch | Shelby |
| Chafee | Helms | Smith (NH) |
| Coats | Hutchinson | Smith (OR) |
| Cochran | Inhofe | Snowe |
| Coverdell | Jeffords | Stevens |
| Craig | Kempthorne | Thomas |
| DeWine | Lott | Thompson |
| Domenici | Lugar | Thurmond |
| Enzi | Mack | Warner |
| Faircloth | McConnell | |

NAYS—48

| | | |
|---|---|---|
| Akaka | Durbin | Leahy |
| Biden | Feingold | Levin |
| Bingaman | Feinstein | Lieberman |
| Bond | Ford | McCain |
| Boxer | Glenn | Mikulski |
| Breaux | Graham | Moseley-Braun |
| Bryan | Harkin | Murray |
| Bumpers | Hollings | Reed |
| Byrd | Inouye | Reid |
| Cleland | Johnson | Robb |
| Collins | Kennedy | Rockefeller |
| Conrad | Kerrey | Sarbanes |
| D'Amato | Kerry | Specter |
| Daschle | Kohl | Torricelli |
| Dodd | Landrieu | Wellstone |
| Dorgan | Lautenberg | Wyden |

NOT VOTING—2

| | |
|---|---|
| Hutchison | Kyl |

The motion to lay on the table was agreed to.

Mr. ROTH. Mr. President, I move to reconsider the vote by which the motion was agreed to.

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

The motion to lay on the table was agreed to.

Mr. GRASSLEY addressed the Chair.

The PRESIDING OFFICER (Mr. HAGEL). The Senator from Iowa.

## MORNING BUSINESS

Mr. GRASSLEY. Mr. President, I ask unanimous consent that there be a period for the transaction of morning business with Senators permitted to speak for up to 15 minutes each.

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

Mr. GRASSLEY addressed the Chair.

The PRESIDING OFFICER. The Senator from Iowa is recognized.

## A HISTORICAL TREATISE ON THE FALSE CLAIMS ACT

Mr. GRASSLEY. Mr. President, I rise today to speak about an important issue for the taxpayers of this country. My purpose today is to:

First, inform my colleagues;

Second, alert future Members of this body; and

Third, create a historical public record so that future Congresses will not repeat the mistakes of the past. The issue is the integrity of the government's present and future efforts to stop widespread fraud, waste and abuse against taxpayer funded programs.

The government's strongest and most effective tool against fraud is the False Claim Act. In recent years, the False Claims Act has been under attack from industries targeted by the government's anti-fraud efforts. Since 1986, when Congress passed amendments that I sponsored to toughen the law, more than $4 billion has been recovered through the False Claims Act. Hundreds of billions more in fraud have been saved through the deterrent effect that this law has upon those who would betray the public's interest.

In addition to the recovery of money and the deterrent effect of this law, the False Claims Act is important for another, perhaps, more important reason. The fact is that the False Claims Act is being used, day after day, by prosecutors to maintain the integrity of countless federal programs funded by American taxpayers. For example, the False Claims Act is being used in the health care industry to ensure that nursing home residents receive quality care—like enough food.

Nonetheless, this Congress just witnessed an unconscionable assault on the False Claims Act. The law has thus far escaped unharmed. But, there is a ''clear and present danger'' lurking in the shadows. It is for this reason that I speak today, Mr. President—to chronicle the events that occurred over the past seven or so months.

The perpetrator of this assault on the False Claims Act was the American Hospital Association (AHA). The AHA used its notable clout to systematically and cleverly orchestrate a major grassroots campaign to ''gut'' the False Claims Act. In the final analysis, its effort fell apart because the approach taken by the AHA lacked an essential ingredient—''credibility.'' You see, the AHA appealed to a great many legislators by using horror stories from hospitals in their respective states and districts. But the horror stories, in the end, had no bearing on what the AHA peddled as the solution—gutting the False Claims Act.

The correct solution was not to change the law—indeed there was, and is, no problem with the language of the False Claims Act. Rather, the solution was to correct a number of missteps made by the Department of Justice in implementing the law through its national initiatives. The AHA was abundantly aware of this fact. But AHA chose instead to pursue a strategy of bait and switch. The AHA allegedly backed a bill to gut the law simply to strong arm the Justice Department into changing how the False Claims Act was implemented. The strategy succeeded. Unfortunately, it comes at the expense of a serious loss of credibility, in my eyes, for the AHA.

Before describing the events of the past months, some historical context is in order. The False Claims Act was fathered by President Abraham Lincoln. Lincoln had become frustrated by the widespread fraud against the Union Army by defense contracts during the Civil War. Contractors would sell the same horses twice to the Army; they

would sell sand instead of gun powder; and sawdust instead of muskets.

Included in the anti-fraud arsenal of the False Claims Act was a provision called qui tam. Qui tam is a concept that dates back to feudal times. It allows private citizens who know of fraud against the taxpayers to bring a lawsuit against the perpetrators. In other words, the citizen acts as a partner with the government. As an incentive, the citizen shares in any monetary recovery to the U.S. Treasury.

Over the decades, the False Claims Act, and especially the qui tam provisions, proved to be effective, both in catching and deterring fraud. Think about it, Mr. President: The most effective way to catch fraud or other wrongdoing is to have ''insider'' information. Insiders help make investigations more targeted, more effective and more efficient. Congress has long recognized the value of insiders. That is why Congress established laws to encourage and protect whistle blowers. We know the value of inside information, and the role it plays in our constitutional system of checks and balances.

Then, in 1943, things changed. That is when private industry played a role in amending the False Claims Act. The amendments neutralized the law's effectiveness—instead of having a powerful tool against fraud perpetrated against the government we had a toothless piece of legislation. Would-be perpetrators of fraud now had every reason to be celebrating in the streets; and taxpayers had suffered a major blow.

During the early 1980s, our defense budget was rising rapidly to counter the Soviet threat. It rose so rapidly, in fact, that it was beyond our ability to manage the money properly. As one defense official said, it was as if we opened up the money bags at both ends, laid them on the doorstep of the Pentagon, and told the contractors to ''come and get it.''

Fraud against the government was suddenly out of control. I recall at one point that eight out of the top ten defense contractors were under federal investigation for fraud. Amazing!!!

Not coincidentally, that is the year Congress restored the teeth to the False Claims Act that were removed some 40 years earlier. It was in 1986 that I sponsored, along with HOWARD BERMAN of the House of Representatives, amendments to the False Claims Act intended to put the ''bite'' back in the statute. Since that time, the law has been a tremendous success. It has recovered more than $4 billion for the taxpayers, and continues to deter fraud in amounts estimated in the hundreds of billions.

Since passage of the 1986 amendments to the False Claims Act, private industry has been plotting to once again gut the law. Even before the amendments were passed, a major effort was underway by the defense and other industries to undermine passage. Even supporters of my amendments suddenly turned against my bill. There were curious instances, as I read in news accounts, of campaign money being given in close proximity to actions taken by Members to stop my bill. In the final analysis, the public's concern about fraud prevailed. My amendments passed and the False Claims Act has demonstrated itself to be one of the most powerful tools in the war against fraud.

I knew at the time, Mr. President, that it would only be a matter of time before some industry would mount yet another assault on the False Claims Act. It is for that reason I have come to be ever vigilant. There are many citizen groups around the country that have joined me in this vigil. They have the taxpayers' best interests in mind.

One such assault occurred in 1990, led by the defense contracting community. It was unsuccessful. One main reason for the failure of the defense contracting community was because that industry lacked credibility. The public grew skeptical of that industry's attempts to exempt itself—under the guise of competitiveness—from anti-fraud statutes.

This year, the defense industry succeeded in persuading the Department of Defense to propose an exemption for that industry from the False Claims Act. Fortunately, the Department of Justice, with the assistance of the Inspector General's Office at the Department of Defense preempted the plans of the defense industry.

A major and well orchestrated assault on the False Claims Act came in 1998 from the health care industry, and more particularly, from the hospitals. The hospital industry has a great deal of credibility with members of Congress. We all have hospitals in our states and districts, and we work closely with them in addressing their concerns.

So, while the defense industry sat back after their attempt failed, the hospital industry took the lead in seeking to carve out an exemption from the False Claims Act for the entire health care industry. The health care industry played heavily on its credibility with the public in pursuing its agenda to exempt itself from the False Claims Act. It was reported to me that all the while, the defense industry watched in awe as progress was made. We all knew that if the hospitals succeeded in carving out an exemption from the False Claims Act, the defense industry would be next in line. And soon other industries would be lining up, too.

The AHA's official and public assault on the False Claims Act began early this year. On January 30, 1998, the AHA met with staff members of the Committee on Aging, which I chair. It was determined at that meeting that the AHA's concerns were not with the language of the False Claims Act, but with the Justice Department's implementation of that law. The AHA alleged that the Justice Department was heavy-handed in its implementation of the law and was not separating innocent billing errors from actual fraud. All this from an industry where a recent survey found that the majority of hospitals pooled did not even have a compliance officer who is responsible (1) for developing and maintaining compliance programs, (2) investigating compliance issues, (3) overseeing Medicare and Medicaid reimbursement, (4) overseeing billing and coding, as well as (5) overseeing tax-related issues.

A few days later, my staff met with the Iowa Hospital Association, which expressed the same concerns as the national association. As a result of these meetings, I took a personal interest in the allegations of the AHA. Consequently, I met with Attorney General Reno on March 3, 1998, to discuss the AHA's concerns. Furthermore, I urged the Attorney General to take whatever action was necessary to insure that the implementation of the False Claims Act was being done properly, and if not, to take expeditious action to correct the situation. She agreed.

I also met with Congressman MCCOLLUM of Florida who had expressed an interest in introducing a bill to amend the False Claims Act. During that meeting, he agreed to a one month reprieve before introducing the bill so that I could, among other things, facilitate a dialogue between the Justice Department and the AHA in the hope of reaching a resolution. Unfortunately, I was dismayed when Mr. MCCOLLUM introduced H.R. 3523 on March 19, 1998—a little over a week after our meeting. This changed the debate dramatically. As opposed to concentrating on resolving the concerns of the AHA through dialogue and communication, I was forced to expend my energies protecting the False Claims Act and the Medicare Trust Funds. Sometime later, on April 29, 1998, two of my Senate colleagues, Senators COCHRAN and HOLLINGS introduced S. 2007, a parallel bill to H.R. 3523.

The bills introduced in the House and Senate were characterized as innocuous by, among others, Representative MCCOLLUM and the AHA. But, the changes were not simple, the changes were not minor and the changes were not clarifying. Quite the contrary, the changes were devastating to the future use of the False Claims Act against the health care industry. So stated the Justice Department, the American Association of Retired Persons and others. Even the Clinton Administration voiced its concern with the bills and was prepared to issue a veto order if it became necessary.

The House bill demonstrated itself to be popular among House members, Indeed, H.R. 3523 enjoys bipartisan support, boasting 201 co-sponsors. However, the McCollum bill stumbled.

On June 3, 1998 the Department of Justice issued written guidance on the appropriate use of the False Claims Act in health care matters. This guidance

was issued in response to concerns relating to the Justice Department's enforcement strategies in national health care projects. In response, Congressman DELAHUNT, co-sponsor of H.R. 3523, determined that the written guidance made this new legislation inadvisable. Mr. DELAHUNT then courageously decided to pull back his support for H.R. 3523. Shortly thereafter Congressmen BLILEY, BARTON, DINGELL, STARK, and BERMAN stated in a Dear Colleague that: ''The Department's guidelines are quite extensive and sufficient time must be given to allow for their appropriate implementation. A non-legislative solution is the appropriate manner to address their issues.''

At this juncture it must be said that the Department of Justice, despite the attacks, despite the rhetoric and despite the misinformation, raised itself up from its bootstraps and, in good faith, issued guidance documenting its implementation of the False Claims Act. And even more amazing, Congressman MCCOLLUM, it is reported, still plans to move forward with the bill that would gut the False Claims Act.

I suppose there are certain people associated with this effort who just don't get it. Who don't mind moving forward despite major questions of credibility. There are many more important issues that I and my staff could have been working on for the last seven months on behalf of the taxpayers. Instead we spent seven months of negative energy trying to put out brush fires as the False Claims Act came under assault.

How anyone could ever suggest someone would enjoy that kind of politics is beyond me. To say the bill is ''innocuous'' is beyond me. And that's what I mean, Mr. President, when I talk about major questions of credibility.

In the Senate, my colleagues, Senators COCHRAN and HOLLINGS, played a critical role in having the Department of Justice issue responsible guidance to the health care industry without gutting the False Claims Act. In addition, my Senate colleagues worked hand-in-hand with me to develop legislative and report language that assures the future integrity of the False Claims Act and the good faith implementation of the guidance by the Department of Justice. I thank you, Senator COCHRAN and Senator HOLLINGS.

All in all, the history of the assault of the False Claims Act sends us on a long and winding road. But it is important to recognize that future attacks on the False Claims Act are undoubtedly around the corner—this despite the fact that the law's success is in many ways unparalleled in the enforcement community.

Consequently, the False Claims Act is, and will remain, a target of those industries that accept billions and billions of taxpayer dollars annually and balk at strict accountability. I ask only that we, as legislators, remember the history of the assault made upon the False Claims Act by the AHA in the present. I ask further that we agree to be strong despite the strength of an industry, simply because it is the ''right'' thing to do. Taxpayers deserve no less—and as legislators, we should deliver no less.

## DEATH OF ELLISON ''BUBBY'' MCKISSICK, JR.

Mr. THURMOND. Mr. President, while the Senate was recessed last week, South Carolina lost one of its most prominent citizens, Ellison ''Bubby'' McKissick, Jr., who was best known as a leader in the textile industry both in the Palmetto State and throughout the United States.

Bubby McKissick passed away, after a long illness, at the rather young age of 69. Though his passing came too soon, he distinguished himself in many ways throughout his life. Not the least of these achievements was serving as the Chairman of Alice Manufacturing, the McKissick family mill and one of the largest textile companies in the Southeast. Additionally, he was a past president of the American Textile Manufacturers Institute, and a forceful advocate for measures that would make the textile industry more competitive, including promoting education.

While his career ultimately took him to the boardroom, Bubby McKissick learned the textile business from the ground floor of one of his family's facilities, working in some of the most demanding jobs in any mill operation. Additionally, Bubby McKissick served in the United States Marine Corps during the Korean War, earning the rank of Sergeant, and having the unenviable distinction of being wounded in combat. This was a man who truly did not have anything handed to him on a silver platter, and who knew well the valuable lessons that one can only learn from experience and hard work.

Bubby McKissick's passing is all the more saddening because he was a loyal supporter, and more importantly, a valued friend. I had known Bubby almost literally from the day he was born as his family was well known to me. I was pleased to watch the successes and achievements of this man, both professional and personal, and I take consolation in the fact that he lived a full and rewarding life.

Mr. President, Bubby McKissick's passing leaves a tremendous void not only in our state's corporate community, but in the lives of the many men and women who called him friend. Bubby McKissick will not soon be forgotten, and I am certain that all those who knew him would join me in sending condolences to his family.

## THE VERY BAD DEBT BOXSCORE

Mr. HELMS. Mr. President, at the close of business yesterday, Tuesday, July 7, 1998, the federal debt stood at $5,530,116,137,980.45 (Five trillion, five hundred thirty billion, one hundred sixteen million, one hundred thirty-seven thousand, nine hundred eighty dollars and forty-five cents).

One year ago, July 7, 1997, the federal debt stood at $5,355,915,000,000 (Five trillion, three hundred fifty-five billion, nine hundred fifteen million).

Five years ago, July 7, 1993, the federal debt stood at $4,337,775,000,000 (Four trillion, three hundred thirty-seven billion, seven hundred seventy-five million).

Ten years ago, July 7, 1988, the federal debt stood at $2,555,671,000,000 (Two trillion, five hundred fifty-five billion, six hundred seventy-one million).

Fifteen years ago, July 7, 1983, the federal debt stood at $1,328,914,000,000 (One trillion, three hundred twenty-eight billion, nine hundred fourteen million) which reflects a debt increase of more than $4 trillion—$4,201,202,137,980.45 (Four trillion, two hundred one billion, two hundred two million, one hundred thirty-seven thousand, nine hundred eighty dollars and forty-five cents) during the past 15 years.

## NEED FOR ACTION ON KOSOVO

Mr. LEVIN. Mr. President, the use of indiscriminate force by units of the Serbian special police and the Yugoslav armed forces in Kosovo must stop. If unchecked, the violence there could well spillover into Albania and Macedonia and could at some point involve other nations in the region, including our NATO allies.

Acting at the direction of Yugoslav President Slobodan Milosevic, the Serbian police and military units have brutally targeted civilians and used scorched earth tactics with a plan to drive ethnic Albanians out of their towns and villages. According to the United Nations High Commissioner for Refugees Sadako Ogata, around 65,000 people have been forced to flee their homes in Kosovo since March and prior to the latest Serbian special police and troop attack on the town of Belacevac.

Of that number, around 12,000 have fled to neighboring Albania across treacherous mountains—some children had to walk barefoot for days. About 8,000 have fled to Montenegro and small numbers have sought refuge in Macedonia, where the United States maintains about 350 Army personnel as part of the United Nations Preventive Deployment Force.

Before I comment further on what I believe should be done to address the crisis in Kosovo, I would like to briefly describe how this crisis came about.

Kosovo, with a population of 2 million of which more than 90 percent are ethnic Albanians, enjoyed autonomous province status under the 1974 Yugoslav Constitution. However, changes to the Serbian constitution in 1989 through 1991 revoked that autonomous province status and abolished the Parliament and Government of Kosovo. Since that time, Serbian authorities have carried out a policy of repression: firing ethnic Albanians from all public jobs and using arrests, brutal and often fatal beatings and other forms of intimidation in violation of commonly

accepted human rights standards. In the face of this repressive policy, ethnic Albanians pursued a policy of non-violent resistance. They boycotted Serbian institutions and built their own parallel set of political, economic and social institutions. In 1992, they elected Ibrahim Rugova as president and a 130-member parliament.

When the policy of non-violent resistance failed to make any progress, some ethnic Albanians turned to violence and over the past two years, the Kosovo Liberation Army has conducted attacks on Serbian police and other officials. On the night of February 28 of this year, Serbian special police reportedly killed more than 20 ethnic Albanians in a sweep through the Drenica region of Kosovo. Since late February, it is estimated that more than 200 ethnic Albanians have been killed in Kosovo at the hands of Serbian special police and military forces. As Serbian police forces have increased their violence against civilians, more and more ethnic Albanians have joined the Kosovo Liberation Army.

Mr. President, the actions of Slobodan Milosevic and his henchmen have been condemned by the entire international community. Russia, at the conclusion of the NATO-Russia Permanent Joint Council meeting on June 12, 1998, joined the NATO defense ministers in condemning ''Belgrade's massive and disproportionate use of force as well as violent attacks by Kosovar Albanian extremists.''

The United Nations Security Council, by resolution 1160 adopted on March 31, 1998, condemned the excessive use of force by Serbian police forces against civilians and peaceful demonstrators in Kosovo and acting under Chapter VII of the Charter imposed a comprehensive arms embargo on Yugoslavia and urged the Prosecutor for the International Criminal Tribunal for Former Yugoslavia to begin gathering information related to the violence in Kosovo.

The Security Council's action is important because, by taking under Chapter VII of the United Nations Charter, the Security Council has determined that the violence in Kosovo is a threat to international peace and security. This is important because, there is a possibility that Russia may use its veto to prevent the Security Council from authorizing the use of all necessary means to stop the violence in Kosovo. In this regard, I note with approval that both Secretary of State Albright and Secretary of Defense Cohen took the position that the Security Council's authorization was desirable but not required for NATO action to intervene in Kosovo.

Mr. President, I applaud NATO's decision to conduct an air exercise in Albania and Macedonia to demonstrate its capability to project power rapidly in the region. I regret that Russian President Yeltsin was unable to gain Milosevic's commitment to withdraw Serbian special units from Kosovo, when they met in Moscow on June 16. Milosevic has already defaulted on his commitment to President Yeltsin to carry out no repressive actions against civilians.

Mr. President, we all hope that this tragic situation will be resolved peacefully, but that does not appear to be likely. Bosnia has taught us that quick and decisive action can prevent a crisis from getting out of hand. We must not allow Milosevic to draw this crisis out, while the ethnic Albanian people of Kosovo suffer. The international community must let Milosevic know that he must halt the systematic campaign of repression and expulsions in Kosovo. He must withdraw his special police from Kosovo and return his military forces to their barracks. And he must engage in bona fide negotiations to restore a significant degree of autonomy to Kosovo. Anything else will be insufficient and justify strong action by the international community.

## MEASURES PLACED ON THE CALENDAR

The following bill was read the second time and placed on the calendar:

H.R. 2271. An act to simplify and expedite access to the Federal courts for injured parties whose rights and privileges, secured by the United States Constitution, have been deprived by final action of Federal agencies, or other government official or entities acting under color of State law, and for other purposes.

## ENROLLED BILL PRESENTED

The Secretary of the Senate reported that on July 8, 1998, he had presented to the President of the United States, the following enrolled bill:

S. 731. An act to extend the legislative authority for construction of the National Peace Garden memorial, and for other purposes.

## REPORTS OF COMMITTEES

The following reports of committees were submitted:

By Mr. THOMPSON, from the Committee on Governmental Affairs, without amendment:

S. 2071: A bill to extend a quarterly financial report program administered by the Secretary of Commerce (Rept. No. 105–241).

By Mr. HATCH, from the Committee on the Judiciary:

Report to accompany the bill (H.R. 1534) to simplify and expedite access to the Federal courts for injured parties whose rights and privileges, secured by the United States Constitution, have been deprived by final actions of Federal agencies, or other government officials or entities acting under color of State law; to prevent Federal courts from abstaining from exercising Federal jurisdiction in actions where no State law claim is alleged; to permit certification of unsettled State law questions that are essential to resolving Federal claims arising under the Constitution; and to clarify when government action is sufficiently final to ripen certain Federal claims arising under the Constitution (Rept. No. 105–242).

## INTRODUCTION OF BILLS AND JOINT RESOLUTIONS

The following bills and joint resolutions were introduced, read the first and second time by unanimous consent, and referred as indicated:

By Mr. BURNS:

S. 2272. A bill to amend the boundaries of Grant-Kohrs Ranch National Historic Site in the State of Montana; to the Committee on Energy and Natural Resources.

By Mr. SPECTER:

S. 2273. A bill to increase, effective as of December 1, 1998, the rates of disability compensation for veterans with service-connected disabilities, and the rates of dependency and indemnity compensation for survivors of certain service-connected disabled veterans, and for other purposes; to the Committee on Veterans Affairs.

By Mr. BINGAMAN:

S. 2274. A bill for relief of Richard M. Barlow of Santa Fe, New Mexico; to the Committee on the Judiciary.

By Mr. LUGAR (for himself, Mr. SANTORUM, Ms. COLLINS, Mr. HARKIN, Mr. LEAHY, and Ms. SNOWE):

S. 2275. A bill to make technical corrections to the Agricultural Research Extension, and Education Reform Act of 1998; considered and passed.

By Ms. LANDRIEU (for herself and Mr. BREAUX):

S. 2276. A bill to amend the National Trails System Act to designate El Camino Real de los Tejas as a National Historic Trail; to the Committee on Energy and Natural Resources.

By Mr. GRASSLEY:

S. 2277. A bill to protect employees of air carriers who serve as whistleblower under applicable Federal law, or who refuse to violate an applicable law, and for other purposes; to the Committee on Commerce, Science, and Transportation.

By Mr. GRAHAM (for himself and Mr. COVERDELL):

S. 2278. A bill to exclude certain veterans' educational benefits from being considered a resource in the computation of financial aid; to the Committee on Veterans Affairs.

## SUBMISSION OF CONCURRENT AND SENATE RESOLUTIONS

The following concurrent resolutions and Senate resolutions were read, and referred (or acted upon), as indicated:

By Mr. BINGAMAN:

S. Res. 256. A resolution to refer S. 2274 entitled ''A bill for the relief of Richard M. Barlow of Santa Fe, New Mexico'' to the chief judge of the United States Court of Federal Claims for a report thereon; to the Committee on the Judiciary.

## STATEMENTS ON INTRODUCED BILLS AND JOINT RESOLUTIONS

By Mr. BURNS:

S. 2272. A bill to amend the boundaries of Grant-Kohrs Ranch National Historic Site in the State of Montana; to the Committee on Energy and Natural Resources.

GRANT-KOHRS RANCH NATIONAL HISTORIC SITE

Mr. BURNS. Mr. President, I am pleased to rise today and introduce legislation which will amend the boundaries of the Grant-Kohrs Ranch National Historic Site in the State of Montana.

Congress authorized the Grant-Kohrs Ranch National Historic Site on August 25, 1972 to preserve the Grant-Kohrs Ranch that operated from 1860–1972. Preserving the ranch also preserved a historic reminder of our Nation's frontier cattle era. The ranch's

intact 120-year archive, 26,000 artifacts, and 88 historic structures capture the heritage of the American cowboy and cattlemen.

Today the area is the hub of a thriving tourism industry and also provides unique educational opportunities. Tourists are constantly in search of a feel for the true American West. The Grant-Kohrs Ranch offers a vivid recollection of life on the frontier while providing a great experience for visitors and jobs for local residents. The ranch has been designated a National Historic Landmark and is a true asset to Montana.

The legislation that I am proposing will incorporate an additional 120 acres of land into the authorized boundary of the Grant-Kohrs Ranch National Historic Site. The 120 acres that will be included in the new boundary of the ranch are already owned by the National Park Service and their inclusion in the ranch's boundary is recommended as a means of conserving the property of the original ranch from future development.

I ask unanimous consent that the administration's letter of transmittal, the bill, and a section-by-section analysis of the legislation be printed in the RECORD for the information of my colleagues.

There being no objection, the items were ordered to be printed in the RECORD, as follows:

S. 2272

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,*

**SECTION 1. SHORT TITLE.**

This Act may be cited as the ''Grant-Kohrs Ranch National Historic Site Boundary Adjustment Act of 1997.''

**SEC. 2 ADDITIONS TO GRANT-KOHRS RANCH NATIONAL HISTORIC SITE.**

The Act entitled ''An Act to authorize the establishment of the Grant-Kohrs Ranch National Historic Site in the State of Montana, and for other purposes'', approved August 25, 1972 (86 Stat. 632) is amended by striking the last sentence in the first section and inserting:

''The boundary of the National Historic Site shall be as generally described on a map entitled, ''Boundary Map, Grant-Kohrs Ranch National Historic Site'', numbered 80030–B, and dated January, 1998, which shall be on file and available for public inspection in the local and Washington, District of Columbia, offices of the National Park Service, Department of the Interior.''.

SECTION BY SECTION ANALYSIS—GRANT-KOHRS RANCH NATIONAL HISTORIC SITE BOUNDARY ADJUSTMENT ACT OF 1997

*Section 1:* Short title.

*Section 2:* Amends the Historic Site's enabling Act by incorporating 120 acres of land already owned by the National Park Service into the boundaries of Grant-Kohrs Ranch National Historic Site.

U.S. DEPARTMENT OF THE INTERIOR,
OFFICE OF THE SECRETARY,
*Washington, DC, March 5, 1998.*

Hon. ALBERT GORE, Jr.,
*President of the Senate, Washington, DC.*

DEAR MR. PRESIDENT: Enclosed is a draft bill ''to amend the boundaries of Grant-Kohrs Ranch National Historic Site in the State of Montana.''

We recommend the bill be introduced, referred to the appropriate committee for consideration, and enacted.

The enclosed draft bill would incorporate 120 acres of land, purchased by the Federal government as an uneconomic remnant in 1988 and administered by the National Park Service, into the authorized boundary of Grant-Kohrs Ranch National Historic Site. Adjusting the boundary to incorporate this tract is recommended by the site's 1993 General Management Plan and 1995 Management Assessment, both of which had extensive public involvement and review.

This parcel is a critical component of the cultural landscape and a defining character of Grant-Kohrs Ranch implicit in its National Register designations as a National Historic Landmark and Agricultural Historic District. The property also augments the Ranch in conserving open space amid the continued growth of Deer Lodge and Powell County, Montana.

The Office of Management and Budget has advised that there is no objection to the enactment of the enclosed draft legislation from the standpoint of the Administration's program.

Sincerely,

*Acting Assistant Secretary for Fish and Wildlife and Parks.*

Enclosures.

By Mr. SPECTER:

S. 2273. A bill to increase, effective as of December 1, 1998, the rates of disability compensation for veterans with service-connected disabilities, and the rates of dependency and indemnity compensation for survivors of certain service-connected disabled veterans, and for other purposes; to the Committee on Veterans Affairs.

VETERANS' COMPENSATION COST-OF-LIVING ADJUSTMENT ACT OF 1998

● Mr. SPECTER. Mr. President, as Chairman of the Senate Committee on Veterans' Affairs, I introduce legislation today to grant a Cost-of-Living-Adjustment (COLA) increase, to take effect at the beginning of next year, to recipients of certain Department of Veterans Affairs (VA) benefits.

Mr. President, this legislation is simple and straightforward. It would grant a COLA increase to recipients of various VA benefits—most notably, compensation benefits received by veterans with service-connected disabilities, and the Dependency and Indemnity Compensation or ''DIC'' benefits received by the survivors of veterans who died in service or died after service as a result of service-connected injuries or illnesses. The COLA to be awarded under this legislation would be, as in past years, the same COLA awarded to recipients of Social Security benefits.

It is a matter of great importance that VA compensation checks keep pace with inflation. I know this from personal experience; in Depression days, all that kept the wolf from the door of the Specter household was a small veterans disability check. The Congress has not failed to grant cost-of-living adjustments in past years, and I know it will not fail now. Mr. President, I ask unanimous consent that the text of the bill be printed in the RECORD.

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

S. 2273

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,*

**SECTION 1. SHORT TITLE.**

This Act may be cited as the ''Veterans' Compensation Cost-of-Living Adjustment Act of 1998''.

**SEC. 2. INCREASE IN COMPENSATION RATES AND LIMITATIONS.**

(a) IN GENERAL.—(1) The Secretary of Veterans Affairs shall, as provided in paragraph (2), increase, effective December 1, 1998, the rates of and limitations on Department of Veterans Affairs disability compensation and dependency and indemnity compensation.

(2) The Secretary shall increase each of the rates and limitations in sections 1114, 1115(1), 1162, 1311, 1313, and 1314 of title 38, United States Code, that were increased by the amendments made by the Veterans' Compensation Rate Amendments of 1997 (Public Law 105–98; 111 Stat. 2155). This increase shall be made in such rates and limitations as in effect on November 30, 1998, and shall be by the same percentage that benefit amounts payable under title II of the Social Security Act (42 U.S.C. 401 et seq.) are increased effective December 1, 1998, as a result of a determination under section 215(i) of such Act (42 U.S.C. 415(i)).

(3) In the computation of increased dollar amounts pursuant to paragraph (2), any amount which as so computed is not an even multiple of $1 shall be rounded to the next lower whole dollar amount.

(b) SPECIAL RULE.—The Secretary may adjust administratively, consistent with the increases made under subsection (a), the rates of disability compensation payable to persons within the purview of section 10 of Public Law 85–857 (72 Stat. 1263) who are not in receipt of compensation payable pursuant to chapter 11 of title 38, United States Code.

(c) PUBLICATION REQUIREMENT.—At the same time as the matters specified in section 215(i)(2)(D) of the Social Security Act (42 U.S.C. 415(i)(2)(D)) are required to be published by reason of a determination made under section 215(i) of such Act during fiscal year 1998, the Secretary shall publish in the Federal Register the rates and limitations referred to in subsection (a)(2) as increased under this section.●

By Mr. BINGAMAN:

S. 2274. A bill for relief of Richard M. Barlow of Santa Fe, New Mexico; to the Committee on the Judiciary.

PRIVATE RELIEF BILL FOR RICHARD BARLOW

● Mr. BINGAMAN. Mr. President, I introduce a private relief bill on behalf of a constituent from Sante Fe, New Mexico, Mr. Richard Barlow. It appears to me that his case represents a misuse of authority within the government in response to a public servant's concern that the Congress receive accurate information about important matters of national security. In recent years, the Congress has adopted measures to protect ''whistle blowers'' who step forward to identify grievous errors or abuses that occur within the government. Mr. Barlow's case involves government reprisal against a man who never actually blew the whistle, but indicated to his superiors that he might do so if they failed to correct misinformation that they had supplied to

the Congress. Let me provide you with a brief outline of the case that I believe justifies filing this bill on his behalf.

In the summer of 1989 officials from the Department of Defense provided information to the Congress on the sale of F–16 aircraft to Pakistan. Mr. Barlow concluded that the information provided was incorrect and misleading and indicated to his supervisor that he intended to correct that information. What followed is a history of reprisal leading to the loss of career, family, and income. The Department of Defense (DoD) suspended Mr. Barlow's high level security clearances and transferred him to other duties, while conducting its own investigation into the matter. When that investigation led to DoD's decision to terminate his employment, Mr. Barlow resigned. Because of that experience, Mr. Barlow has had significant personal problems including the dissolution of his marriage and long periods of under- and unemployment.

As a constituent, Mr. Barlow asked for our help. In 1993, I asked the Inspector General of the DoD to review this case to see if it had been handled fairly. Because of the nature of the issue, Inspectors General (IG) from DoD, the Central Intelligence Agency, and the State Department reviewed the matter. The former two concluded that DoD had handled the matter fairly; the IG from the State Department disagreed.

Mr. Barlow again appealed for my assistance to enlist the support of the Senate Armed Services Committee in investigating the case. Senators THURMOND and NUNN requested the General Accounting Office (GAO) to review the findings of the IG offices. Last summer, the GAO concluded that there was insufficient evidence to support the findings of the DoD and CIA Inspectors General that Mr. Barlow's case had been handled fairly.

Given those findings, I requested the Secretary of Defense to review the case to determine if Mr. Barlow should be compensated for the losses he incurred. The Secretary replied that, after a careful review, no compensation was warranted.

Mr. President, I continue to believe that from the evidence I have reviewed, Mr. Barlow has been unfairly treated and is worthy of compensation for the price he has paid.

Mr. President, I am introducing this bill today not only because I believe a constituent has been wronged, but because this case involves an issue that's virtually important to the effective functioning of the government. In my view, private relief bills are not undertaken lightly. They are appropriate in cases of individuals who have been wronged, who have exhausted all possible remedies for resolution, and whose case represents matters of important legal or policy matters. In Mr. Barlow's case, in order for the Congress to do its job, it must rely on timely and accurate information from all the agencies of the government, particularly when it involves matters of national security. In 1989 Mr. Barlow was very concerned about efforts in Pakistan to initiate a nuclear weapons program and that the Congress needed to know the full implications of selling nuclear capable F–16 aircraft to Pakistan. Recent history indicates how important those concerns were.

Mr. President, although I believe compensation may be due to Mr. Barlow, I believe that such judgments require careful review by those experienced in such matters such as the Court of Claims. The Court will report its findings back to the Senate to guide our deliberations before determining the outcome of this bill. I hope that the Court will perform its review quickly and report their findings to the Senate in order for us to resolve this matter before the end of this session of the Congress.

Mr. President, I ask unanimous consent that the text of the bill be printed in the RECORD.

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

S. 2274

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,*

**SECTION 1. COMPENSATION OF CERTAIN LOSSES.**

(a) IN GENERAL.—The Secretary of the Treasury shall pay, out of any money in the Treasury not otherwise appropriated, to Mr. Richard M. Barlow of Santa Fe, New Mexico, the sum of $1,100,000 for compensation for losses incurred by Mr. Richard M. Barlow relating to and a direct consequence of—

(1) personnel actions taken by the Department of Defense affecting Mr. Barlow's employment at the Department (including Mr. Barlow's top secret security clearance) during the period of August 4, 1989, through February 27, 1992; and

(2) Mr. Barlow's separation from service with the Department of Defense on February 27, 1992.

(b) NO INFERENCE OF LIABILITY.—Nothing in this section shall be construed as an inference of liability on the part of the United States.

(c) LIMITATION ON AGENTS AND ATTORNEYS FEES.—No more than 10 percent of the payment authorized by this Act may be paid to or received by any agent or attorney for services rendered in connection with obtaining such payment, any contact to the contrary notwithstanding. Any person who violates this subsection shall be guilty of a misdemeanor and shall be subject to a fine in the amount provided in title 18, United States Code.

(d) NON-TAXABILITY OF PAYMENT.—The payment authorized by this Act is in partial reimbursement for losses incurred by Mr. Barlow as a result of the personnel actions taken by the Department of Defense and is not subject to Federal, State, or local income taxes.●

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By Ms. LANDRIEU (for herself and Mr. BREAUX):

S. 2276. A bill to amend the National Trails System Act to designate El Camino Real de los Tejas as a National Historic Trail; to the Committee on Energy and Natural Resources.

EL CAMINO REAL DE LOS TEJAS NATIONAL HISTORIC TRAIL ACT OF 1998

● Ms. LANDRIEU. Mr. President, today I introduce legislation on behalf of myself and Senator BREAUX that is very important to the States of Texas and Louisiana, as well as to our neighboring country of Mexico. This bill will designate the El Camino Real de los Tejas Trail in Texas and Louisiana as a National Historic Trail. This legislation is the culmination of efforts by interested parties in Texas, Louisiana and Mexico, including legislators and members of academia, to study the feasibility and suitability of designating this exceptional complex of roads as part of the National Trails System.

El Camino Real, comprised of economically important roads in Mexico and the United States, was used by Native Americans and the colonial powers of Spain, France and England during the seventeenth, eighteenth and nineteenth centuries. These viceregal roads were used for exploration, conquest, mission supply, settlement, cultural exchange and military campaigns, connecting a series of Spanish missions and posts between Monclova, Mexico and Los Adaes, the first capital of the province of Texas, now located in the Red River Valley of Louisiana. In the late seventeenth century, French interests expanded westward from the Mississippi River Valley into Spanish Texas. The official Spanish response was retaliatory. As a result, routes were extended from Mexico north and east into Louisiana. The historic remnants of these efforts can be found today at the Spanish outpost of Los Adaes in northwest Louisiana and the French frontier post of Fort St. Jean the Baptiste near Natchitoches, Louisiana.

El Camino Real de los Tejas, named for the Indian tribes living in what is now east Texas and northwest Louisiana, begins in Maverick County, Texas and extends into Sabine and Natchitoches Parishes in Louisiana. Historically, the trail was composed of several routes, including Camino Pita, Upper Presidio Road, Upper Road, Lower Road, Lower Presidio Road, Camino de en Medio, and the Laredo Road. These roads were established beginning in 1689. The Old San Antonio Road, sometimes called the Camino de Arriba, the nineteenth century route between San Antonio and Natchitoches, is a separate road system that in part followed El Camino Real and overlaps it in many segments. It was used by famous politicians and expansionists, such as Sam Houston and Davy Crockett. Altogether, the roads in the United States make up approximately 2,500 miles of changing routes in Texas and eighty miles in Louisiana. As an important observation, there may well be evidence procured in the future that will show that El Camino Real de los Tejas extended all the way to the Natchez Trace.

In July, the National Park Service will complete its study of the El Camino Real de los Tejas with a positive determination of suitability and feasibility for establishment of a national historic trail. This comes after enthusiastic support from the Natchitoches

community, including Northwestern State University and the Louisiana Department of Culture, Recreation and Tourism. Strong support and contribution to the research and potential of trail designation came from the Texas Department of Transportation, the Texas Historical Commission, consultants, and many others. Trail designation would make possible coordination of activities along the length of the trail. It also would mean increased opportunities for coordination with the Mexican government on respective resource preservation and research, as well as enhanced opportunities for cooperative educational programs and tourism related to El Camino Real de los Tejas. The study anticipates little, if any, federal acquisition of private land, and only on a willing seller basis. Instead, the management of the trail would depend on cooperative partnerships between the National Park Service and other administering agencies, interested property owners or land managers, and other entities.

Mr. President, this bill represents truly successful efforts on behalf of the National Park Service and State and local governments and associations to commemorate the settlement of Texas and Louisiana. The El Camino Real de los Tejas will make a fine addition to the National Trails System, and I urge its speedy consideration and approval by this body. Mr. President, I ask unanimous consent that the text of the bill be printed in the RECORD.

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

S. 2276

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,*

**SECTION 1. SHORT TITLE.**

This Act may be cited as the ''El Camino Real de los Tejas National Historic Trail Act of 1998''.

**SEC. 2. FINDINGS.**

Congress finds that—

(1) El Camino Real de los Tejas (the Royal Road to the Tejas), served as the primary route between the Spanish viceregal capital of Mexico City and the Spanish provincial capital of Tejas at Los Adaes (1721–1773) and San Antonio (1773–1821).

(2) The seventeenth, eighteenth, and early nineteenth century rivalries among the European colonial powers of Spain, France, and England and after their independence, Mexico and the United States, for dominion over lands fronting the Gulf of Mexico, were played out along the evolving travel routes in this immense area.

(3) The future of several American Indian nations, whose prehistoric trails were later used by the Spaniards for exploration and colonization, was tied to these larger forces and events and the nations were fully involved in and affected by the complex cultural interactions that ensued.

(4) The Old San Antonio Road was a series of routes established in the early 19th century sharing the same corridor and some routes of El Camino Real, and carried American immigrants from the east, contributing to the formation of the Republic of Texas, and its annexation to the United States.

(5) The exploration, conquest, colonization, settlement, migration, military occupation, religious conversion, and cultural exchange that occurred in a large area of the borderland was facilitated by El Camino Real de los Tejas as it carried Spanish and Mexican influences northeastward, and by its successor, the Old San Antonio Road, which carried American influence westward, during a historic period which extended from 1689 to 1850.

(6) The portions of El Camino Real de los Tejas in what is now the United States extended from the Rio Grande near Eagle Pass and Loredo, Texas and involved routes that changed through time, that total almost 2,600 miles in combined length, generally coursing northeasterly through San Antonio, Bastrop, Nacogdoches, and San Augustine in Texas to Natchitoches, Louisiana, a general corridor distance of 550 miles.

**SEC. 3. AUTHORIZATION AND ADMINISTRATION.**

Section 5(a) of the National Trails System Act (16 U.S.C. 1244(a) is amended—

(1) by designating the paragraphs relating to the California National Historic Trail, the Pony Express National Historic Trail, and the Selma to Montgomery National Historic Trail as paragraphs (18), (19), and (20), respectively; and

(2) by adding at the end the following:

''(21) EL CAMINO REAL DE LOS TEJAS.—

''(A) IN GENERAL.—El Camino Real de los Tejas (The Royal Road to the Tejas) National Historic Trail, a combination of routes totaling 2,580 miles in length from the Rio Grande near Eagle Pass and Laredo, Texas to Natchitoches, Louisiana, and including the Old San Antonio Road, as generally depicted on the maps entitled 'El Camino Real de los Tejas', contained in the report prepared pursuant to subjection (b) entitled 'National Historic Trail Feasibility Study and Environmental Assessment: El Camino Real de los Tejas, Texas-Louisiana', dated _____ 1998. A map generally depicting the trail shall be on file and available for public inspection in the Office of the National Park Service, Department of the Interior. The trail shall be administered by the Secretary of the Interior. No land or interest in land outside the exterior boundaries of any federally administered area may be acquired by the United States for the trail except with the consent of the owner of the land or interest in land.

''(B) COORDINATION OF ACTIVITIES.—The Secretary of the Interior may coordinate with United States and Mexican public and non-governmental organizations, academic institutions, and, in consultation with the Secretary of State, the government of Mexico and its political subdivisions, for the purpose of exchanging trail information and research, fostering trail preservation and educational programs, providing technical assistance, and working to establish an international historic trail with complementary preservation and education programs in each nation.''●

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By Mr. GRAHAM (for himself and Mr. COVERDELL):

S. 2278. A bill to exclude veterans' educational benefits from being considered a resource in the computation of financial aid; to the Committee on Veterans' Affairs.

VETERANS EDUCATIONAL BENEFITS PROTECTION ACT OF 1998

Mr. GRAHAM. Mr. President, I rise today to speak about an issue which is of vital importance to our nation's brave veterans and their families.

The Montgomery GI bill, which was made permanent on June 1, 1987, guarantees basic educational assistance for most persons who are, or have been, members of the Armed Forces or the Selected Reserve for significant periods of time.

The Montgomery GI bill was created to help veterans in their readjustment to civilian life, to aid in recruitment and retention of qualified personnel in the Armed Forces, and to develop a more highly educated and productive work force.

Currently, Montgomery GI benefits are considered ''other financial aid'' in the determination of need.

In other words, when a veteran applies for financial aid, colleges and universities are required to consider veterans' educational benefits as a resource when computing the financial award.

The ultimate result is that the total financial aid award is reduced.

This penalty does not exist for other Americans who serve our country.

The National Community Service Act of 1990 decrees that a national service educational award or post-service benefit shall not be treated as financial assistance.

Mr. President, this inequity is an affront to the many veterans who have sacrificed to defend our nation from harm.

Today, I am introducing the Veterans Educational Benefits Protection Act of 1998 to prevent GI bill benefits from being considered a resource in the computation of financial aid.

Let me read to you from a letter that I received from a Florida veteran. He writes:

> I do not think that VA education benefits should be calculated into the financial aid equation for two reasons.
>
> First, I paid for the Montgomery GI Bill, albeit only $1200, but more so with a sacrifice of time serving my country.
>
> I previously paid for these benefits and am currently being penalized for that through financial aid . . . I did not qualify for any type of federal educational grant this year in part because my veterans benefits were counted as financial aid in my package.

It's ironic, Mr. President.

We created the Montgomery GI bill to reward veterans for their dedication to the defense of our liberties.

They earn its benefits through years of service and help to finance them through paycheck deduction.

But current law unfairly penalizes the 94 percent of veterans who sign up for the program and the 40 percent who actually use the benefits to which they are entitled.

Our bill will revoke this self-defeating approach and restore common sense to this important veterans educational program.

If it is enacted, Montgomery GI bill benefits will no longer be treated as other financial assistance for purposes of the need analysis formula.

This is a critical change.

It is well-known and well-documented that education has a dramatic impact on earning potential and employment success.

Employees with a college education are more likely to earn higher salaries—and less likely to become unemployed—than those workers who did not advance beyond high school.

Even worse, failure to enact this legislation will harm our efforts to attract our best and brightest young people to the armed services.

The Department of Defense has identified the Montgomery GI bill as its best available recruitment tool.

Mr. President, just over fifty years ago, in 1945, tens of thousands of American servicemen returned home from defeating totalitarian aggression around the globe.

Because Congress had enacted the original GI bill a year earlier, they arrived with the assurance that the federal government would reward their brave defense of freedom and heroic sacrifice with a chance for a better life.

When Congress passed that first GI bill, it made a covenant with the men and women who put their lives on the line to protect our cherished freedom and democracy.

By making it more difficult for veterans to finance higher education once they leave the armed services, current law has undermined that compact.

I am confident that the Veterans Education Benefits Protection Act will help us reaffirm our commitment to these courageous Americans, and give veterans access to the higher education that they so richly deserve.

Mr. President, I ask unanimous consent that the text of the bill be printed in the RECORD.

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

S. 2278

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,*

**SECTION 1. SHORT TITLE.**

This Act may be cited as the ''Veterans' Educational Benefits Protection Act of 1998''.

**SEC. 2. FINDINGS.**

Congress makes the following findings:

(1) Having served their country with honor, veterans of the Armed Forces deserve the Nation's gratitude and support.

(2) Recognizing that education is a key element of economic success and reintegration into civilian life, Congress has for more than 50 years provided aid to veterans seeking postsecondary education.

(3) The escalating costs of postsecondary education make veterans more dependent than ever on veterans' educational benefits.

(4) Recipients of veterans' educational benefits should not be disadvantaged with respect to any other recipients of Federal educational aid programs.

**SEC. 3. TREATMENT OF VETERANS' EDUCATIONAL BENEFITS.**

Section 480(j)(3) (20 U.S.C. 1087vv(j)(3)) is amended by inserting after ''paragraph (1),'' the following: ''a post-service benefit under chapter 30 of title 38, United States Code, or''.

## ADDITIONAL COSPONSORS

S. 1089

At the request of Mr. SPECTER, the name of the Senator from Minnesota (Mr. WELLSTONE) was added as a cosponsor of S. 1089, a bill to terminate the effectiveness of certain amendments to the foreign repair station rules of the Federal Aviation Administration, and for other purposes.

S. 1147

At the request of Mr. WELLSTONE, the name of the Senator from Hawaii (Mr. INOUYE) was added as a cosponsor of S. 1147, a bill to amend the Public Health Service Act, Employee Retirement Income Security Act of 1974, and the Internal Revenue Code of 1986 to provide for nondiscriminatory coverage for substance abuse treatment services under private group and individual health coverage.

S. 1252

At the request of Mr. D'AMATO, the name of the Senator from Ohio (Mr. GLENN) was added as a cosponsor of S. 1252, a bill to amend the Internal Revenue Code of 1986 to increase the amount of low-income housing credits which may be allocated in each State, and to index such amount for inflation.

S. 1578

At the request of Mr. MCCAIN, the name of the Senator from Wisconsin (Mr. FEINGOLD) was added as a cosponsor of S. 1578, a bill to make available on the Internet, for purposes of access and retrieval by the public, certain information available through the Congressional Research Service web site.

S. 1919

At the request of Mr. MURKOWSKI, the name of the Senator from Texas (Mr. GRAMM) was added as a cosponsor of S. 1919, a bill to provide for the energy security of the Nation through encouraging the production of domestic oil and gas resources from stripper wells on federal lands, and for other purposes.

S. 1920

At the request of Mr. MURKOWSKI, the name of the Senator from Texas (Mr. GRAMM) was added as a cosponsor of S. 1920, a bill to improve the administration of oil and gas leases on Federal lands, and for other purposes.

S. 2007

At the request of Mr. COCHRAN, the name of the Senator from Maine (Ms. SNOWE) was added as a cosponsor of S. 2007, a bill to amend the false claims provisions of chapter 37 of title 31, United States Code.

S. 2078

At the request of Mr. GRASSLEY, the name of the Senator from Georgia (Mr. COVERDELL) was added as a cosponsor of S. 2078, a bill to amend the Internal Revenue Code of 1986 to provide for Farm and Ranch Risk Management Accounts, and for other purposes.

S. 2091

At the request of Mr. GRAMS, the names of the Senator from Hawaii (Mr. INOUYE), and the Senator from North Carolina (Mr. FAIRCLOTH) were added as cosponsors of S. 2091, a bill to amend title XVIII of the Social Security Act to ensure medicare reimbursement for certain ambulance services, and to improve the efficiency of the emergency medical system, and for other purposes.

S. 2154

At the request of Mrs. BOXER, the name of the Senator from Illinois (Mr. DURBIN) was added as a cosponsor of S. 2154, a bill to promote research to identify and evaluate the health effects of silicone breast implants, and to ensure that women and their doctors receive accurate information about such implants.

S. 2162

At the request of Mr. MACK, the name of the Senator from Connecticut (Mr. LIEBERMAN) was added as a cosponsor of S. 2162, a bill to amend the Internal Revenue Code of 1986 to more accurately codify the depreciable life of printed wiring board and printed wiring assembly equipment.

At the request of Mr. MACK, the name of the Senator from Ohio (Mr. GLENN) was withdrawn as a cosponsor of S. 2162, supra.

S. 2170

At the request of Mr. ALLARD, the name of the Senator from Texas (Mrs. HUTCHISON) was added as a cosponsor of S. 2170, a bill to amend the Internal Revenue Code of 1986 to eliminate the temporary increase in unemployment tax.

S. 2175

At the request of Mr. CRAIG, the name of the Senator from Wyoming (Mr. ENZI) was added as a cosponsor of S. 2175, a bill to safeguard the privacy of certain identification records and name checks, and for other purposes.

S. 2201

At the request of Mr. TORRICELLI, the name of the Senator from North Carolina (Mr. HELMS) was added as a cosponsor of S. 2201, a bill to delay the effective date of the final rule promulgated by the Secretary of Health and Human Services regarding the Organ Procurement and Transplantation Network.

S. 2213

At the request of Mr. FRIST, the names of the Senator from Michigan (Mr. LEVIN), the Senator from Kentucky (Mr. MCCONNELL), and the Senator from Nebraska (Mr. HAGEL) were added as cosponsors of S. 2213, a bill to allow all States to participate in activities under the Education Flexibility Partnership Demonstration Act.

S. 2236

At the request of Mr. GORTON, the name of the Senator from Connecticut (Mr. DODD) was added as a cosponsor of S. 2236, a bill to establish legal standards and procedures for product liability litigation, and for other purposes.

SENATE CONCURRENT RESOLUTION 95

At the request of Mr. DODD, the name of the Senator from Arizona (Mr. MCCAIN) was added as a cosponsor of Senate Concurrent Resolution 95, a concurrent resolution expressing the sense of Congress with respect to promoting coverage of individuals under long-term care insurance.

SENATE RESOLUTION 193

At the request of Mr. REID, the name of the Senator from Virginia (Mr. WARNER) was added as a cosponsor of Senate Resolution 193, a resolution designating December 13, 1998, as ''National Children's Memorial Day.''

SENATE RESOLUTION 237

At the request of Mr. FEINGOLD, the names of the Senator from North Dakota (Mr. DORGAN) and the Senator from Connecticut (Mr. LIEBERMAN) were added as cosponsors of Senate Resolution 237, a resolution expressing the sense of the Senate regarding the situation in Indonesia and East Timor.

## SENATE RESOLUTION 256—RELATIVE TO PRIVATE RELIEF LEGISLATION AND THE UNITED STATES COURT OF FEDERAL CLAIMS

Mr. BINGAMAN submitted the following resolution; which was referred to the Committee on the Judiciary:

S. RES. 256

*Resolved,* That (a) S. 2274 entitled ''A bill for the relief of Richard M. Barlow of Santa Fe, New Mexico'' now pending in the Senate, together with all the accompanying papers, is referred to the chief judge of the United States Court of Federal Claims.

(b) The chief judge shall—

(1) proceed according to the provisions of sections 1492 and 2509 of title 28, United States Code; and

(2) report back to the Senate, at the earliest practicable date, providing—

(A) such findings of fact and conclusions that are sufficient to inform the Congress of the nature, extent, and character of the claim for compensation referred to in such bill as a legal or equitable claim against the United States or a gratuity; and

(B) the amount, if any, legally or equitably due from the United States to Mr. Richard M. Barlow of Santa Fe, New Mexico.

## AMENDMENTS SUBMITTED

### PRODUCT LIABILITY REFORM ACT OF 1998

#### ROBB AMENDMENT NO. 3066

(Ordered to lie on the table.)

Mr. ROBB submitted an amendment intended to be proposed by him to the bill (S. 648) to establish legal standards and procedures for product liability litigation, and for other purposes; as follows:

In section 107(a), after ''other than toxic harm'' insert the following: ''(including any illness caused by exposure to asbestos)''.

### DEPARTMENTS OF VETERANS AFFAIRS AND HOUSING AND URBAN DEVELOPMENT, AND INDEPENDENT AGENCIES APPROPRIATIONS ACT, 1999

#### KERREY (AND HAGEL) AMENDMENTS NOS. 3067–3068

Mr. KERREY (for himself and Mr. HAGEL) submitted two amendments intended to be proposed by them to the bill (S. 2168) making appropriations for the Departments of Veterans Affairs and Housing and Urban Development, and for sundry independent agencies, commissions, corporations, and offices for the fiscal year ending September 30, 1999, and for other purposes; as follows:

AMENDMENT NO. 3067

On page 93, between lines 18 and 19, insert the following:

**SEC. 423. TEMPORARY PROHIBITION ON IMPLEMENTATION OR ENFORCEMENT OF PUBLIC WATER SYSTEM TREATMENT REQUIREMENTS FOR COPPER ACTION LEVEL.**

(a) IN GENERAL.—None of the funds made available by this or any other Act for any fiscal year may be used by the Administrator of the Environmental Protection Agency to implement or enforce the national primary drinking water regulations for lead and copper in drinking water promulgated under the Safe Drinking Water Act (42 U.S.C. 300f et seq.), to the extent that the regulations pertain to the public water system treatment requirements related to the copper action level, until—

(1) the Administrator and the Director of the Centers for Disease Control and Prevention jointly conduct a study to establish a reliable dose-response relationship for the adverse human health effects that may result from exposure to copper in drinking water, that—

(A) includes an analysis of the health effects that may be experienced by groups within the general population (including infants) that are potentially at greater risk of adverse health effects as the result of the exposure;

(B) is conducted in consultation with interested States;

(C) is based on the best available science and supporting studies that are subject to peer review and conducted in accordance with sound and objective scientific practices; and

(D) is completed not later than 30 months after the date of enactment of this Act; and

(2) based on the results of the study and, once peer reviewed and published, the 2 studies of copper in drinking water conducted by the Centers for Disease Control and Prevention in the State of Nebraska and the State of Delaware, the Administrator establishes an action level for the presence of copper in drinking water that protects the public health against reasonably expected adverse effects due to exposure to copper in drinking water.

(b) CURRENT REQUIREMENTS.—Nothing in this section precludes a State from implementing or enforcing the national primary drinking water regulations for lead and copper in drinking water promulgated under the Safe Drinking Water Act (42 U.S.C. 300f et seq.) that are in effect on the date of enactment of this Act, to the extent that the regulations pertain to the public water system treatment requirements related to the copper action level.

AMENDMENT NO. 3068

On page 93, between lines 18 and 19, insert the following:

**SEC. 423. TEMPORARY PROHIBITION ON IMPLEMENTATION OR ENFORCEMENT OF PUBLIC WATER SYSTEM TREATMENT REQUIREMENTS FOR COPPER ACTION LEVEL.**

(a) IN GENERAL.—None of the funds made available by this or any other Act for any fiscal year may be used by the Administrator of the Environmental Protection Agency to implement or enforce the national primary drinking water regulations for lead and copper in drinking water promulgated under the Safe Drinking Water Act (42 U.S.C. 300f et seq.), to the extent that the regulations pertain to the public water system treatment requirements related to the copper action level, until—

(1) the Administrator and the Director of the Centers for Disease Control and Prevention jointly conduct a study to establish a reliable dose-response relationship for the adverse human health effects that may result from exposure to copper in drinking water, that—

(A) includes an analysis of the health effects that may be experienced by groups within the general population (including infants) that are potentially at greater risk of adverse health effects as the result of the exposure;

(B) is conducted in consultation with interested States;

(C) is based on the best available science and supporting studies that are subject to peer review and conducted in accordance with sound and objective scientific practices; and

(D) is completed not later than 30 months after the date of enactment of this Act; and

(2) based on the results of the study and, once peer reviewed and published, the 2 studies of copper in drinking water conducted by the Centers for Disease Control and Prevention in the State of Nebraska and the State of Delaware, the Administrator establishes an action level for the presence of copper in drinking water that protects the public health against reasonably expected adverse effects due to exposure to copper in drinking water.

(b) CURRENT REQUIREMENTS.—Nothing in this section precludes a State from implementing or enforcing the national primary drinking water regulations for lead and copper in drinking water promulgated under the Safe Drinking Water Act (42 U.S.C. 300f et seq.) that are in effect on the date of enactment of this Act, to the extent that the regulations pertain to the public water system treatment requirements related to the copper action level.

### PRODUCT LIABILITY REFORM ACT OF 1998

#### TORRICELLI (AND OTHERS) AMENDMENT NO. 3069

(Ordered to lie on the table)

Mr. TORRICELLI (for himself, Mr. FEINSTEIN, Mrs. BOXER, and Mr. LAUTENBERG) submitted an amendment intended to be proposed by them to the bill, S. 648, supra; as follows:

In section 101, after paragraph (9), insert the following:

(9A) FIREARM.—The term ''firearm''—

(A) has the meaning given that term in section 921(3) of title 18, United States Code; and

(B) includes any firearm included under the definition of that term under section 5845 of the Internal Revenue Code of 1986.

In the heading of section 102(a)(2)(B), strike ''NEGLIGENCE PER SE CONCERNING FIREARMS AND AMMUNITION''.

In section 102(a)(2)(B), strike clause (ii) and redesignate clause (iii) as clause (ii).

Amend section 102(a)(2) by adding at the end the following:

(E) ACTIONS INVOLVING HARM CAUSED BY A FIREARM OR AMMUNITION.—A civil action brought for harm caused by a firearm or ammunition shall not be subject to the provisions of this title governing product liability actions, but shall be subject to any applicable Federal or State law.

## BOXER AMENDMENTS. NOS. 3070–3078

(Ordered to lie on the table)

Mrs. BOXER submitted nine amendments intended to be proposed by her to the bill, S. 2168, supra;

AMENDMENT NO. 3070

Amend section 102(a)(2) by adding at the end the following:

(E) ACTIONS INVOLVING HARM THAT RESULTS IN A DISABILITY THAT RENDERS AN INJURED PARTY INCAPABLE OF CONTINUING TO WORK IN THE OCCUPATION OF THE PARTY.—A civil action brought for harm caused by a product that results in a disability that renders an injured party incapable of continuing to work in the occupation that that party was engaged in at the time of the injury shall not be subject to the provisions of this title governing product liability actions, but shall be subject to any applicable Federal or State law.

AMENDMENT NO. 3071

Amend section 102(a)(2) by adding at the end the following:

(E) ACTIONS INVOLVING A LOSS OF FERTILITY.—A civil action brought for harm caused by a product that includes a loss of fertility caused by that product shall not be subject to the provisions of this title governing product liability actions, but shall be subject to any applicable Federal or State law.

AMENDMENT NO. 3072

Amend section 102(a)(2) by adding at the end the following:

(E) ACTIONS INVOLVING SEVERE DISFIGUREMENT.—A civil action brought for harm caused by a product that includes severe disfigurement caused by that product shall not be subject to the provisions of this title governing product liability actions, but shall be subject to any applicable Federal or State law.

AMENDMENT NO. 3073

Amend section 102(a)(2) by adding at the end the following:

(E) ACTIONS INVOLVING BLINDNESS.—A civil action brought for harm caused by a product that includes blindness caused by that product shall not be subject to the provisions of this title governing product liability actions, but shall be subject to any applicable Federal or State law.

AMENDMENT NO. 3074

Amend section 102(a)(2) by adding at the end the following:

(E) ACTIONS INVOLVING PERMANENT PARALYSIS.—A civil action brought for harm caused by a product that includes permanent paralysis caused by that product shall not be subject to the provisions of this title governing product liability actions, but shall be subject to any applicable Federal or State law.

AMENDMENT NO. 3075

Amend section 102(a)(2) by adding at the end the following:

(E) ACTIONS INVOLVING MULTIPLE LIMB LOSS.—A civil action brought for harm caused by a product that includes multiple limb loss caused by that product shall not be subject to the provisions of this title governing product liability actions, but shall be subject to any applicable Federal or State law.

AMENDMENT NO. 3076

On page 14, between lines 19 and 20, insert the following:

(E) ACTIONS INVOLVING HARM CAUSED BY A HANDGUN.—

(i) IN GENERAL.—A civil action against a transferor of a handgun (as defined in section 921(a) of title 18, United States Code) for harm caused by the handgun shall not be subject to the provisions of this title governing product liability actions, but shall be subject to any applicable Federal or State law, unless the transferee was provided with a locking device for that handgun at the time of transfer.

(ii) DEFINITION OF LOCKING DEVICE.—In this subparagraph, the term ''locking device'' means a device or locking mechanism—

(I) that—

(aa) if installed on a firearm and secured by means of a key or a mechanically, electronically, or electromechanically operated combination lock, is designed to prevent the firearm from being discharged without first deactivating or removing the device by means of a key or mechanically, electronically, or electromechanically operated combination lock;

(bb) if incorporated into the design of a firearm, is designed to prevent discharge of the firearm by any person who does not have access to the key or other device designed to unlock the mechanism and thereby allow discharge of the firearm; or

(cc) is a safe, gun safe, gun case, lock box, or other device that is designed to store a firearm, and that is designed to be unlocked only by means of a key, a combination, or other similar means; and

(II) that is approved by a licensed firearms manufacturer (as defined in section 921(a) of title 18, United States Code) for use on the handgun with which the device or locking mechanism is sold, delivered, or transferred.

AMENDMENT NO. 3077

Amend section 102(a)(2) by adding at the end the following:

(E) ACTIONS INVOLVING SEVERE BRAIN DAMAGE THAT RENDERS AN INJURED PARTY INCAPABLE OF UNASSISTED LIVING.—A civil action brought for harm caused by a product that includes severe brain damage caused by that product that renders an injured party incapable of unassisted living shall not be subject to the provisions of this title governing product liability actions, but shall be subject to any applicable Federal or State law.

AMENDMENT NO. 3078

Amend section 102(a)(2) by adding at the end the following:

(E) ACTIONS INVOLVING INTERNAL ORGAN DAMAGE THAT RESULTS IN A NEED FOR AN ORGAN TRANSPLANT.—A civil action brought for harm caused by a product that includes internal organ damage caused by that product that results in a need for an organ transplant shall not be subject to the provisions of this title governing product liability actions, but shall be subject to any applicable Federal or State law.

## CONRAD AMENDMENT NO. 3079

(Ordered to lie on the table)

Mr. CONRAD submitted an amendment intended to be proposed by him to the bill, S. 648, supra; as follows:

Amend section 102(a)(2) by adding at the end the following:

(E) ACTIONS RELATING TO HARM CAUSED BY VIOLENT, PORNOGRAPHIC, OBSCENE, OR INDECENT MATERIALS.—

(i) IN GENERAL.—A civil action brought for harm caused by any violent, pornographic, obscene, or indecent material shall not be subject to the provisions of this title governing product liability actions, but shall be subject to any applicable Federal or State law.

(ii) MATERIALS INCLUDED.—The materials referred to in clause (i) include any movie, television show, videotape, record, audio tape recording, CD-ROM, or other visual, audio, or electronic media that is violent, pornographic, obscene, or indecent.

## LEAHY AMENDMENTS NOS. 3080–3081

(Ordered to lie on the table)

Mr. LEAHY sumbitted two amendments intended to be proposed by him to the bill, S. 648, supra; as follows:

AMENDMENT NO. 3080

In section 102(a)(2), strike subparagraph (A) and insert the following:

(A) ACTIONS FOR COMMERCIAL LOSS, ECONOMIC LOSS, AND NONECONOMIC LOSS.—

(i) COMMERCIAL LOSS.—A civil action brought for commercial loss shall be governed only by applicable commercial law, including applicable State law based on the Uniform Commercial Code.

(ii) ECONOMIC LOSS AND NONECONOMIC LOSS.—A civil action brought for economic loss or noneconomic loss shall be governed only by applicable State law.

AMENDMENT NO. 3081

In section 102(a)(2)—

(1) strike subparagraph (A); and

(2) redesignate subparagraphs (B) through (D) as subparagraphs (A) through (C), respectively.

## LEVIN AMENDMENT NO. 3082

(Ordered to lie on the table)

Mr. LEVIN submitted an amendment intended to be proposed by him to the bill, S. 648, supra; as follows:

In section 110(a)(1), in the first sentence, strike ''To the extent punitive damages are permitted by applicable State law, punitive damages'' and insert ''Punitive damages''.

## KERRY (AND HOLLINGS) AMENDMENT NO. 3083

(Ordered to lie on the table.)

Mr. KERRY (for himself and Mr. HOLLINGS) submitted an amendment intended to be proposed by him to the bill, S. 648, supra; as follows:

To the pending substitute amendment, on page 22, line 23, after the period, add the following: ''As used in this section, the term 'toxic harm' shall mean any harm caused by acute or repeated exposure to asbestos or any radioactive compounds or any other chemical or hazardous substance listed by the Centers for Disease Control Agency or the Toxic Substances and Disease Registry.''

## WELLSTONE AMENDMENTS. NOS. 3084–3085

(Ordered to lie on the table.)

Mr. WELLSTONE submitted two amendments intended to be proposed by him to the bill, S. 648, supra; as follows:

AMENDMENT NO. 3084

At the end of the substitute add the following:

**TITLE IV—PROTECTIVE ORDERS AND SEALING OF CASES AND SETTLEMENTS RELATING TO PUBLIC HEALTH OR SAFETY IN PRODUCT LIABILITY CASES**

**SEC. 401. PROTECTIVE ORDERS AND SEALING OF CASES AND SETTLEMENTS RELATING TO PUBLIC HEALTH OR SAFETY PRODUCT LIABILITY CASES.**

(a) SHORT TITLE.—This section may be cited as the ''Sunshine in Litigation Act of 1998''.

(b) PROTECTIVE ORDERS AND SEALING OF CASES AND SETTLEMENTS RELATING TO PUBLIC HEALTH OR SAFETY.—Chapter 111 of title 28, United States Code, is amended by adding at the end the following new section:

**''§ 1660. Protective orders and sealing of cases and settlements relating to public health or safety in product liability cases**

''(a)(1) In any civil action brought in any Federal or State court on any theory for harm caused by a product, a court shall enter an order restricting the disclosure of information obtained through discovery or an order restricting access to court records in a civil case only after making particularized findings of fact that—

''(A) such order would not restrict the disclosure of information which is relevant to the protection of public health or safety; or

''(B)(i) the public interest in disclosure of potential health or safety hazards is clearly outweighed by a specific and substantial interest in maintaining the confidentiality of the information or records in question; and

''(ii) the requested protective order is no broader than necessary to protect the privacy interest asserted.

''(2) No order entered in accordance with paragraph (1) shall continue in effect after the entry of final judgment, unless at or after such entry the court makes a separate particularized finding of fact that the requirements of paragraph (1) (A) or (B) have been met.

''(b) The party who is the proponent for the entry of an order, as provided under this section, shall have the burden of proof in obtaining such an order.

''(c)(1) No agreement between or among parties in a civil action brought on any theory for harm caused by a product may contain a provision that prohibits or otherwise restricts a party from disclosing any information relevant to such civil action to any Federal or State agency with authority to enforce laws regulating an activity relating to such information.

''(2) Any disclosure of information to a Federal or State agency as described under paragraph (1) shall be confidential to the extent provided by law.''.

(c) TECHNICAL AND CONFORMING AMENDMENT.—The table of sections for chapter 111 of title 28, United States Code, is amended by adding after the item relating to section 1659 the following:

''1660. Protective orders and sealing of cases and settlements relating to public health or safety in product liability cases.''.

(d) EFFECTIVE DATE.—The amendments made by this section shall take effect 30 days after the date of enactment of this Act and shall apply only to orders entered in civil actions or agreements entered into on or after such date.

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AMENDMENT NO. 3085

At the end of the substitute add the following:

**TITLE IV—PROTECTIVE ORDERS AND SEALING OF CASES AND SETTLEMENTS RELATING TO PUBLIC HEALTH OR SAFETY IN PRODUCT LIABILITY CASES**

**SEC. 401. PROTECTIVE ORDERS AND SEALING OF CASES AND SETTLEMENTS RELATING TO PUBLIC HEALTH OR SAFETY PRODUCT LIABILITY CASES.**

(a) SHORT TITLE.—This section may be cited as the ''Sunshine in Litigation Act of 1998''.

(b) PROTECTIVE ORDERS AND SEALING OF CASES AND SETTLEMENTS RELATING TO PUBLIC HEALTH OR SAFETY.—Chapter 111 of title 28, United States Code, is amended by adding at the end the following new section:

**''§ 1660. Protective orders and sealing of cases and settlements relating to public health or safety in product liability cases**

''(a)(1) In any civil action brought in any Federal or State court on any theory for harm caused by a product, a court shall enter an order restricting the disclosure of information obtained through discovery or an order restricting access to court records in a civil case only after making particularized findings of fact that—

''(A) such order would not restrict the disclosure of information which is relevant to the protection of public health or safety; or

''(B)(i) the public interest in disclosure of potential health or safety hazards is clearly outweighed by a specific and substantial interest in maintaining the confidentiality of the information or records in question; and

''(ii) the requested protective order is no broader than necessary to protect the privacy interest asserted.

''(2) No order entered in accordance with paragraph (1) shall continue in effect after the entry of final judgment, unless at or after such entry the court makes a separate particularized finding of fact that the requirements of paragraph (1) (A) or (B) have been met.

''(b) The party who is the proponent for the entry of an order, as provided under this section, shall have the burden of proof in obtaining such an order.

''(c)(1) No agreement between or among parties in a civil action brought on any theory for harm caused by a product may contain a provision that prohibits or otherwise restricts a party from disclosing any information relevant to such civil action to any Federal or State agency with authority to enforce laws regulating an activity relating to such information.

''(2) Any disclosure of information to a Federal or State agency as described under paragraph (1) shall be confidential to the extent provided by law.''.

(c) TECHNICAL AND CONFORMING AMENDMENT.—The table of sections for chapter 111 of title 28, United States Code, is amended by adding after the item relating to section 1659 the following:

''1660. Protective orders and sealing of cases and settlements relating to public health or safety in product liability cases.''.

(d) EFFECTIVE DATE.—The amendments made by this section shall take effect 30 days after the date of enactment of this Act and shall apply only to orders entered in civil actions or agreements entered into on or after such date.

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## STEVENS AMENDMENT NO. 3086

(Ordered to lie on the table.)

Mr. STEVENS submitted an amendment intended to be proposed by him to the bill, S. 648, supra; as follows:

On page 11, at the end of line 16 insert the following new sentence: ''The term shall not be construed to mean attorney fees awarded pursuant to state law authorizing attorney fee awards to the prevailing party in a civil action.''

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## FAIRCLOTH AMENDMENT NO. 3087

(Ordered to lie on the table.)

Mr. FAIRCLOTH submitted an amendment intended to be proposed by him to the bill, S. 648, supra; as follows:

**SECTION 1. SHORT TITLE.**

This Act may be cited as the ''Legal Reform Commission Act of 1998''.

**SEC. 2. ESTABLISHMENT OF COMMISSION.**

(a) ESTABLISHMENT.—There is established a commission to be known as the Legal Reform Commission (hereafter in this Act referred to as the ''Commission'').

(b) MEMBERSHIP.—

(1) COMPOSITION.—The Commission shall be composed of 11 members of whom—

(A) one shall be appointed by the President;

(B) one shall be appointed by the President pro tempore of the Senate;

(C) one shall be appointed by the Speaker of the House of Representatives;

(D) two shall be appointed by the Majority Leader of the Senate;

(E) two shall be appointed by the Minority Leader of the Senate;

(F) two shall be appointed by the Majority Leader of the House of Representatives; and

(G) two shall be appointed by the Minority Leader of the House of Representatives.

(2) CHAIRMAN AND VICE CHAIRMAN.—The members of the Commission shall select a Chairman and a Vice Chairman from the members.

(3) PROHIBITION.—

(A) CHAIRMAN.—The Chairman of the Commission may not be an employee or former employee of the Federal Government.

(B) MEMBERS.—No member of the Commission may be a member or former member of the Bar of any State.

(4) DATE.—The appointments of the members of the Commission shall be made no later than June 1, 1998.

(c) PERIOD OF APPOINTMENT; VACANCIES.—Members shall be appointed for the life of the Commission. Any vacancy in the Commission shall not affect its powers, but shall be filled in the same manner as the original appointment.

(d) INITIAL MEETING.—No later than 30 days after the date on which all members of the Commission have been appointed, the Commission shall hold its first meeting.

(e) MEETINGS.—The Commission shall meet at the call of the Chairman.

(f) QUORUM.—A majority of the members of the Commission shall constitute a quorum, but a lesser number of members may hold hearings.

**SEC. 3. DUTIES OF THE COMMISSION.**

(a) STUDY.—

(1) IN GENERAL.—The Commission shall conduct a thorough study of all matters relating to the reform and simplification of the United States legal system.

(2) MATTERS STUDIED.—The matters studied by the Commission shall include reform of—

(A) Federal law;

(B) State law;

(C) criminal law;

(D) civil law;

(E) judicial, trial, and appellate processes;

(F) the Federal Rules of Evidence;

(G) the Federal Rules of Civil Procedure; and

(H) the Federal Rules of Criminal Procedure.

(b) RECOMMENDATIONS.—The Commission shall develop recommendations on all matters studied under subsection (a) relating to reform of the United States legal system.

(c) REPORT.—No later than 2 years after the date of enactment of this Act, the Commission shall submit a report to the President and Congress which shall contain a detailed statement of the findings and conclusions of the Commission, together with its recommendations for such legislation and administrative actions as it considers appropriate.

**SEC. 4. POWERS OF THE COMMISSION.**

(a) HEARINGS.—The Commission may hold such hearings, sit and act at such times and places, take such testimony, and receive such evidence as the Commission considers advisable to carry out the purposes of this Act.

(b) INFORMATION FROM FEDERAL AGENCIES.—The Commission may secure directly from any Federal department or agency such information as the Commission considers necessary to carry out the provisions of this Act. Upon request of the Chairman of the Commission, the head of such department or agency shall furnish such information to the Commission.

(c) POSTAL SERVICES.—The Commission may use the United States mails in the same manner and under the same conditions as other departments and agencies of the Federal Government.

(d) GIFTS.—The Commission may accept, use, and dispose of gifts or donations of services or property.

**SEC. 5. COMMISSION PERSONNEL MATTERS.**

(a) COMPENSATION OF MEMBERS.—Each member of the Commission who is not an officer or employee of the Federal Government shall be compensated at a rate equal to the daily equivalent of the annual rate of basic pay prescribed for level IV of the Executive Schedule under section 5315 of title 5, United States Code, for each day (including travel time) during which such member is engaged in the performance of the duties of the Commission. All members of the Commission who are officers or employees of the United States shall serve without compensation in addition to that received for their services as officers or employees of the United States.

(b) TRAVEL EXPENSES.—The members of the Commission shall be allowed travel expenses, including per diem in lieu of subsistence, at rates authorized for employees of agencies under subchapter I of chapter 57 of title 5, United States Code, while away from their homes or regular places of business in the performance of services for the Commission.

(c) STAFF.—

(1) IN GENERAL.—The Chairman of the Commission may, without regard to the civil service laws and regulations, appoint and terminate an executive director and such other additional personnel as may be necessary to enable the Commission to perform its duties. The employment of an executive director shall be subject to confirmation by the Commission.

(2) COMPENSATION.—The Chairman of the Commission may fix the compensation of the executive director and other personnel without regard to the provisions of chapter 51 and subchapter III of chapter 53 of title 5, United States Code, relating to classification of positions and General Schedule pay rates, except that the rate of pay for the executive director and other personnel may not exceed the rate payable for level V of the Executive Schedule under section 5316 of such title.

(d) DETAIL OF GOVERNMENT EMPLOYEES.—Any Federal Government employee may be detailed to the Commission without reimbursement, and such detail shall be without interruption or loss of civil service status or privilege.

(e) PROCUREMENT OF TEMPORARY AND INTERMITTENT SERVICES.—The Chairman of the Commission may procure temporary and intermittent services under section 3109(b) of title 5, United States Code, at rates for individuals which do not exceed the daily equivalent of the annual rate of basic pay prescribed for level V of the Executive Schedule under section 5316 of such title.

**SEC. 6. TERMINATION OF THE COMMISSION.**

The Commission shall terminate 90 days after the date on which the Commission submits its report under section 3.

**SEC. 7. AUTHORIZATION OF APPROPRIATIONS.**

(a) IN GENERAL.—There are authorized to be appropriated such sums as are necessary to the Commission to carry out the purposes of this Act.

(b) AVAILABILITY.—Any sums appropriated under the authorization contained in this section shall remain available, without fiscal year limitation, until expended.

## HOLLINGS (AND CONRAD) AMENDMENT NO. 3088

(Ordered to lie on the table.)

Mr. HOLLINGS (for himself and Mr. CONRAD) submitted an amendment intended to be proposed by them to the bill, S. 648, supra; as follows:

On page 14, between lines 19 and 20, insert the following:

(E) PORNOGRAPHIC MATERIALS,—A civil action brought for harm caused by violent or pornographic, obscene, or indecent materials, including movies, television shows, videotapes, records, audio tape recordings, CD–ROMs, and other visual, audio, or electronic media or products, shall not be subject to the provisions of this title governing product liability actions, but shall be subject to any other applicable Federal or State law.

## HOLLINGS AMENDMENTS. NOS. 3089–3093

(Ordered to lie on the table.)

Mr. HOLLINGS submitted five amendments intended to be proposed by him to the bill, S. 648, supra; as follows:

AMENDMENT NO. 3089

On page 14, strike lines 6 through 11.

AMENDMENT NO. 3090

On page 10, strike line 2 and insert the following:

utility, natural gas, or steam; or

(iii) toys or other articles intended for use by children.

AMENDMENT NO. 3091

On page 12, between lines 17 and 18, insert the following:

(21) TOXIC HARM.—The term ''toxic harm'' means harm caused by acute or repeated exposure to naturally-occurring or synthesized minerals or mineral products, organic compounds, microorganisms, biological products, radioactive compounds, or any chemical or hazardous substance listed by the Centers for Disease Control Agency for Toxic Substances and Disease Registry.

AMENDMENT NO. 3092

On page 9, between lines 14 and 15, insert the following:

(iv) meets the Federal Trade Commission's definition of ''Made in the United States''; and

AMENDMENT NO. 3093

On page 25. beginning with line 20, strike through line 24 on page 28.

## FEINGOLD AMENDMENT NO. 3094

(Ordered to lie on the table.)

Mr. FEINGOLD submitted an amendment intended to be proposed by him to the bill, S. 648, supra; as follows:

In section 102(b), strike ''that the State law applies to a matter covered by this title'' and insert ''an issue is covered under this Act''.

In section 110(a)(1), in the first sentence, strike ''To the extent punitive damages are permitted by applicable State law, punitive damages'' and insert ''Punitive damages''.

At the end of section 107, add the following:

(b) PREEMPTION OF STATE LAW.—To the extent that a State has established a term-of-years limitation on the filing of actions of the type set forth in this section, that limitation is preempted without regard to whether the period is less than or greater than 18 years.

## BREAUX AMENDMENT NO. 3095

(Ordered to lie on the table.)

Mr. BREAUX submitted an amendment intended to be proposed by him to the bill, S. 648, supra; as follows:

In lieu of the language proposed to be inserted, insert the following:

**SEC. 1. SHORT TITLE AND FINDINGS.**

(a) SHORT TITLE.—This Act may be cited as the ''Product Safety and Liability Fairness Act of 1997''.

(b) FINDINGS.—The Congress finds the following:

(1) For too long, the Congress has engaged in a contentious debate over federal product liability legislation without making significant progress in addressing the legitimate concerns of all sides to the debate;

(2) As the Congress has always been presented with only the two extreme positions of the proponents and opponents of federal product liability legislation, it is time for a true common sense middle ground;

(3) While the opponents of federal product liability legislation contend that there is no need for any reform at all, there is real concern among businesses and others about the effect of the product liability system that Congress should examine;

(4) While the proponents of federal product liability legislation speak forcefully about the problem of frivolous lawsuits and slow and costly litigation, the bills supported by the proponents often fail to address these issues while instead placing restrictions and limitations on legitimate claims;

(5) While no persons with legitimate claims should be denied redress and their constitutional rights to a trial by jury, and while the product liability system does and must continue to provide valuable deterrence to the manufacture and sale of dangerous or defective products, there is no role in our legal system for frivolous product liability lawsuits;

(6) The several states and their courts can and must continue to be the primary architects and regulators of the tort system, with only infrequent and limited intervention by the federal government;

(7) If the Congress is to intervene in this traditional province of the states, it should do so only to address real issues while balancing the interest of all sides to the debate;

(8) Federal legislation that seeks to limit frivolous product liability lawsuits and which encourages alternative and less costly forms of dispute resolution fits this narrow role for the federal government to take in the area of product liability law.

**SEC. 2. TABLE OF CONTENTS.**

The table of contents of this Act is as follows:

TABLE OF CONTENTS

Sec. 1. Short title and findings.
Sec. 2. Table of contents.
Sec. 3. Definitions.
Sec. 4. Applicability; preemption.
Sec. 5. Jurisdiction of Federal courts.
Sec. 6. Effective date.

TITLE I—DETERRENCE OF FRIVOLOUS PRODUCT LIABILITY ACTIONS

Sec. 101. Requirement of an affidavit in product liability actions.
Sec. 102. Sanctions for frivolous product liability suits.
Sec. 103. Amendments to Federal Rules of Civil Procedures and Evidence for product liability cases.
Sec. 104. Special rules of procedure applicable in courts of the states in product liability cases.

TITLE II—OFFERS OF JUDGMENT AND ALTERNATIVE DISPUTE RESOLUTION PROCEDURES FOR PRODUCT LIABILITY CASES

Sec. 201. Offers of judgment.
Sec. 202. Alternative dispute resolution procedures.

TITLE III—UNIFORM PROCEDURES AND STANDARDS FOR PUNITIVE DAMAGES IN PRODUCT LIABILITY CASES

Sec. 301. Uniform standards for punitive damages.
Sec. 302. Determining amount of punitive damages.

TITLE IV—STATUTE OF LIMITATIONS IN PRODUCT LIABILITY CASES

Sec. 401. Uniform statute of limitations.

TITLE V—USEFUL SAFE LIFE

Sec. 501 Statute of repose beyond useful safe life in product liability cases.

TITLE VI—PRODUCT LIABILITY CLASS ACTIONS

Sec. 601. Notification requirement of class action certification or settlement.

TITLE VII—STUDY OF PRODUCT LIABILITY SYSTEM

Sec. 701. Study of Product Liability System.

**SEC. 3. DEFINITIONS.**

As used in this Act, the term—

(1) ''capital good'' means any product, or any component of any such product, which is of a character subject to allowance for depreciation under the Internal Revenue Code of 1986, and which was—

(A) used in a trade or a business;

(B) held for the production of income; or,

(C) sold or donated to a governmental or private entity for the production of goods, for training, for demonstration, or for other similar purposes.

(2) ''claimant'' means any person who brings a civil action subject to this Act, and any person on whose behalf such an action is brought; if such an action is brought through or on behalf of an estate, the term includes the claimant's decedent, or if it is brought through or on behalf of a minor or incompetent, the term includes the claimant's parent or guardian;

(3) ''defendant'' means a person against whom a claimant brings a civil action subject to this Act;

(4) ''economic loss'' means any pecuniary loss resulting from harm (including but not limited to medical expense loss, work loss, replacement services loss, loss due to death, burial costs, and loss of business or employment opportunities), to the extent recovery for such loss is allowed under applicable State law;

(5) ''harm'' means any injury to a person, including illness, disease, or death resulting from that injury, and including injury consisting of economic or pecuniary loss;

(6) ''manufacturer'' means—

(A) any person who is engaged in a business to produce, create, make, or construct any product (or component part of a product) and who designs or formulates the product (or component part of the product) or has engaged another person to design or formulate the product (or component part of the product);

(B) a product seller, but only with respect to those aspects of a product (or component part of a product) which are created or affected when, before placing the product in the stream of commerce, the product seller produces, creates, makes, or constructs and designs or formulates, or has engaged another person to design or formulate, an aspect of a product (or component part of a product) made by another; or

(V) any product seller not described in subparagraph (B) which holds itself out as a manufacturer to the user of a product;

(7) ''noneconomic loss'' means subjective, nonmonetary loss resulting from harm, including but not limited to pain, suffering, inconvenience, mental suffering, emotional distress, loss of society and companionship, loss of consortium, injury to reputation, and humiliation; the term does not include economic loss;

(8) ''person'' means any individual, corporation, company, association, firm, partnership, society, joint stock company, or any other entity (including any governmental entity);

(9) ''product'' means any object, substance, mixture, or raw material in a gaseous, liquid, or solid state—

(A) which is capable of delivery itself or as an assembled whole, in a mixed or combined state, or as a component part or ingredient;

(B) which is produced for introduction into interstate trade or commerce;

(C) which has intrinsic economic value; and

(D) which is intended for sale or lease to persons for commercial or personal use; the term does not include human tissue, blood and blood products, or organs unless specially recognized as a product pursuant to State law;

(10) ''product seller'' means a person who, in the course of a business conducted for that purpose sells, distributes, leases, prepares, blends, packages, labels, or otherwise is involved in placing a product in the stream of commerce, or who installs, repairs, or maintains the harm-causing aspect of a product; the term does not include—

(A) a seller or lessor of real property;

(B) a provider of professional services in any case in which the sale or use of a product is incidental to the transaction and the essence of the transaction is the furnishing of judgment, skill or services; or

(C) any person who—

(i) acts in only a financial capacity with respect to the sale of a product; and

(ii) leases a product under a lease arrangement in which the selection, possession, maintenance, and operation of the product are controlled by a person other than the lessor.

(11) ''State'' means any State of the United States, the District of Columbia, Puerto Rico, the Northern Mariana Islands, the Virgin Islands, Guam, American Samoa, and any other territory or possession of the United States, or any political sub-division thereof.

(12) ''time of delivery'' means the time when a product is delivered to its first purchaser or lessee who was not involved in the business of manufacturing or selling such product or using it as a component part of another product to be sold.

(13) ''useful safe life'' means the period beginning at the time of delivery of the product and extending for the time during which the product would normally be likely to perform in a safe manner.''

**SEC. 4. APPLICABILITY; PREEMPTION.**

(A) APPLICABILITY TO PRODUCT LIABILITY ACTIONS.—This Act applies to any civil action brought against a manufacturer or product seller for harm caused by a product.

(b) SCOPE OF PREEMPTION.—This Act supersedes any State law regarding recovery for harm caused by a product only to the extent that this Act establishes a rule of law applicable to any such recovery and that is inconsistent with State law. Any issue arising under this Act that is not governed by any such rule of law shall be governed by applicable State or Federal law.

(c) EFFECT ON OTHER LAW.—Nothing in this Act shall be construed to—

(1) waive or affect any defense of sovereign immunity asserted by any State under any provision of law;

(2) waive or affect any defense of sovereign immunity asserted by the United States;

(3) affect any provision of chapter 97 of title 28, United States Code;

(4) preempt State choice-of-law rules with respect to claims brought by a foreign nation or a citizen of a foreign nation;

(5) affect the right of any court to transfer venue or to apply the law of a foreign nation or to dismiss a claim of a foreign nation or of a citizen of a foreign nation on the ground of inconvenient forum; or

(6) supersede any statutory or common law, including an action to abate a nuisance, that authorizes a State or person to institute an action for civil damages or civil penalties, cleanup costs, injunctions, restitution, cost recovery, punitive damages, or any other form of relief resulting from contamination or pollution of the environment (as defined in section 101(8) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980; 42 U.S.C. 9601(8)), or the threat of such contamination or pollution.

(7) affect any provision of chapter 2 of title 45, United States Code;

**SEC. 5. JURISDICTION OF FEDERAL COURTS.**

This Act shall not establish jurisdiction in the district courts of the United States pursuant to section 1331 or 1337 of title 28, United States Code.

**SEC. 6. EFFECTIVE DATE.**

This Act shall take effect on the date of its enactment and shall apply to civil actions commenced on or after such date, including any action in which the harm or the conduct which caused the harm occurred before the effect date of this Act.

TITLE I—DETERRENCE OF FRIVOLOUS PRODUCT LIABILITY ACTIONS

**SEC. 101. REQUIREMENT OF AN AFFIDAVIT IN PRODUCT LIABILITY ACTIONS.**

(a) SUBMISSION OF AN AFFIDAVIT WITH COMPLAINT.—In any civil action subject to this Act, the claimant's shall be accompanied by an affidavit signed by the attorney of record for the claimant, or if unrepresented, by the claimant.

(b) CONTENTS OF THE AFFIDAVIT.—The affidavit shall:

(1) certify that the affiant conducted a reasonable inquiry into the circumstances averred in the claim for relief as they pertain to each defendant, and

(2) attest that the affiant has a sound reason to believe that the circumstances as averred in the claim for relief are confirmed by the inquiry referred to in (1) and are in all respects supportable by facts which the affiant reasonably believes to be true and provable at trial.

**SEC. 102. SANCTIONS FOR FRIVOLOUS PRODUCT LIABILITY SUITS.**

If a claimant submits in bad faith, or fails to submit, an affidavit pursuant to section

101 of this title, the court, upon motion made within the time for responsive pleadings, shall impose upon the claimant an appropriate sanction which may include an order to pay to the other party or parties the amount of reasonable expenses, including reasonable attorney's fees, incurred up to the time of the disposition of the motion.

**SEC. 103. AMENDMENTS TO FEDERAL RULES OF CIVIL PROCEDURE AND EVIDENCE IN PRODUCT LIABILITY CASES.**

(a) MANDATORY SANCTIONS UNDER FRCP 11.—Rule 11 of the Federal Rules of Civil Procedure (28 U.S.C. App.) is amended by adding at the end of subsection (c)—

''If in an action subject to [this bill] alleging harm caused by a product, the court finds a violation of subsection (b), sanctions shall be mandatory.''

(b) PLEADINGS WITH PARTICULARITY UNDER FRCP 9.—Rule 9 of the Federal Rule of Civil Procedure (28 U.S.C. App.) is amended by adding—

(i) Punitive Damages. The basis for claims of punitive damages in any complaint alleging harm caused by a product [as defined at _____] shall be stated with particularity and shall include such supporting particulars as are within the pleader's knowledge.

(c) EVIDENCE OF INTOXICATION OR IMPAIRMENT OF DRUGS.—Rule 403 of the Federal Rules of Evidence (28 U.S.C. ) is amended by designating the existing paragraph ''(a)'' and adding—

''(b) Evidence that a claimant was under the influence of drugs or alcohol at the time of the injury shall be presumed admissible in all actions subject to [this bill].''

**SEC. 104. SPECIAL RULES OF PROCEDURE APPLICABLE IN THE COURTS OF THE STATES IN PRODUCT LIABILITY CASES.**

For all actions subject to this Act brought in courts other than the courts of the United States, the following rules shall apply:

(a) MANDATORY SANCTIONS.—If a court, upon motion or its own accord, finds that a party to an action subject to this Act has put forth a pleading, motion, petition or claim that was—

(1) made for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in costs;

(2) not warranted by existing law or by a nonfrivolous argument for the extension, modification, or reversal of existing law or the establishment of new law; or

(3) lacking evidentiary support and unlikely to have evidentiary support after reasonable opportunity for further investigation or discovery,

the court shall impose sanctions sufficient to deter repetition of such conduct or comparable conduct by others similarly situated.

(b) PLEADING CLAIMS FOR PUNITIVE DAMAGES WITH PARTICULARITY.—The basis for claims of punitive damages in any complaint in an action subject to this Act shall be stated with particularity and shall include such supporting particulars as are within the pleader's knowledge.

(c) EVIDENCE OF INTOXICATION OR IMPAIRMENT OF DRUGS.—Evidence that a claimant was under the influence of drugs or alcohol at the time of the injury shall be presumed admissible in all actions subject to this Act.

## TITLE II—OFFERS OF JUDGMENT AND ALTERNATIVE DISPUTE RESOLUTION PROCEDURES FOR PRODUCT LIABILITY CASES

**SEC. 201. OFFERS OF JUDGMENT.**

(a) CLAIMANT'S OFFER OF JUDGMENT.—Any claimant may, at any time after the filing of a complaint subject to this Act, serve an offer of judgment to be entered against a defendant for a specific dollar amount as complete satisfaction of the claim.

(b) DEFENDANT'S OFFER.—A defendant may serve an offer to allow judgment to be entered against that defendant for a specific dollar amount as complete satisfaction of the claim.

(c) EXTENSION OF RESPONSE PERIOD.—In any case in which an offer of judgment is served pursuant to subsection (a) or (b), the court may, upon motion by the offeree made prior to the expiration of the applicable period for response, enter an order extending such period. Any such order shall contain a schedule for discovery of evidence material to the issue of the appropriate amount of relief, and shall not extend such period for more than sixty days. Any such motion shall be accompanied by a supporting affidavit of the moving party setting forth the reasons why such extension is necessary to promote the interests of justice and stating that the information likely to be discovered is material and is not, after reasonable inquiry, otherwise available to the moving party.

(d) DEFENDANT'S PENALTY FOR REJECTION OF OFFER.—If a defendant, as offeree, does not serve on a claimant a written notification of acceptance of an offer of judgment served by a claimant in accordance with subsection (a) within the time permitted pursuant to State law for a responsive pleading or, if such pleading includes a motion to dismiss in accordance with applicable law, within thirty days after the court's denial of such motion, and a final judgment, including all compensatory, punitive, exemplary or other damages, is entered in such action in an amount greater than the specific dollar amount of such offer of judgment, the court shall modify the judgment against that defendant by including in the judgment an additional amount not to exceed the lesser of $50,000 or the difference between the offer and the judgment.

(e) CLAIMANT'S PENALTY FOR REJECTION OF OFFER.—If the claimant, as offeree, does not serve on the defendant a written notice of acceptance of an offer of judgment served by a defendant in accordance with subsection (b) within thirty days after such service and a final judgment is entered in such an amount less than the specific dollar amount of such offer of judgment, the court shall reduce the amount of the final judgment in such action by the amount of any punitive damages awarded. If the claimant is not the prevailing party in such action, the claimant's refusal to accept an offer of judgment shall not result in the payment of any penalty under this subsection.

(f) EVIDENCE OF OFFER.—An offer not accepted shall be deemed withdrawn and evidence thereof is not admissible except in a proceeding to determine attorney's fees and costs.

**SEC. 102. ALTERNATIVE DISPUTE RESOLUTION PROCEDURES IN PRODUCT LIABILITY CASES.**

(a) IN GENERAL.—A claimant or defendant in a civil action subject to this Act may, within the time permitted for making an offer of judgment under section 201, serve upon an adverse party an offer to proceed pursuant to any voluntary, nonbinding alternative dispute resolution procedure established or recognized under the law of the State in which the civil action is brought or under the rules of the court in which such action is maintained. An offeree shall, within ten days of such service, file a written notice of acceptance or rejection of the offer; except that the court may, upon motion by the offeree make prior to the expiration of such ten-day period, extend the period for response for up to sixty days, during which discovery may be permitted.

(b) DEFENDANT'S PENALTY FOR UNREASONABLE REFUSAL.—The court shall assess reasonable attorney's fees and costs against the offeree, if—

(1) a defendant as offeree refuses to proceed pursuant to such alternative dispute resolution procedure;

(2) final judgment is entered against the defendant for harm caused by a product; and

(3) the defendant's refusal to proceed pursuant to such alternative dispute resolution procedure was unreasonable or not in good faith.

(c) GOOD FAITH REFUSAL.—In determining whether an offeree's refusal to proceed pursuant to such alternative dispute resolution procedure was unreasonable or not in good faith, the court shall consider such factors as the court deems appropriate.

## TITLE III—UNIFORM PROCEDURES AND STANDARDS FOR PUNITIVE DAMAGES IN PRODUCT LIABILITY CASES

**SEC. 301. UNIFORM STANDARDS FOR AWARD OF PUNITIVE DAMAGES.**

Punitive damages may be awarded in any civil action subject to this Act to any claimant who establishes by clear and convincing evidence that the harm suffered by the claimant was the result of conduct manifesting a manufacturer's or product seller's reckless, egregious, willful or wanton misconduct, or conscious, flagrant indifference to the safety of those persons who might be harmed by the product. A failure to exercise reasonable care in choosing among alternative product designs, formulations, instructions, or warnings is not of itself such conduct.

**SEC. 302. DETERMINING AMOUNT OF PUNITIVE DAMAGES**

In determining the amount of punitive damages, the trier of fact shall, unless deemed significantly prejudicial by the court, consider all of the following facts—

(1) the financial condition of the manufacturer or product seller;

(2) the severity of the harm caused by the conduct of the manufacturer or product seller;

(3) the duration of the conduct or any concealment of it by the manufacturer or product seller;

(4) the profitability of the conduct to the manufacturer or product seller;

(5) the number of products sold by the manufacturer or product seller of the kind causing the harm complained of by the claimant;

(6) awards of punitive or exemplary damages to persons similarly situated to the claimant;

(7) prospective awards of compensatory damages to persons similarly situated to the claimant;

(8) any criminal penalties imposed on the manufacturer or product seller as a result of the conduct complained of by the claimant; and

(9) the amount of any civil fines assessed against the defendant as a result of the conduct complained of by the claimant.

## TITLE IV—STATUTE OF LIMITATIONS IN PRODUCT LIABILITY CASES

**SEC. 401. UNIFORM STATUTE OF LIMITATIONS.**

(a) IN GENERAL.—Except as provided in paragraph (b), a product liability action may be filed not later than 2 years after the date on which the claimant discovered or, in the exercise of reasonable care, should have discovered—

(1) the harm that is the subject of the action; and

(2) the cause of the harm.

(b) EXCEPTION.—A person with a legal disability (as determined under applicable law) may file a product liability action not later than 2 years after the date on which the person ceases to have a legal disability.

TITLE V—USEFUL SAFE LIFE OF PRODUCTS

**SEC. 501. STATUTE OF REPOSE BEYOND USEFUL SAFE LIFE IN PRODUCT LIABILITY CASES.**

(a) IN GENERAL.—Except as provided in Subsection (a)(2), in any civil action subject to this Act against a product manufacturer or seller for harm caused by a product that is a capital good, such defendant shall not be liable for damages if the defendant proves by a preponderance of the evidence that the harm was caused by use of the product after its useful safe life.

(1) In determining the useful safe life of the product, the trier of fact shall consider, among other things, the following:

(A) the number of years the product has been in use and the frequency of product use;

(B) the average age of similar or like products still in similar uses;

(C) the normal practices of the product user, similar product users, and the product manufacturer or seller with respect to the circumstances, frequency, and purposes of the use of the product;

(D) any representations, instructions, or warnings made by the product manufacturer or seller concerning the proper use of the product or the expected useful safe life of the product; and

(E) any modification or alteration of the product by a user or third party.

(2) A product manufacturer or seller may be liable for damages caused by a product used beyond its useful safe life if:

(A) the product manufacturer or seller expressly or implied warranted that the product may be utilized safely for a longer period; or

(B) the product manufacturer or seller intentionally misrepresented facts about the product, or fraudulently concealed information about the product, and such conduct was a substantial cause of the claimant's damages.

(b) PRESUMPTION REGARDING USEFUL SAFE LIFE.—If the harm was caused more than twenty (20) years after the time of delivery, a presumption arises that the harm was caused by use of the product after its useful safe life. This presumption may be rebutted by a preponderance of evidence.

TITLE VI—PRODUCT LIABILITY CLASS ACTIONS

**SEC. 601 NOTIFICATION REQUIREMENT OF CLASS ACTION CERTIFICATION OR SETTLEMENT.**

(a) IN GENERAL.—Part V of title 28, United States Code, is amended by inserting after chapter 113 the following new chapter:

CHAPTER 114—PRODUCT LIABILITY CLASS ACTIONS

Sec. 1711. Notification of class action certifications and settlements.

**_____ 1711. NOTIFICATION OF CLASS ACTION CERTIFICATIONS AND SETTLEMENTS.**

(a) For purposes of this section, the term—

(1) ''class'' means a group of similarly situated individuals, defined by a class certification order, that comprise a party in a class action lawsuit;

(2) ''class action'' means a lawsuit file pursuant to rule 23 of the Federal Rules of Civil Procedure or similar State rules of procedure authorizing a lawsuit to be brought by 1 or more representative individuals on behalf of a class;

(3) ''class certification order'' means an order issued by a court approving the treatment of a lawsuit as a class action;

(4) ''class member'' means a person that falls within the definition of the class;

(5) ''class counsel'' means the attorneys representing the class in a class action;

(6) ''electronic legal databases'' means computer services available to subscribers containing text of judicial opinions and other legal materials, such as LEXIS OR WESTLAW;

(7) ''official court reporter'' means a publicly available compilation of published judicial opinions;

(8) ''plaintiff class action'' means a class action in which the plaintiff is a class; and

(9) ''proposed settlement'' means a settlement agreement between the parties in a class action that is subject to court approval before it becomes binding on the parties.

(b) This section shall not apply except to product liability cases subject to [this bill]. This section shall apply to—

(1) all product liability plaintiff class actions filed in Federal court; and

(2) all product liability plaintiff class actions filed in State court in which—

(A) any class member resides outside the State in which the action is filed; and

(B) the transaction or occurrence that gave rise to the lawsuit occurred in more than one State.

(c) No later than 10 days after a proposed settlement in a class action is filed in court, and at least 14 days prior to a court order approving such settlement, class counsel shall serve the State attorney general of each State in which a class member resides and the Department of Justice as if they were parties in the class action with—

(1) a copy of the complaint and any materials filed with the compliant and any amended complaints;

(2) notice of any future scheduled judicial hearing in the class action;

(3) any proposed or final notification to class members of—

(A) their rights to request exclusion from the class action; and

(B) a proposed settlement of a class action;

(4) any proposed or final class action settlement;

(5) any settlement or other agreement contemporaneously made between class counsel and counsel for the defendants;

(6) any final judgment or notice of dismissal;

(7)(A) if feasible the names of class members who reside in each State attorney general's respective State and their estimated proportionate claim to the entire settlement; or

(B) if not feasible, a reasonable estimate of the number of class members residing in each attorney general's State and their estimated proportionate claim to the entire settlement; and

(8) any written judicial opinion relating to the materials described under paragraphs (3) through (6).

(d) A hearing to consider final approval of a proposed settlement may not be held earlier than 120 days after the date on which the State attorneys general and the Department of Justice are served notice under subsection (c).

(e) Any court with jurisdiction over a plaintiff class action shall require that—

(1) any written notice provided to the class through the mail or publication in printed media contain a short summary written in plain, easily understood language, describing—

(A) the subject matter of the class action;

(B) the legal consequences of joining the class action;

(C) if the notice is informing class members of a proposed settlement agreement—

(i) the benefits that will accrue to the class due to the settlement;

(ii) the rights that class members will lose or waive through the settlement;

(iii) obligations that will be imposed on the defendants by the settlement;

(iv) a good faith estimate of the dollar amount of any attorney's fee if possible; and

(v) an explanation of how any attorney's fee will be calculated and funded; and

(D) any other material matter; and

(2) any notice provided through television or radio to inform the class of its rights to be excluded from a class action or a proposed settlement shall, in plain, easily understood language—

(A) describe the individuals that may potentially become class members in the class action; and

(B) explain that the failure of individuals falling within the definition of the class to exercise their right to be excluded from a class action will result in the individual's inclusion in the class action.

(f) Compliance with this section shall not immunize any party from any legal action under Federal or State law, including actions for malpractice or fraud.

(g)(1) A class member may refuse to comply with and may choose not to be bound by a settlement agreement or consent decree in a class action lawsuit if the class member resides in a State where the State attorney general has not been provided notice and materials under subsection (c). The rights created by this subsection shall apply only to class members or any person acting on their behalf, and shall not be construed to limit any other rights affecting a class member's participation in the settlement.

(2) Nothing in this chapter shall be construed to impose any obligations, duties, or responsibilities upon State attorneys general or the attorney general of the United States.

(b) TECHNICAL AND CONFORMING AMENDMENT.—The Table of chapters of part V of title 28, United States Code, is amended by inserting after the item relating to chapter 113 the following:

''114. Class Actions ..... 1711.''

TITLE VII—STUDY OF PRODUCT LIABILITY SYSTEM

**SEC. 701. STUDY OF THE PRODUCT LIABILITY SYSTEM.**

(a) STUDY BY THE SECRETARY OF COMMERCE.—The Secretary of Commerce, in conjunction with the Attorney General of the United States, shall, in consultation with the courts of the several states and the attorneys general of the states, complete a study of the product liability system in the state and federal courts. Such study shall focus on—

(1) The relative caseload in the courts of product liability claims;

(2) The size and frequency of awards of punitive damages in products liability cases and the need for further reform in that area;

(3) Whether damage awards differ according to location of litigation and the impact of any such finding on the filing and resolution of product liability claims;

(4) Whether damage awards in product liability cases for economic and non-economic losses differ according to the sex, race or ethnicity of the claimant;

(5) The cost and availability of liability insurance and the impact of the product liability system on that cost and availability.

(6) The effects of this Act on the resolution of product liability claims.

(b) REPORT TO CONGRESS.—The Secretary of Commerce shall report to Congress on the findings of this study within 24 months of the date of enactment.

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## SESSIONS AMENDMENTS NOS. 3096–3097

(Ordered to lie on the table)

Mr. SESSIONS submitted two amendments intended to be proposed by him to the bill, S. 648, supra; as follows:

AMENDMENT NO. 3096

On page 2, beginning with line 1, strike through line 19 on page 34 and insert in lieu thereof the following:

Strike all after the enacting clause and insert the following:

**SECTION 1. SHORT TITLE; TABLE OF CONTENTS.**

(a) SHORT TITLE.—This Act may be cited as the ''Product Liability Reform Act of 1998''.

(b) TABLE OF CONTENTS.—The table of contents for this Act is as follows:

Sec. 1. Short title; table of contents.

TITLE I—PRODUCT LIABILITY REFORM

Sec. 101. Definitions.
Sec. 102. Applicability; preemption.
Sec. 103. Liability rules applicable to product sellers, renters, and lessors.
Sec. 107. Statute of repose for durable goods used in a trade or business.
Sec. 109. Alternative dispute resolution procedures.
Sec. 110. Punitive damages reforms.

TITLE II—BIOMATERIALS ACCESS ASSURANCE

Sec. 201. Short title.
Sec. 202. Findings.
Sec. 203. Definitions.
Sec. 204. General requirements; applicability; preemption.
Sec. 205. Liability of biomaterials suppliers.
Sec. 206. Procedures for dismissal of civil actions against biomaterials suppliers.
Sec. 207. Subsequent impleader of dismissed defendant.

## TITLE I—PRODUCT LIABILITY REFORM

**SEC. 101. DEFINITIONS.**

In this title:

(1) ALCOHOLIC PRODUCT.—The term ''alcoholic product'' includes any product that contains not less than ½ of 1 percent of alcohol by volume and is intended for human consumption.

(2) CLAIMANT.—The term ''claimant'' means any person who brings an action covered by this title and any person on whose behalf such an action is brought. If such an action is brought through or on behalf of an estate, the term includes the claimant's decedent. If such an action is brought through or on behalf of a minor or incompetent, the term includes the claimant's legal guardian.

(3) CLAIMANT'S BENEFITS.—The term ''claimant's benefits'' means the amount paid to an employee as workers' compensation benefits.

(4) CLEAR AND CONVINCING EVIDENCE.—The term ''clear and convincing evidence'' is that measure or degree of proof that will produce in the mind of the trier of fact a firm belief or conviction as to the truth of the allegations sought to be established. The level of proof required to satisfy that standard is more than that required under a preponderance of the evidence, but less than that required for proof beyond a reasonable doubt.

(5) COMMERCIAL LOSS.—The term ''commercial loss'' means—

(A) any loss or damage solely to a product itself;

(B) loss relating to a dispute over the value of a product; or

(C) consequential economic loss.

(6) COMPENSATORY DAMAGES.—The term ''compensatory damages'' means damages awarded for economic and noneconomic loss.

(7) DRAM-SHOP.—The term ''dram-shop'' means a drinking establishment where alcoholic products are sold to be consumed on the premises.

(8) DURABLE GOOD.—The term ''durable good'' means any product, or any component of any such product, which—

(A)(i) has a normal life expectancy of 3 or more years; or

(ii) is of a character subject to allowance for depreciation under the Internal Revenue Code of 1986; and

(B) is—

(i) used in a trade or business;

(ii) held for the production of income; or

(iii) sold or donated to a governmental or private entity for the production of goods, training, demonstration, or any other similar purpose.

(9) ECONOMIC LOSS.—The term ''economic loss'' means any pecuniary loss resulting from harm (including the loss of earnings or other benefits related to employment, medical expense loss, replacement services loss, loss due to death, burial costs, and loss of business or employment opportunities) to the extent recovery for that loss is allowed under applicable State law.

(10) HARM.—The term ''harm''—

(A) means any physical injury, illness, disease, or death, or damage to property caused by a product; and

(B) does not include commercial loss.

(11) INSURER.—The term ''insurer'' means the employer of a claimant if the employer is self-insured or if the employer is not self-insured, the workers' compensation insurer of the employer.

(12) MANUFACTURER.—The term ''manufacturer'' means—

(A) any person who is engaged in a business to produce, create, make, or construct any product (or component part of a product) and who—

(i) designs or formulates the product (or component part of the product); or

(ii) has engaged another person to design or formulate the product (or component part of the product);

(B) a product seller, but only with respect to those aspects of a product (or component part of a product) which are created or affected when, before placing the product in the stream of commerce, the product seller—

(i) produces, creates, makes, constructs and designs, or formulates an aspect of the product (or component part of the product) made by another person; or

(ii) has engaged another person to design or formulate an aspect of the product (or component part of the product) made by another person; or

(C) any product seller not described in subparagraph (B) which holds itself out as a manufacturer to the user of the product.

(13) NONECONOMIC LOSS.—The term ''noneconomic loss'' means subjective, nonmonetary loss resulting from harm, including pain, suffering, inconvenience, mental suffering, emotional distress, loss of society and companionship, loss of consortium, injury to reputation, and humiliation.

(14) PERSON.—The term ''person'' means any individual, corporation, company, association, firm, partnership, society, joint stock company, or any other entity (including any governmental entity).

(15) PRODUCT.—

(A) IN GENERAL.—The term ''product'' means any object, substance, mixture, or raw material in a gaseous, liquid, or solid state that—

(i) is capable of delivery itself or as an assembled whole, in a mixed or combined state, or as a component part or ingredient;

(ii) is produced for introduction into trade or commerce;

(iii) has intrinsic economic value; and

(iv) is intended for sale or lease to persons for commercial or personal use.

(B) EXCLUSION.—The term ''product'' does not include—

(i) tissue, organs, blood, and blood products used for therapeutic or medical purposes, except to the extent that such tissue, organs, blood, and blood products (or the provision thereof) are subject, under applicable State law, to a standard of liability other than negligence; or

(ii) electricity, water delivered by a utility, natural gas, or steam.

(16) PRODUCT LIABILITY ACTION.—The term ''product liability action'' means a civil action brought on any theory for harm caused by a product.

(17) PRODUCT SELLER.—

(A) IN GENERAL.—The term ''product seller'' means a person who in the course of a business conducted for that purpose—

(i) sells, distributes, rents, leases, prepares, blends, packages, labels, or otherwise is involved in placing a product in the stream of commerce; or

(ii) installs, repairs, refurbishes, reconditions, or maintains the harm-causing aspect of the product.

(B) EXCLUSION.—The term ''product seller'' does not include—

(i) a seller or lessor of real property;

(ii) a provider of professional services in any case in which the sale or use of a product is incidental to the transaction and the essence of the transaction is the furnishing of judgment, skill, or services; or

(iii) any person who—

(I) acts in only a financial capacity with respect to the sale of a product; or

(II) leases a product under a lease arrangement in which the lessor does not initially select the leased product and does not during the lease term ordinarily control the daily operations and maintenance of the product.

(18) PUNITIVE DAMAGES.—The term ''punitive damages'' means damages awarded against any person or entity to punish or deter that person or entity, or others, from engaging in similar behavior in the future.

(19) STATE.—The term ''State'' means any State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Northern Mariana Islands, the Virgin Islands, Guam, American Samoa, and any other territory or possession of the United States or any political subdivision of any of the foregoing.

(20) TOBACCO PRODUCT.—The term ''tobacco product'' means—

(A) a cigarette, as defined in section 3 of the Federal Cigarette Labeling and Advertising Act (15 U.S.C. 1332);

(B) a little cigar, as defined in section 3 of the Federal Cigarette Labeling and Advertising Act (15 U.S.C. 1332);

(C) a cigar, as defined in section 5702(a) of the Internal Revenue Code of 1986;

(D) pipe tobacco;

(E) loose rolling tobacco and papers used to contain that tobacco;

(F) a product referred to as smokeless tobacco, as defined in section 9 of the Comprehensive Smokeless Tobacco Health Education Act of 1986 (15 U.S.C. 4408); and

(G) any other form of tobacco intended for human consumption.

**SEC. 102. APPLICABILITY; PREEMPTION.**

(a) PREEMPTION.—

(1) IN GENERAL.—Except as provided in paragraph (2) and title II, this title governs any product liability action brought in any Federal or State court on any theory for harm caused by a product.

(2) ACTIONS EXCLUDED.—

(A) ACTIONS FOR COMMERCIAL LOSS.—A civil action brought for commercial loss shall be governed only by applicable commercial law, including applicable State law based on the Uniform Commercial Code.

(B) ACTIONS FOR NEGLIGENT ENTRUSTMENT; NEGLIGENCE PER SE CONCERNING FIREARMS AND AMMUNITION; DRAM-SHOP.—

(i) NEGLIGENT ENTRUSTMENT.—A civil action for negligent entrustment shall not be subject to the provisions of this title governing product liability actions, but shall be

subject to any applicable Federal or State law.

(ii) NEGLIGENCE PER SE CONCERNING FIREARMS AND AMMUNITION.—A civil action brought under a theory of negligence per se concerning the use of a firearm or ammunition shall not be subject to the provisions of this title governing product liability actions, but shall be subject to any applicable Federal or State law.

(iii) DRAM-SHOP.—A civil action brought under a theory of dram-shop or third-party liability arising out of the sale or providing of an alcoholic product to an intoxicated person or minor shall not be subject to the provisions of this title, but shall be subject to any applicable Federal or State law.

(C) ACTIONS INVOLVING HARM CAUSED BY A TOBACCO PRODUCT.—A civil action brought for harm caused by a tobacco product shall not be subject to the provisions of this title governing product liability actions, but shall be subject to any applicable Federal or State law.

(D) ACTIONS INVOLVING HARM CAUSED BY A BREAST IMPLANT.—A civil action brought for harm caused by either the silicone gel or the silicone envelope utilized in a breast implant containing silicone gel shall not be subject to the provisions of this title governing product liability actions, but shall be subject to any applicable Federal or State law.

(b) RELATIONSHIP TO STATE LAW.—Nothing in this Act shall be construed to pre-empt or supercede any Federal or State law to the extent that such law would further limit the award of punitive damages in civil actions. Any matter that is not specifically covered by this title shall be governed by any applicable Federal or State law.

(c) EFFECT ON OTHER LAW.—Nothing in this title shall be construed to—

(1) waive or affect any defense of sovereign immunity asserted by any State under any law;

(2) supersede or alter any Federal law;

(3) waive or affect any defense of sovereign immunity asserted by the United States;

(4) affect the applicability of any provision of chapter 97 of title 28, United States Code;

(5) preempt State choice-of-law rules with respect to claims brought by a foreign nation or a citizen of a foreign nation;

(6) affect the right of any court to transfer venue or to apply the law of a foreign nation or to dismiss a claim of a foreign nation or of a citizen of a foreign nation on the ground of inconvenient forum; or

(7) supersede or modify any statutory or common law, including any law providing for an action to abate a nuisance, that authorizes a person to institute an action for civil damages or civil penalties, cleanup costs, injunctions, restitution, cost recovery, punitive damages, or any other form of relief, for remediation of the environment (as defined in section 101(8) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9601(8)).

**SEC. 103. LIABILITY RULES APPLICABLE TO PRODUCT SELLERS, RENTERS, AND LESSORS.**

(a) GENERAL RULE.—

(1) IN GENERAL.—In any product liability action that is subject to this title, a product seller other than a manufacturer shall be liable to a claimant only if the claimant establishes that—

(A)(i) the product that allegedly caused the harm that is the subject of the complaint was sold, rented, or leased by the product seller;

(ii) the product seller failed to exercise reasonable care with respect to the product; and

(iii) the failure to exercise reasonable care was a proximate cause of the harm to the claimant;

(B)(i) the product seller made an express warranty applicable to the product that allegedly caused the harm that is the subject of the complaint, independent of any express warranty made by a manufacturer as to the same product;

(ii) the product failed to conform to the warranty; and

(iii) the failure of the product to conform to the warranty caused the harm to the claimant; or

(C)(i) the product seller engaged in intentional wrongdoing, as determined under applicable State law; and

(ii) the intentional wrongdoing caused the harm that is the subject of the complaint.

(2) REASONABLE OPPORTUNITY FOR INSPECTION.—For purposes of paragraph (1)(A)(ii), a product seller shall not be considered to have failed to exercise reasonable care with respect to a product based upon an alleged failure to inspect the product, if—

(A) the failure occurred because there was no reasonable opportunity to inspect the product; or

(B) the inspection, in the exercise of reasonable care, would not have revealed the aspect of the product that allegedly caused the claimant's harm.

(b) SPECIAL RULE.—

(1) IN GENERAL.—A product seller shall be deemed to be liable as a manufacturer of a product for harm caused by the product, if—

(A) the manufacturer is not subject to service of process under the laws of any State in which the action may be brought; or

(B) the court determines that the claimant is or would be unable to enforce a judgment against the manufacturer.

(2) STATUTE OF LIMITATIONS.—For purposes of this subsection only, the statute of limitations applicable to claims asserting liability of a product seller as a manufacturer shall be tolled from the date of the filing of a complaint against the manufacturer to the date that judgment is entered against the manufacturer.

(c) RENTED OR LEASED PRODUCTS.—

(1) DEFINITION.—For purposes of paragraph (2), and for determining the applicability of this title to any person subject to that paragraph, the term ''product liability action'' means a civil action brought on any theory for harm caused by a product or product use.

(2) LIABILITY.—Notwithstanding any other provision of law, any person engaged in the business of renting or leasing a product (other than a person excluded from the definition of product seller under section 101(17)(B)) shall be subject to liability in a product liability action under subsection (a), but any person engaged in the business of renting or leasing a product shall not be liable to a claimant for the tortious act of another solely by reason of ownership of that product.

**SEC. 107. STATUTE OF REPOSE FOR DURABLE GOODS USED IN A TRADE OR BUSINESS.**

(a) IN GENERAL.—Except as provided in subsections (b) and (c), no product liability action that is subject to this title concerning a durable good alleged to have caused harm (other than toxic harm) for which the claimant has received or is eligible to receive workers' compensation may be filed after the 18-year period beginning at the time of delivery of the durable good to its first purchaser or lessee.

(b) EXTENSION OF STATUTE OF REPOSE.—Notwithstanding any other provision of this section and except as provided in section 106(b), a product liability action may be commenced within 2 years after the date of discovery or date on which discovery should have occurred, if the harm, and the cause of the harm, leading to a product liability action described in subsection (a) are discovered or, in the exercise of reasonable care, should have been discovered, before the expiration of the 18-year period under this section.

(c) EXCEPTIONS.—

(1) IN GENERAL.—A motor vehicle, vessel, aircraft, or train, that is used primarily to transport passengers for hire, shall not be subject to this section.

(2) CERTAIN EXPRESS WARRANTIES.—Subsection (a) does not bar a product liability action against a defendant who made an express warranty in writing as to the safety or life expectancy of the specific product involved which was longer than 18 years, except that such subsection shall apply at the expiration of that warranty.

(3) AVIATION LIMITATIONS PERIOD.—Subsection (a) does not affect the limitations period established by the General Aviation Revitalization Act of 1994 (49 U.S.C. 40101 note).

**SEC. 109. ALTERNATIVE DISPUTE RESOLUTION PROCEDURES.**

(a) SERVICE OF OFFER.—A claimant or a defendant in a product liability action that is subject to this title may serve upon an adverse party an offer to proceed pursuant to any voluntary, nonbinding alternative dispute resolution procedure established or recognized under the law of the State in which the product liability action is brought or under the rules of the court in which that action is maintained, not later than 60 days after the later of—

(1) service of the initial complaint; or

(2) the expiration of the applicable period for a responsive pleading.

(b) WRITTEN NOTICE OF ACCEPTANCE OR REJECTION.—

(1) IN GENERAL.—Except as provided in subsection (c), not later than 20 days after the service of an offer to proceed under subsection (a), an offeree shall file a written notice of acceptance or rejection of the offer.

(2) EFFECT OF NOTICE.—The filing of a written notice under paragraph (1) shall not constitute a waiver of any objection or defense in the action, including any objection on the grounds of jurisdiction.

(c) EXTENSION.—

(1) IN GENERAL.—The court may, upon motion by an offeree made before the expiration of the 20-day period specified in subsection (b), extend the period for filing a written notice under such subsection for a period of not more than 60 days after the date of expiration of the period specified in subsection (b).

(2) PERMITTED DISCOVERY.—Discovery may be permitted during the period described in paragraph (1).

**SEC. 110. PUNITIVE DAMAGES REFORMS.**

(a) GENERAL RULE.—

(1) UNIFORM STANDARD FOR AWARD OF PUNITIVE DAMAGES.—To the extent punitive damages are permitted by applicable State law, punitive damages may be awarded against a defendant in any product liability action that is subject to this title if the claimant establishes by clear and convincing evidence that the harm that is the subject of the action was the result of conduct carried out by the defendant with a conscious, flagrant indifference to the rights or safety of others.

(2) BIFURCATION AT REQUEST OF ANY PARTY.—

(A) IN GENERAL.—At the request of any party, the trier of fact in any action that is subject to this section shall consider in a separate proceeding, held subsequent to the determination of the amount of compensatory damages, whether punitive damages are to be awarded for the harm that is the subject of the action and the amount of the award.

(B) INADMISSIBILITY OF EVIDENCE RELATIVE ONLY TO A CLAIM OF PUNITIVE DAMAGES IN A

PROCEEDING CONCERNING COMPENSATORY DAMAGES.—If any party requests a separate proceeding under paragraph (1), in a proceeding to determine whether the claimant may be awarded compensatory damages, any evidence, argument, or contention that is relevant only to the claim of punitive damages, as determined by applicable State law, shall be inadmissible.

(b) SPECIAL RULE FOR CERTAIN PERSONS AND ENTITIES.—

(1) IN GENERAL.—In any action described in subsection (a) against a person or entity described in paragraph (2), an award of punitive damages shall not exceed the lesser of—

(A) 2 times the amount of compensatory damages awarded; or

(B) $250,000.

(2) PERSONS AND ENTITIES DESCRIBED.—

(A) IN GENERAL.—A person or entity described in this paragraph is—

(i) an individual whose net worth does not exceed $500,000; or

(ii) an owner of an unincorporated business, or any partnership, corporation, association, unit of local government, or organization that has—

(I) annual revenues of less than or equal to $5,000,000; and

(II) fewer than 25 full-time employees.

**TITLE II—BIOMATERIALS ACCESS ASSURANCE**

**SEC. 201. SHORT TITLE.**

This title may be cited as the ''Biomaterials Access Assurance Act of 1998''.

AMENDMENT NO. 3097

On page 14, beginning with line 20, strike through line 25, and insert the following:

(b) RELATIONSHIP TO STATE LAW—Nothing in this Act shall be construed to pre-empt or supercede any Federal or State law to the extent that such law would further limit the award of punitive damages in civil actions. Any matter that is not specifically covered by this title shall be governed by any applicable Federal State law.

## GRAMM AMENDMENTS NOS. 3098–3101

(Ordered to lie on the table.)

Mr. GRAMM submitted four amendments intended to be proposed by him to the bill, S. 648, supra; as follows:

AMENDMENT NO. 3098

In section 105(b), strike ''and except as otherwise provided in section 112''.

AMENDMENT NO. 3099

In section 105(b) add at the end: ''Nothing in this Section shall preclude consideration of misuse or alteration of the product by the claimant's employer or any co-employee who is immune from suit pursuant to state law applicable to workplace injuries for purposes of determining liability.''

AMENDMENT NO. 3100

Section 105(b) is amended to read as follows:

(b) WORKPLACE INJURY.—Notwithstanding subsection (a) the damages for which a defendant is otherwise liable under State law shall not be reduced by the percentage of responsibility for the claimant's harm attributable to misuse or alteration of the product by the claimant's employer who is immune from suit by the claimant pursuant to the State law applicable to workplace injuries. Nothing in this section shall preclude consideration of sophisticated user or bulk seller issues relating to employer responsibility for purposes of determining liability.

AMENDMENT NO. 3101

Section 105(b) is amended to read as follows:

(b) WORKPLACE INJURY.—Notwithstanding subsection (a) the damages for which a defendant is otherwise liable under State law shall not be reduced by the percentage of responsibility for the claimant's harm attributable to misuse or alteration of the product by the claimant's employer who is immune from suit by the claimant pursuant to the State law applicable to workplace injuries. Nothing in this section shall preclude consideration of misuse or alteration of the product by the claimant's employer or any co-employee who is immune from suit pursuant to state law applicable to workplace injuries for purposes of determining liability.

## HARKIN AMENDMENTS NOS. 3102–3103

(Ordered to lie on the table.)

Mr. HARKIN submitted amendments intended to be proposed by him to the bill, S. 648, supra; as follows:

AMENDMENT NO. 3102

Amend section 102(a)(2) by adding at the end the following:

(E) ACTIONS INVOLVING MINORS.—A civil action brought for harm caused by a product that includes harm involving permanent disability, disfigurement, or death, caused by that product to an individual under the age of 18 shall not be subject to the provisions of this title governing product liability actions, but shall be subject to any applicable Federal or State law.

AMENDMENT NO. 3103

Strike subsections (a) and (b) of section 107 and insert the following:

(a) USEFUL SAFE LIFE DEFINED.—

(1) IN GENERAL.—For purposes of this subsection, the term ''useful safe life'' means, with respect to a product, the period beginning at the time of delivery of the product and ending on the date on which the product would not likely perform in a safe manner.

(2) FACTORS FOR CONSIDERATION.—In making a determination of what constitutes the useful safe life of a product, the court may consider evidence that is probative in determining whether the useful safe life of the product had expired, including—

(A) the amount of wear and tear on the product;

(B) the effect of deterioration from natural causes, climate, and other conditions under which the product was used or stored;

(C) the normal practices of the user, similar users, and the defendant with respect to—

(i) the circumstances and frequency of the use of the product;

(ii) the purposes of the use of the product; and

(iii) any repair, renewal, or replacement made with respect to the product;

(D) any representation, instruction, or warning made by the defendant concerning—

(i) the proper maintenance, storage, or use of the product; or

(ii) the expected useful safe life of the product; and

(E) any modification or alteration to the product made by a user or a third party.

(b) EXEMPTION; PRESUMPTION.—

(1) EXEMPTION FROM LIABILITY.—Except as provided in subsection (c), and subject to paragraph (2), in any product liability action concerning a product that is a durable good alleged to have caused harm (other than toxic harm), the defendant shall not be subject to liability to a claimant for damages resulting from harm caused by the durable good if the defendant proves by a preponderance of the evidence that the harm was caused after the expiration of the useful safe life of the product.

(2) LIABILITY OF DEFENDANT.—A defendant may be subject to liability for damages resulting from harm caused by a durable good after the expiration of the useful safe life of the product if—

(A) the defendant expressly warranted that the product could be utilized safely for a period longer than the useful safe life of the product; or

(B) the defendant intentionally misrepresented facts concerning the product, or fraudulently concealed information concerning the product, and that conduct was a substantial cause of the damages.

(3) PRESUMPTION REGARDING USEFUL SAFE LIFE.—If harm resulting in damages was caused by a durable good after the 18-year period beginning on the date of delivery of the product to the initial purchaser or lessee, there shall be a rebuttable presumption that the harm occurred after the expiration of the useful safe life of the product. The presumption may be rebutted by a preponderance of the evidence.

## SESSIONS AMENDMENTS NOS. 3104–3105

(Ordered to lie on the table.)

Mr. SESSIONS submitted two amendments intended to be proposed by him to the bill, S. 648, supra; as follows:

AMENDMENT NO. 3104

Strike section 2.

Strike section 102(b) and insert the following:

(b) RELATIONSHIP TO STATE LAW.—Nothing in this Act shall be construed to preempt or supersede any Federal or State law to the extent that such law would further limit the award of punitive damages. Any matter that is not specifically covered by this title shall be governed by applicable Federal or State law.

Strike sections 104 through 106.

Redesignate section 107 as section 104.

Strike section 108.

Redesignate sections 109 through 112 as sections 105 through 108, respectively.

AMENDMENT NO. 3105

Strike section 102(b) and insert the following:

(b) RELATIONSHIP TO STATE LAW.—Nothing in this Act shall be construed to preempt or supersede any Federal or State law to the extent that such law would further limit the award of punitive damages in civil actions. Any matter that is not specifically covered by this title shall be governed by applicable Federal or State law.

## NOTICES OF HEARINGS

COMMITTEE ON SMALL BUSINESS

Mr. BOND. Mr. President, I wish to announce that the Committee on Small Business will hold a hearing entitled ''Home Health Care: Can Small Agencies Survive New Regulations?'' The hearing will be held on Wednesday, July 15, 1998, beginning at 10:00 a.m. in room 428A of the Russell Senate Office Building. For further information, please contact Suey Howe at 224–5175.

COMMITTEE ON ENERGY AND NATURAL RESOURCES

Mr. MURKOWSKI. Mr. President, I would like to announce for the public that a hearing has been scheduled before the Committee on Energy and Natural Resources.

The hearing will take place on July 28, 1998 at 9:30 p.m. in room SD–366 of the Dirksen Senate Office Building in Washington, DC.

The purpose of this hearing is to receive testimony on the March 31, 1998, Government Accounting Office report on the Forest Service: Review of the Alaska Region's Operating Costs.

Those who wish to submit written statements should write to the Committee on Energy and Natural Resources, U.S. Senate, Washington, DC 20510. For further information, please call Amie Brown or Mark Rey at (202) 224–6170.

## AUTHORITY FOR COMMITTEES TO MEET

### COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION

Mr. JEFFORDS. Mr. President, I ask unanimous consent that the Senate Committee on Commerce, Science, and Transportation be authorized to meet on Wednesday, July 8, 1998, at 9:30 am on High Definition Television (HDTV).

The PRESIDING OFFICER. Without objection, it is ordered.

### COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION

Mr. JEFFORDS. Mr. President, I ask unanimous consent that the Senate Committee on Commerce, Science, and Transportation be authorized to meet on Wednesday, July 8, 1998, at 2:00 pm on S. 2105—Government Paperwork Elimination Act.

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

### COMMITTEE ON INDIAN AFFAIRS

Mr. JEFFORDS. Mr. President, I ask unanimous consent that the Senate Committee on Indian Affairs be authorized to meet during the session of the Senate on Wednesday, July 8, 1998 at 9:30 a.m. to conduct a hearing on S. 1419, Miccousukee Land, S. 391, Cheyenne River Sioux Compensation, S. 1905, Mississippi Sioux Judgment Funds and H.R. 700, Agua Caliente. The hearing will be held in room 485 of the Russell Senate Office Building.

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

### COMMITTEE ON THE JUDICIARY

Mr. JEFFORDS. Mr. President, I ask unanimous consent that the Committee on The Judiciary be authorized to meet during the session of the Senate on Wednesday, July 8, 1998 at 9:00 a.m. in room 226 of the Senate Dirksen Office Building to hold a hearing on S.J. Res. 40, Joint Resolution Proposing an amendment to the Constitution of the United States authorizing Congress to prohibit the physical desecration of the flag of the United States.

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

### COMMITTEE ON THE JUDICIARY

Mr. JEFFORDS. Mr. President, I ask unanimous consent that the Committee on The Judiciary be authorized to meet during the session of the Senate on Wednesday, July 8, 1998 at 1:00 p.m. in Room 226 of the Senate Dirksen Office Building to hold a hearing on S. 1529, The Hate Crimes Prevention Act of 1998.

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

### SELECT COMMITTEE ON INTELLIGENCE

Mr. JEFFORDS. Mr. President, I ask unanimous consent that the Select Committee on Intelligence be authorized to meet during the session of the Senate on Wednesday, July 8, 1998 at 10:00 a.m. to hold a closed hearing on Intelligence Matters and at 2:30 p.m. to hold an open confirmation hearing on the nomination of L. Britt Snider to be Inspector General of CIA.

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

### SUBCOMMITTEE ON INTERNATIONAL ECONOMIC POLICY, EXPORT, AND TRADE PROMOTION

Mr. JEFFORDS. Mr. President, I ask unanimous consent that the Subcommittee on International Economic Policy, Export and Trade Promotion be authorized to meet during the session of the Senate on Wednesday, July 8, 1998 at 10:00 am to hold a hearing.

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

### SUBCOMMITTEE ON INTERNATIONAL SECURITY, PROLIFERATION, AND FEDERAL SERVICES

Mr. JEFFORDS. Mr. President, I ask unanimous consent on behalf of the Governmental Affairs Subcommittee on International Security, Proliferation, and Federal Services to meet on Wednesday, July 8, 1998 at 2:00 p.m. for a hearing on The Adequacy of Commerce Department Satellite Export Controls.

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

## ADDITIONAL STATEMENTS

## TOBACCO SETTLEMENT LEGISLATION

• Mr. ABRAHAM. Mr. President, I rise today to comment on Senate action last month on S. 1415, the comprehensive tobacco settlement legislation, and to explain the votes I cast on various amendments, motions to invoke cloture, and other procedural matters relating to this legislation.

At the outset, I would like to thank the floor manager of the legislation, Senator MCCAIN, for his absolutely outstanding work on the tobacco settlement legislation. As Chairman of the Senate Commerce Committee, the distinguished Senator from Arizona took on the difficult task of bringing our Committee together to report out comprehensive tobacco settlement legislation.

Mr. President, I believe that passing a tobacco bill would be good, but only if it is the right bill. In my judgment, if we are to pass such a bill, it should follow a number of important principles. First, it should increase funding for research on tobacco-related illnesses. Second, it should provide funds for smoking cessation programs, anti-tobacco education programs, and counter-advertising. Third, it should include programs to combat drug abuse among our kids, a crisis that demands just as much attention as youth smoking. Fourth, it should not place unfair burdens on our small businesses. And finally, it should accomplish these goals without imposing a huge net tax increase on the American people.

Last summer, the tobacco industry started this process when it entered into a settlement with the Attorneys General of several States, a settlement which required congressional action. I voted to report out this legislation from the Commerce Committee, with the hope that it could be modified in ways to achieve the above-stated goals through more amendments to the legislation, through consideration in the House, and through an eventual conference. While many improvements were added to the legislation—such as the addition of the Coverdell-Craig-Abraham ''Drug Free Neighborhoods Act'' and the Gramm amendment to reduce the marriage penalty tax—more were clearly needed to achieve the goals set forth above.

My vote for cloture was designed to move the process ahead in the hope that we could pass a bill and that it would meet the standards set forth above. It did not signal my intent to vote for final passage of any legislation that remained following the amendment process. Had cloture succeeded, it was my intention to work with others in offering amendments to modify the bill to achieve my aforestated goals.

Following the failure to invoke cloture, it became clear that we were not going to be able to move the bill forward in the way I would have liked. In light of this, and my belief as a member of the Budget Committee that we should keep the budget balanced, I voted with Senator STEVENS on his budget point of order. Senator STEVENS raised a point of order that the tobacco legislation was inconsistent with the budget agreement reached last year between the Congress and the President. I voted against the motion to waive that point of order, which sent the legislation back to the Commerce Committee where, perhaps, we can devise a more acceptable bill.

Mr. President, let me just comment briefly on some of the major amendments that were voted on during the course of the floor consideration of this bill.

I joined Senators CRAIG and COVERDELL in offering the ''Drug Free Neighborhoods Act'' as an amendment to the tobacco legislation. We are falling very far behind in the war on drugs, and teenage drug use has particularly become much worse in recent years. In the last six years, for instance, the percentage of high school seniors admitting that they had used an illicit drug has risen by more than half. Sadly, nearly 20 percent of our eighth graders

use illegal drugs. This amendment provided needed resources for drug interdiction and deterrence and particularly addressed the alarming trends in drug use among teenagers. As we address the harmful health consequences of tobacco, we need to also remember that drug use among teenagers is worsening and is even more unhealthy, dangerous, and unacceptable.

I voted for Senator GRAMM's amendment to reduce the size of the net tax increase proposed in the bill by reducing the marriage penalty tax for working families earning less than $30,000. Under the bill as reported out of Committee, the burden of the price or tax increase from 65 cents to $1.10 per pack of cigarettes would have fallen disproportionately on working class Americans. I believed that we ought to give some of this revenue back in the form of relief from the unfair marriage penalty tax, which requires married people to pay higher taxes than they would if they were single.

On the Reed amendment, which would have denied the advertising deduction for any business found in violation of FDA tobacco advertising regulations, I opposed this amendment and felt that the legislation had begun to stray further away from the core goals that should concern the Congress. Under that amendment, which was narrowly adopted, if the FDA finds that one advertisement of a tobacco product failed to comply with marketing and advertising rules issued by the FDA nearly two years ago and still under litigation, the offending company would lose the entire business expense deduction for all of its advertising in that year. The Congress should not be giving the FDA or any other regulatory agency such expansive and punitive authority. The possibility of such a penalty could chill advertising and deter legitimate, protected speech. In my view, this raises serious constitutional concerns and liberty interests that should at the minimum be seriously considered in the appropriate committees. This is unsound public policy, unsound tax policy, and an unwise expansion of federal regulatory authority. It also sets poor precedent and raises constitutional concerns. No matter what we think of the uses of advertising, the Constitution protects the right of free speech.

I supported Senator GREGG's amendment to eliminate the liability caps that had been included in the manager's amendment. I had concerns about our taking action to limit the liability of the tobacco industry without enacting other legal reforms that are desperately needed by so many industries. I found it highly incongruous that we would not extend the same liability protections to industries that produce life-saving products as we do for the tobacco industry.

For example, I would have liked to see us include reforms to permit the development and manufacturing of beneficial products, such as pacemakers and other medical devices. Too often, biomaterials needed to manufacture those products have been unavailable due to litigation concerns. I had supported Senator ASHCROFT's amendment in the Commerce Committee that would have added the Biomaterials Access Assurance Act to the tobacco settlement legislation. The biomaterials legislation, of which I am a cosponsor, offers liability protections to manufacturers of biomaterials, which are needed to produce life-saving devices but which have been tragically unavailable in some instances because of litigation concerns. Such important health-related legislation as the biomaterials bill would be appropriate to include as part of tobacco settlement legislation, and, in my view, should in fact be directly linked to and included in the legislation.

In summary, I would like to again commend my colleagues for their hard work on the legislation and the majority leader for bringing this important legislation to the floor and giving the full Senate ample opportunity to debate and consider the bill. While I had hoped we could come together on the issue, I think it became far more complex than any of us had imagined. A number of amendments, many of which I supported, changed the nature of the legislation so fundamentally that the legislation really must be revisited from square one. With almost no restrictions on payments for damages and penalties, for instance, it became clear that the industry would never agree to voluntary advertising restrictions. In my view, tobacco advertising is one of the most powerful factors in influencing the decisions of teenagers with respect to smoking, and it was one of the key parts of that legislation that we were not going to get.

I will continue to work with my colleagues on this issue, and with my own Governor and state legislature. I am pleased that Leader LOTT is considering setting up a bipartisan task force to revisit this important issue. There is much that can still be done on it, and I believe that we have learned a great deal in going through this process once.●

## TAX DEDUCTIBILITY OF THE BREAST CANCER STAMP

● Mrs. FEINSTEIN. Mr. President, I was concerned to learn this morning that the IRS will not allow individuals who purchase a special stamp intended to raise funds for breast cancer research to list the donation as a charitable gift for tax deduction purposes.

Last year, Congress passed legislation that authorized the US Postal Service to issue a stamp priced at 40 cents, with the additional 8 cents going to the National Institute of Health and the Department of Defense to fund breast cancer research. The clear intent of my legislation was that gifts made to fund breast cancer research through the purchase of the breast cancer stamp are to be considered as a charitable donation. For the IRS to treat them in any other way violates the spirit of the law.

Breast cancer is one of the greatest health risks facing America today. More than 2.6 million women are living with breast cancer right now, one million of them have yet to be diagnosed. Breast cancer is still the number one killer of women between the ages of 35 and 52. The disease claims another woman's life every 12 minutes in the U.S.

Despite increases in the last few years, research dollars are still desperately needed to fund cancer research. In 1996, the National Cancer Institute could fund only 26% of the research grant applications, a decline from 60% in the 1970's.

Clearly, there needs to be innovative ways to offset this reduction in research spending. The breast cancer stamp is one such idea. It has the potential to raise millions of badly needed cancer research dollars. I am disturbed that the IRS has chosen to make it more difficult to raise this money. My legislation was designed to encourage contributions for breast cancer research and I hope the IRS will help fulfill its intent.●

## TRIBUTE TO DR. BRUCE CANADAY

● Mr. FAIRCLOTH. Mr. President, I am happy to announce that one of North Carolina's own has been elected president of the American Society of Health-System Pharmacists (ASHP). As president for the 1998–1999 season, Dr. Bruce R. Canaday, Pharm.D., FASHP will lead the nation's pharmacists in developing new and innovative patient care methods. His job will also include representing pharmacists from an array of varying disciplines such as hospitals, health maintenance organizations, long-term care facilities and home health care to name just a few.

After earning his B.S. in pharmacy from Purdue University, Dr. Canaday went on to earn his Doctor of Pharmacy degree from the University of Tennessee. Dr. Canaday's previous experience include serving as Chair of the ASHP House of Delegates and member of the Board of Directors, and as president of the North Carolina Society of Health-System Pharmacists.

When Dr. Canaday is not teaching future pharmacists under his title—Clinical Professor—at the University of North Carolina at Chapel Hill, he is working as Director of the Department of Pharmacotherapy for the Coastal Area Health Education Centers in Wilmington, N.C. At both the coastal centers and at UNC, Dr. Canaday's contributions to the field of pharmacy have taught pharmacy students the information necessary for delivering effective and efficient healthcare to those in need.

Mr. President, if those credentials are not enough for my colleagues to

get a good idea of all this fine North Carolinian has done and continues to do, may I add that Dr. Canaday is a board certified pharmacotherapy specialist. As a specialist, he maintains a clinical practice at New Hanover Regional Medical Center in New Hanover, Tennessee.

I am confident, Mr. President, that Dr. Canaday will do a fine job and be a successful leader for the American Pharmacy. Good leadership is important. And I think it is especially true today because of the complexity and command that healthcare and healthcare reform has in this evolutionary age.

Mr. President, North Carolina continues to be blessed by the outstanding achievements of its men and women. The rise of Dr. Bruce R. Canaday to president of the American Society of Health-System Pharmacists is a recent example. I hope that my colleagues will join me in congratulating Dr. Canaday for his latest achievement.●

## SHOLL'S COLONIAL CAFETERIA

● Mr. CLELAND. Mr. President, I would like to take this opportunity to salute Washington, DC's beloved Sholl's Colonial Cafeteria for 70 years of prospering business and never-ending dedication to its customers and employees. People have come from all around the world simply for a sampling of Sholl's down home hospitality and great food.

I cannot count the number of meals I have eaten at this Washington institution, but as I am sure many of you who have also visited this landmark know, the memories of dining at Sholl's are endless. Each person who has dined at Sholl's has their own memory of what has made it so special to them. For some it was simply a piece of their apple or rhubarb pie. For others it was the unique experience of dining amongst close friends, colleagues or even new friends you made during a visit.

But for everyone who has frequented Sholl's, there are fond memories of the wonderful people who worked at this restaurant and made it such an enjoyable place to start or end your day. The friendly hello from the late Evan Sholl, Cafeteria founder, and his beloved wife, Gertrude, or their son-in-law and current proprietor, George Fleishell has kept us all returning to Sholl's over the years.

Patrons of Sholl's have described members of the Sholl family, who have owned and operated Sholl's over the last 70 years, as having the biggest hearts in Washington.

Sholl's is not just a business. It is more like a home where friends meet regularly to get together and enjoy some good food and have a good time. Whenever I dine at Sholl's, it is like going to dinner at a friend's house.

I have enjoyed eating at Sholl's Colonial Cafeteria for many years—since the days when I was an intern in 1963 until today. I hope that we will all be able to enjoy many more home cooked meals at Sholl's Cafeteria for many more years to come.

Recently reporter James P. McGrath chronicled the ''70 Years of Nourishing Body and Soul'' of Sholl's Colonial Cafeteria in an article in the Washington Post. I ask for unanimous consent that this inspirational story of hard work, perseverance and determination be printed in the RECORD.

The article follows:

[From the Washington Post, March 15, 1998]

(By James P. McGrath)

Most city dwellers of a certain age have fond memories of a great cafeteria they patronized at some point in their lives. Given the velocity and scope of urban redevelopment, however, many of those grand, old dining palaces are gone, but, happily, the flagship of them all survives: Sholl's Colonial Cafeteria at K and 20th streets NW in downtown Washington. Although the Sholl's at Vermont and K closed in 1984, the Sholl's cafeteria a half-dozen blocks away managed to survive, and today it celebrates its 70th year of operation.

In this city of monuments, Sholl's is a monument unto itself. Long before multiculturalism came into fashion, diversity was its hallmark. Its current staff of 40 represents 17 nations, and at one time or another, every Latin American country has had a representative on staff.

Humanity, generosity and kindness also have been Sholl's standards. A family atmosphere permeates the place—from the lounge at the entrance, to the vastly long steam table laden with delectable food, to the huge dining room, where customers can seek out a seat in their favorite nook or cranny.

Sholl's is not interested in political correctness, and it makes no bones about its religious sentiments. While its owners don't proselytize, neither do they hide their convictions. On a simple plate in the cafeteria lobby is a supply of 'grace-before-meals' prayer cards, featuring Protestant, Catholic and Jewish devotions. Cafeteria founder Evan Sholl and his beloved wife, Gertrude, both devout Catholics, regularly invited visiting clergy of all denominations for complimentary meals.

Those meals were and are as basic and all-American as apple pie (and, boy, what delicious apple pie Sholl's makes). The cafeteria's famous powder-milk biscuits are world-class (eat your heart out, Garrison Keillor). Food preparation at Sholl's emphasizes freshness too, with all items prepared daily from scratch, on the premises, in as-needed quantities, with no leftovers for the next day.

Some might consider such Sholl's fare 'square,' but the cafeteria routinely ranks among Phyllis Richman's 'Best 50 Restaurants in Washington.' In an Oct. 19 review, The Post's food critic wrote, 'Every city needs a down-home cafeteria, and few have one with more character than Sholl's. It's been a D.C. fixture . . . long enough to qualify for Medicare. . . .'

Sholl's has attracted its share of notables over its long career. When Harry S. Truman was vice president, he enjoyed dining there, as did H. L. Hunt, the parsimonious billionaire from Dallas. It is easy to imagine Truman and Hunt sitting across from one another and enjoying a good old fashioned 'rhubarb.' That, of course, would be rhubarb pie, a daily Sholl's delicacy.

The late Evan Sholl, who died in 1983 at the age of 85, and his son-in-law and current proprietor, George Fleishell, are responsible for the cafeteria's amalgam of great food and good works. Both gentlemen have dispensed generosity, wholesale and retail. The amount of free food distributed by Sholl's over the years would have fed an army many times over. In addition, shortly before his death, Evan Sholl distributed a year's profits in bonuses to his employees on the basis of $100 for each year of service.

Many believe that a nation's greatness is best measured by how it treats its old, its disabled and its young. Using that yardstick as a standard, also has earned high marks, giving meal passes to the needy, many of them elderly and/or disabled, and donating thousands of food baskets to the poor at Thanksgiving and Christmas. The cafeteria keeps its prices down too, and low-, modest- and fixed-income people, many of whom are elderly, flock to the cafeteria. Dining room employees gently guide infirm customers to convenient tables, carry their trays for them and routinely decline tips.

Sholl's is popular with the young and hale too. Tourist buses, looking for the best food buy for the buck, routinely drop off throngs of kids at the cafeteria's doors, and from the decibel level, the kids seem to be having a whale of a time.

The dining room walls at Sholl's are covered with wonderful memorabilia and pictures of yesteryear as well as awards from the food industry and other organizations. The one that says it best, however, is from the Cosmopolitan Club, which saluted Evan Sholl in 1982 as 'the citizen who has performed the most outstanding, unselfish service to the Washington Metropolitan Community.'●

## JERUSALEM POST EDITORIAL ON AMENDING THE PLO COVENANT

● Mr. MACK. Mr. President, there is much discussion in the news about the slow progress of the Middle East Peace Process. Unfortunately, much of the criticism is pointed at Israel's Prime Minister Benyamin Netanyahu. I was pleased to read, however, the Jerusalem Post's editorial of July 6 titled

''The Missing Summit'' which correctly identifies Arafat's failure to revise the PLO Covenant as a major obstacle to peace. The editorial reads as follows:

The summer heat tends to slow everything down, even diplomacy. In the absence of real movement in the peace process, talk of summits is proliferating. Prime Minister Binyamin Netanyahu has unsuccessfully pushed for a ''Madrid 2'' international conference, France and Egypt have a proposal, and yesterday Egyptian President Hosni Mubarak, Jordan's King Hussein, and Palestinian Authority Chairman Yasser Arafat met in Cairo. However, the only summit missing is the one that is most necessary—between Netanyahu and Arafat.

When Mubarak, Hussein, and Arafat last met in September, they could hardly have expected that by now there would still be no deal on the much-anticipated second redeployment. Much of the blame for delay has fallen on Netanyahu's doorstep, and indeed Netanyahu seems to be a master at drawing matters out. Next to Arafat, however, Netanyahu's delaying skills seem almost amateur.

In the current stalemate, one of the main issues in contention is Israel's demand that the Palestinians amend the PLO Covenant to erase its multiple calls for Israel's destruction. Arafat's promise to do so is as old as the Oslo process itself. The Oslo era officially began with an exchange of letters between prime minister Yitzhak Rabin and Arafat, days before the signing of the Declaration of Principles on the White House lawn. Arafat's September 9, 1993 letter to Rabin states the Covenant's denials of Israel's right to exist ''are now inoperative'' and that he pledges to ''submit to the Palestinian National Council for formal approval the necessary changes in regard to the Palestinian Covenant.''

At that time, amending the Covenant seemed imminent. It is now almost six years later, and Arafat's commitment is yet to be implemented. In April 1996, the Peres government attempted to negotiate a formula to resolve the issue, but the resolution actually passed by the PNC again made no specific amendment to the Covenant. Then in January 1997, as part of the Hebron Accords, Arafat again committed to ''complete the process'' of amending the Covenant.

Since then, Arafat has sent letters to President Bill Clinton and Prime Minister Tony Blair retroactively listing the articles of the Covenant that were supposedly canceled by the 1996 PNC resolution. But this, too, can only be taken as a statement of intentions, since the Covenant states that it can only be amended by a two-thirds vote of the PNC, and numerous PLO officials have stated that it has been ''frozen,'' not amended. Now Netanyahu is seen to be delaying matters by demanding that the Palestinians finally carry out a commitment that is a foundation stone of the entire process.

Since the beginning of the Oslo process, Israel has—despite fits and starts, internal division, and even the assassination of the prime minister—demonstrated its commitment to the process by transferring territorial control to the Palestinians. Even under Netanyahu, this process continued with the redeployment in Hebron, and now a major further redeployment is on the table. In this context, it is not unreasonable to characterize the situation as Netanyahu did to the diplomatic corps on Friday: ''The issue is not what Israel is prepared to give—it is prepared to give considerably—but it is the Palestinians' unwillingness to give anything of substance.''

In the Gaza Strip on Friday, the Palestinian Police cut off Israeli settlements after the IDF refused passage on an Israeli security road to a convoy led by a Palestinian minister. The standoff, which could have broken out into a full-fledged shooting war, was a reminder of how dangerous the current situation is. But the lesson is not just that Israel has an interest in resolving the existing impasse, but that the Palestinians do as well.

Now that Clinton has returned from China and the end of the Knesset summer session approaches, the fate of the redeployment package will be determined. So far, the United States has not rejected Israel's concerns regarding the package on the table, but it has not subjected the Palestinians to the same public pressure that Israel has been under. The sticking point is no longer the size of the redeployment, since creative solutions can be found for the territory surrounding the Israeli settlements that will be isolated by the withdrawal. The more significant question is whether Arafat will be pressed to deliver something much less tangible than what Israel is delivering, but no less necessary for the ultimate success of the peace process. Amending the Covenant is such a fundamental building block, as is an end to the long boycott by Arafat of direct negotiations with Netanyahu.

Mr. President, the Palestinian Authority has promised since 1993 to change the PLO Covenant so that the Israeli people can be confident in the Palestinian regime's acceptance of the existence of the State of Israel. To this day, this most basic and vital action has not been done. As the Jerusalem Post correctly points out, the U.S. Government has ''. . . not subjected the Palestinians to the same public pressure that Israel has been under.''

The Palestinian Authority must formally and officially amend the Covenant. Until they do so, United States influence should be focused on this failed Palestinian promise.●

## RECOGNITION OF THE DEROSSI AND SON COMPANY

● Mr. TORRICELLI. Mr. President, I rise today in recognition of DeRossi and Son Company, which has been recently honored by the Small Business Administration. DeRossi and Son Company was nominated as the Regional Small Business Prime Contractor of the Year and recognized as one of the top small business prime contractors in the State of New Jersey. As a result of this nomination, DeRossi and Son has earned the U.S. Small Business Administration ''Administrator's Award for Excellence'' certificate. It is a pleasure for me to be able to note these accomplishments and congratulate DeRossi and Son on a job well done.

Since 1926, when Angelo and Dominick DeRossi founded the company, DeRossi and Son has manufactured military dress coats for the United States Government. The company provided clothing for the United States Armed Forces during World War II, the Korean War, and the Vietnam War. DeRossi and Son has a long history of excellence, beginning in 1943 when it received the Army Navy E Award during World War II. This was an award issued for excellence in production and quality during the war. Mr. DeRossi believes that the success of the company is due to the training he received from his grandfather and father and to the great dedication and effort his staff and employees have in serving the customer.

Small businesses face enormous odds for success in the corporate world. There are tremendous obstacles every day, yet DeRossi and Son has been able to rise above adversity. This award is a wonderful testament to its strength and perseverance among small businesses in the State of New Jersey and across the country. Few companies are able to make this claim, and I am honored to be able to say that one has been from my home state.

Both the DeRossi Family, and the company they built over the last seventy-two years, are excellent examples of an immigrant success story. The DeRossi Family's contributions have done much for the future of the town of Vineland, the State of New Jersey, and the United States as a whole. I congratulate DeRossi and Son on a job well done, and I wish both them and their employees the best of luck in the future.●

## CRIME VICTIMS WITH DISABILITIES

● Mr. ABRAHAM. Mr. President, I rise to join my colleagues Senator DEWINE and Senator LEAHY in sponsoring the Crime Victims with Disabilities Awareness Act. This legislation will help us better understand and prevent crimes against Americans with disabilities.

Mr. President, Americans with disabilities are four to ten times as likely as other Americans to be the victims of crimes. That means that 54 million Americans are at increased risk of victimization because they suffer from one or more disabilities.

We have long known that criminals are opportunists, and that they target the weakest members of society for exploitation. As a result we have initiated programs to heighten public awareness of crime against women, children, and the elderly. Americans with developmental disabilities deserve the same consideration.

Many disabled Americans have been the victims of crime, Mr. President. Indeed, many of these Americans have been repeat victims because their condition renders them less likely to report incidents to the proper authorities.

If some Americans are unsafe from crime, Mr. President, all Americans are unsafe. Criminals who prey on the disabled are not only showing their lack of morality and victimizing a particularly vulnerable segment of our society, they are degrading our entire nation. To the extent they are allowed to continue their criminal activities they endanger all Americans.

That is why this legislation is so important. It will direct the Attorney General, in conjunction with the National Research Council, to develop a

research program to help us better understand and prevent crimes against the disabled. It also directs the Attorney General to include in the annual National Crime Victims Survey statistics regarding crimes against victims with developmental disabilities.

These measures, Mr. President, will help us to heighten awareness of crime against the disabled and help us put a stop to it. It will help us to make our streets and our homes safer for all Americans by protecting the most vulnerable among us.

I urge my colleagues to support this important legislation.●

## DR. NILS DAULAIRE

● Mr. LEAHY. Mr. President, when most of us think about health we think about it on a personal or local level. Perhaps a child is suffering from an ear infection or an outbreak of chicken pox has emptied the local elementary school. But when Dr. Nils Daulaire thinks about health it is from a global perspective, and I am delighted to report that Nils was recently named the next President and CEO of the National Council for International Health.

I have known Nils for many years. He is a fellow Vermonter and a trusted friend whose advice I have valued enormously. Nils' boundless energy and devotion to helping others is an inspiration to everyone who knows him. He is as comfortable tending to a sick child in a remote village in Nepal as he is representing the United States Government in international health policy negotiations. Over the years, Nils has earned a reputation as a leading authority in the public health field.

During his tenure as Senior Health Adviser at the Agency for International Development, Nils worked to ensure that international health is a major focus of AID's efforts worldwide. He played a central role in convening a conference of health agencies and organizations to develop a multi-year U.S. strategy to strengthen global surveillance and control of infectious disease. Nils' leadership was instrumental in the strategy that emerged from that conference, which should, over time, result in a significant reduction in the number of deaths from infectious disease. As the new head of NCIH whose membership includes over 1,000 medical professionals and organizations, Nils' continued involvement in this initiative will be critical to its success.

The NCIH's mission to improve global health is a monumental task. I cannot think of a person more capable of leading NCIH into the next century than Nils Daulaire. He is a straight talker and he knows what he is talking about. He understands the medical issues and he understands the political issues. Once Nils begins his new job on August 1, NCIH's operations will be split between Nils in Vermont and his other capable staff in Washington. I look forward to continuing our close working relationship on infectious disease, on maternal health, and other important issues.

Mr. President a June 24, 1998, article in the Washington Post described Nils Daulaire's contribution to the field of international health. I ask unanimous consent that the article be printed in the RECORD.

The article follows:

[From the Washington Post, June 24, 1998]

A MAN TO MAKE HEALTH A GLOBAL ISSUE

(By Judy Mann)

Nils Daulaire, the U.S. government's leading authority on international health, is leaving his post as senior health adviser to the Agency for International Development to become president and CEO of the National Council on International Health.

The NCIH is an organization of more than 1,000 medical professionals and organizations; pharmaceutical companies such as Merck and Becton Dickinson & Co.; government agencies such as the Peace Corps and the Centers for Disease Control and Prevention; international relief organizations such as CARE, Save the Children and Project Hope; Planned Parenthood; religious relief agencies; and universities such as Harvard and John Hopkins. It receives funding from the MacArthur, Kellogg, Ford and Turner foundations, and some government financing.

Based in the United States, its mission is to advance policies and programs that improve health around the world. But a recent blue-ribbon panel headed by former surgeon general C. Everett Koop recommended a major restructuring of the organization. The new NCIH will focus on the need for improving global health and making health one of the cornerstones of globalization, on a par with international trade, currency flows and information and communication. A 32-member board is being replaced by a smaller board where leading medical experts can cross-fertilize ideas with experts in development and leaders in the private sector.

The Koop report also recommended hiring a president and CEO with international stature, which the board has done: Daulaire, 49, is a Phi Beta Kappa and summa cum laude graduate of Harvard College and received his medical degree from Harvard Medical School. He has a master's in public health from Johns Hopkins. He has spent two decades in fieldwork, including five years in Nepal, and has provided technical assistance in more than 20 countries. He speaks seven languages.

He was the lead U.S. negotiator at the Cairo International Conference on Population and Development in 1994, the Beijing World Conference on Women in 1995 and the Rome World Food Summit in 1996. He has represented the United States in the last five World Health Organization assemblies and was helpful in the election of Gro Brundtland, former prime minister of Norway, to be director general-elect of WHO with a mission to revitalize it.

New leadership of both of these organizations holds enormous potential for putting health at the center of efforts to improve living conditions around the world. NCIH plans to change its name to the Global Health Council and aims to become, within five years, the preeminent nongovernmental source of information, practical experience, analysis and public advocacy for the most pressing global health issues.

''You can get more done from the outside than the inside,'' Daulaire says. ''In terms of my work over the last five years, if I had had an outside organization that was highly effective in explaining things to the public, tying people together, involving the private sector, it would have made my job much more effective. When you look at the whole movement toward a globalized economy, you can't have enormous differentials in health status. You can't have disruption of economies and trade due to the spread of disease.

''A reason disease is uncorrected is people accept it as natural,'' Daulaire says. ''One of the consequences of the global communications revolution is people [elsewhere] will be aware of how good we have it. They will see their poor conditions and have an awareness that this is not a necessary condition.''

When he first arrived in Nepal 20 years ago, ''I thought I'd landed in the 14th century. Kids had never seen a wheeled vehicle. When I went back five years ago, there were satellite dishes and cellular phones.'' The use of information technology as a tool for health care workers and educating people in poor, rural areas has led to astounding changes in the last 15 years, he says.

Currently, the council's top health priorities are AIDS, maternal health, family planning and infectious diseases. It plans to increase public and private funding to improve effectiveness in these areas through sharing information about what works best. Using cutting-edge technology and communication is a key component of its plans. It plans to be ready for emerging diseases.

Daulaire believes the damage to foreign assistance programs by congressional budget hackers has to be reversed, but he also recalls a conversation with a staffer who works for a prominent Republican. He bluntly told Daulaire that these programs may be the right things to do but they have no constituency and so they were ''going to get hammered.''

The new NCIH plans to develop that constituency so that people, governments and the private sector understand that countries can't participate in the global economy when they are dragged down by health care costs that can be avoided. Daulaire sees a major role for the private sector in promoting global health, and already Becton Dickinson & Co., a multinational medical technology company, has indicated a keen interest in developing a major partnership with the new NCIH.

Daulaire's appointment is to be announced officially tomorrow at the NCIH's 25th annual meeting. He takes office Aug. 1, bringing to the post a rare blend of medical expertise, optimism, fieldwork, knowledge of bureaucracies, a network of relationships with health experts and politicians around the world, and an unusual ability to articulate complicated health and development issues to the media.

Global health is not them; it is all of us. Daulaire is the person to move that principle into the center of efforts to raise standards of living around the world.●

## HONORING AN IDAHO CIVIC LEADER

● Mr. KEMPTHORNE. Mr. President, I rise to pay tribute to an Idahoan who has distinguished himself in both the public and private sector.

Kirk Sullivan is retiring after 27 years with the Boise Cascade Corporation. But to simply say that Kirk enjoyed a long and productive career with a company is not adequate and doesn't do this outstanding individual justice.

While not a native Idahoan, Kirk has worked most of his adult life to make the state a better place to live. And over the years he's dedicated himself to helping others.

Idaho's children are of particular interest to Kirk. He has used his education and business experience to act as a tremendous resource to our children, from elementary school to the university level.

As an active member of the Business Week Foundation, Kirk served as a mentor to Idaho high school students eager to learn how business operates and how to be successful in the workplace.

As the founder of the Bishop Kelly Foundation, Kirk raised money for Boise's private high school.

Kirk has not just played a supporting role in those ventures, nor in others. When Kirk sets out to do something, he takes charge. He actively raised money for the Children's Home Society of Idaho, he is leading a $500,000 fund drive for the Boise Master Chorale, and he raises funds for the University of Idaho.

Kirk's boundless energy is contagious. I have seen him take on so many different issues and set lofty goals. He doesn't know the word ''no.'' When he's asked to do something, it is always ''yes.'' I've seen him gather some of the very talented people in the state of Idaho and tackle some of these major projects and come up with major results. It is so invigorating to see how he weaves your magic.

In fact, even though Kirk Sullivan is not an alumnus of the University of Idaho, he has received the school's Presidential Citation for giving to the University and its community.

I must add, Mr. President, that the University of Idaho is not the only beneficiary of Kirk Sullivan's efforts and enthusiasm. He has served as President of the Bronco Athletic Association at Boise State University and is currently a member of the Commission on the Future of Clemson University, his alma mater. He also is on Clemson's College of Engineering and Science Leadership Committee, with a fundraising goal of $100 million.

So you can see, Mr. President, that Kirk and his wife, Betty, are valuable assets and cherished members of our community.

While Kirk is retiring, I'm confident in the knowledge that his good works and commitment to his state will never wane. Idaho is a much better place because of the dedication and tireless efforts of Kirk Sullivan.

I take pride in congratulating him today, and I know all Idahoans salute him.●

## IOWA'S BILL FITCH

● Mr. HARKIN. Mr. President, our former colleague, Senator John Culver of Iowa, brought to my attention an article, which recently appeared in the Cedar Rapids Gazette, about Bill Fitch. Mr. Fitch was an outstanding athlete when he attended Cedar Rapids' Wilson High School and, also, during his college years at Coe College in Cedar Rapids. Later on, Mr. Fitch coached at Coe College, Creighton University (where he coached Bob Gibson, the famous baseball pitcher), and North Dakota (where he coached Phil Jackson, now coach of the Chicago Bulls). He won the 1981 NBA title as the Boston Celtics' coach with Larry Bird. He coached in the NBA for 25 years and was the only person to coach 2,000 regular-season games and his 944 wins ranked second only to NBA coach Lenny Wilkens. I am grateful to Mike Hlas of the Cedar Rapids Gazette for writing this column about one of Iowa's great athletes, and I am thankful to my friend, Senator John Culver, for bringing it to my attention.

At this point, I ask that Mr. Hlas' article be printed in the RECORD.

The article follows:

[From The Gazette, Apr. 22, 1998]

C.R.'S FITCH A BIG WINNER

(By Mike Hlas)

No one will ever put a sign at Cedar Rapids' city limits proclaiming it the hometown of the NBA's all-time losingest coach.

That's good. Bill Fitch, who attended Wilson back when it was a high school and coached at Coe, deserves respect.

You don't last long enough to lose 1,106 times unless you were good. You don't become the only coach in NBA history to coach 2,050 times in the regular season unless you were good.

Fitch, fired by the Los Angeles Clippers Monday at age 63, was good.

But as Casey Stengel once said, I managed good, they just played bad.

Perhaps none of Fitch's 25 NBA squads was as bad as the 1997–98 Clippers, who won 17 and lost 65, and did so without a hint of style.

It didn't even feel this rotten for Fitch in 1970, when he and the Cleveland Cavaliers spent their first years in the NBA together. The original Cavs were so bad they were unaffectionately nicknamed the Cadavers. Somehow, Fitch kept a sense of humor and his sanity.

By the time Fitch's nine-year engagement closed in Cleveland, the Cavs had made the playoffs three times.

As the years passed, Cedar Rapids could take more and more pride in calling Fitch a homeboy. Especially when NBA coaching legend Red Auerbach, then a general manager—brought him to Boston to coach the then-stale Celtics.

When surrounded by people who could play the game better than anyone, Fitch turned out to be quite a coach. He had three consecutive 60-game winners in Boston, and won the NBA title in 1981 with young Larry Bird.

Houston was Fitch's next stop. The Rockets had four winning seasons in five years under Fitch, and once reached the NBA finals, only to lose to Bird's Celtics.

The NBA's heights were great, but Fitch was one of the few coaches who could survive in its depths. His last seven teams were in New Jersey and Los Angeles, where talent was inadequate. Last year, though, he did lead a very young Clipper club to the playoffs.

The promise gave way to a nightmare season. A very good player (Bo Outlaw) left as a free agent, and another star (Loy Vaught) missed most of the year with a bad back.

So the coach got fired because he's 63 years old, because his players supposedly began to tune him out, and because the Clippers are about to move into a big new arena in downtown Los Angeles and want a sharper image.

Fitch, who had worked with Bird and Kevin McHale and Moses Malone, was surrounded in his final season with youngsters who had never won a thing in the NBA. They were tuning him out? He should have turned them out.

For anyone to endure four years with the Clipper's and 25 seasons in the NBA as a coach is semi-amazing. If meddling management isn't giving you a headache, some underachieving knucklehead player is giving you heartache.

You need a cast-iron stomach to coach in the NBA for 25 years. To be the only person to coach 2,000 regular-season games in the league tells how highly regarded Fitch was held. His 944 wins rank second only to Lenny Wilkens. It is something worth honoring.

As any coach will tell you, losing one game tears you apart. To drop 1,106 and keep plugging is wonderful.

''It's depressing,'' Fitch said about this season, days before he was fired. ''But it's also one that makes you want to say, 'Never again,' We'll get it going in the right direction again.''

If you spend four years with the Bad News Clippers and can still say a thing like that, you are a winner for the ages.●

## CAPITAL GAINS TAX CUT

● Mr. ABRAHAM. Mr. President, I rise to support the Majority Leader's legislation, S. 2214, reducing the top capital gains tax rate from 20 to 15 percent, and reducing from 18 to 12 months the holding period required on capital gains.

Mr. President, this legislation is good news for the economy, and it is good news for America's working families.

Ours is a global economy, Mr. President. And in my view it is crucial, if we want to continue enjoying our current prosperity, that we do more to maintain our competitive edge. Even with last year's capital gains tax cut, at 20 percent America's long term capital gains tax rate remains among the industrialized world's highest. Further, countries like Australia and the United Kingdom, which have higher rates, also allow taxpayers to index the cost of the asset on which they make gains.

We pay a high price for our high capital gains tax, Mr. President. As Stanford Dean John B. Shoven points out, higher capital gains rates increase the cost of investing in capital and equipment. As a percentage of Gross National Product, the United States invested less in nonresidential projects from 1973 to 1992 than any of our major competitors. And investment in plant and equipment has fallen to only half the level of the 1960's and 1970's.

Without updated plant and equipment, productivity lags and we cannot compete with other nations. Lowered capital gains taxes would directly address this problem. National Council of Policy Assessment Senior Fellows Gary and Aldona Robbins predicted, before last year's reduction in the top capital gains tax rate, that a cut of 50 percent in that rate, to 14 percent, would lower the cost of capital by 5 percent. This would induce investors to increase the capital stock by $2.2 trillion in 5 years. And that larger stock of capital would create 721,000 new jobs and increase GDP cumulatively by almost $1 trillion.

That's a lot of jobs and a lot of growth, Mr. President. Particularly when we can achieve them simply by allowing the American people to keep more of what they earn. And we are well on our way to spurring this growth and job creation. For example, Mr. President, Congress' Joint Committee on Taxation estimates that the recent cut in the top capital gains tax rate from 28 to 20 percent will increase capital gains realizations by $1 trillion over the next 10 years. That's a trillion dollars, Mr. President, that will be freed from stagnant investments for more productive purposes.

We should also keep in mind, Mr. President, that this tax cut will benefit the vast majority of the American people. In addition to creating jobs and keeping our businesses competitive in the global marketplace, this capital gains tax cut will directly aid America's working families.

It is time to recognize, Mr. President, that America's middle class is fully integrated into our free market economy. The vast majority of working Americans are not just wage-earners, they are investors as well.

Americans who own stocks, bonds and other investments on which they may take capital gains are investors. Small business owners, nonprofessional salaried employees and blue collar workers with a company retirement plan are investors.

As economist Lawrence Kudlow points out, ''Today's investor class could total as many as 125 million people. That's equivalent to virtually the entire working population of the U.S..''

How does Mr. Kudlow come up with this number? According to a recent Nasdaq survey, 43 percent of all Americans own stocks—more than double the 21 percent reported in 1980. An NBC/Wall Street Journal poll found that 51 percent of Americans own at least $5,000 in stocks, mutual funds or other retirement saving vehicles. And the American Savings Education Council reports that nearly half of all American workers contribute an average of 5 percent of their gross income to 401(k) individual retirement plans.

Forty-nine percent of America's investors are women, 38 percent are nonprofessional salaried workers—and both groups have annual incomes of $75,000 or less. Nearly two thirds of investor families have incomes under $50,000.

Mr. President, these responsible, hard-working, middle class Americans are concerned about their futures; they are attempting to build and nurture a nest-egg for themselves, their retirement and their children.

These Americans know that wealth is created through innovation and hard work in free markets. They know that saving is crucial to their future and to the future of this nation. They saw the dangers big-government social engineering posed to our economy and brought about the most significant political revolution in this country in 50 years, putting the free-market Republican party in control of both Houses of Congress.

Mr. President, middle class investors in America support our nation through disproportionate savings and investment. In return these middle class Americans seek fair treatment. They seek policies that do not penalize them for their hard work and financial responsibility. And in my view it is time we gave it to them. And that means lowering the capital gains tax to 15 percent.

It is also important to note, Mr. President, that it is the moderate income person who is penalized most by high capital gains tax rates. The increase in moderate income workers reporting capital gains is largely due to the increasing use of mutual funds. These funds allow more and more Americans to invest in the stock market by pooling resources in the hands of a fund manager who buys and sells stocks.

The only down side to this profitable arrangement, Mr. President, is created by the tax code. Individuals investing in mutual funds cannot balance their capital gains by selling off other stocks showing capital losses as wealthy people can. This means that a significant proportion of mutual fund investors show capital gains on a regular basis—and see their returns reduced because of capital gains taxes—even though they are not controlling individual investment decisions.

If we want Americans to save more, Mr. President, in my view it makes sense to make savings pay more by taxing it less. This cut in capital gains taxes will make savings and investment more attractive to Americans by increasing the net return on investments.

Finally, Mr. President, I believe it is important at this point to address the fear expressed by a number of people that this tax cut would bust the budget. Fortunately for us, that simply is not true.

As I have already mentioned, the Joint Committee on Taxation has estimated that the most recent cut in the capital gains tax rate will produce $1 trillion over the next 10 years in increased capital gains realizations. That translates, Mr. President, into an increase of $47 billion in federal revenues. This further cut in the top marginal capital gains tax rate will only magnify that increase in revenue.

Indeed, Congress' own Joint Economic Committee last year published a study, written by economists James Gwartney and Randall Holcombe of Florida State University, finding that revenue from the capital gains tax would be maximized at 15 percent. Thus, the tax cut we are considering today would achieve the maximum federal revenue possible from this tax, while in addition spurring economic growth and job creation.

This is a truly win-win situation, Mr. President. We now have an opportunity to encourage savings and investment, spur continued economic growth and maximize federal revenues. I urge my colleagues to grant the American people the benefits of this important legislation.●

## CORRECTING THE AGRICULTURAL RESEARCH, EXTENSION, AND EDUCATION REFORM ACT OF 1998

Mr. GRASSLEY. Mr. President, for the leader I ask unanimous consent that the Senate proceed to the immediate consideration of S. 2275, which was introduced earlier today by Senator LUGAR.

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

The clerk will report.

The legislative clerk read as follows:

A bill (S. 2275) to make technical corrections to the Agricultural Research, Extension, and Education Reform Act of 1998.

The Senate proceeded to consider the bill.

Mr. GRASSLEY. Mr. President, I ask unanimous consent that the bill be considered read a third time and passed, the motion to reconsider be laid upon the table, and that any statements relating to the bill appear at this point in the RECORD.

There being no objection, the bill (S. 2275) was considered read the third time and passed as follows:

S. 2275

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,*

**SECTION 1. TECHNICAL CORRECTIONS TO AGRICULTURAL RESEARCH, EXTENSION, AND EDUCATION REFORM ACT OF 1998.**

(a) FOREST AND RANGELAND RENEWABLE RESOURCES RESEARCH.—Section 3(d)(3) of the Forest and Rangeland Renewable Resources Research Act of 1978 (16 U.S.C. 1642(d)(3)) (as amended by section 253(b) of the Agricultural Research, Extension, and Education Reform Act of 1998) is amended by striking ''The Secretary'' and inserting ''At the request of the Governor of the State of Maine, New Hampshire, New York, or Vermont, the Secretary''.

(b) HONEY RESEARCH, PROMOTION, AND CONSUMER INFORMATION.—Section 7(e)(2) of the Honey Research, Promotion, and Consumer Information Act (7 U.S.C. 4606(e)(2)) (as amended by section 605(f)(3) of the Agricultural Research, Extension, and Education Reform Act of 1998) is amended by striking ''$0.0075'' each place it appears and inserting ''$0.01''.

(c) EFFECTIVE DATE.—The amendments made by this section take effect on the date of enactment of the Agricultural Research, Extension, and Education Reform Act of 1998.

## ORDERS FOR THURSDAY, JULY 9, 1998

Mr. GRASSLEY. Mr. President, for the leader I ask unanimous consent that when the Senate completes its business today it stand in adjournment until 9 a.m. on Thursday, July 9. I further ask that when the Senate reconvenes on Thursday, immediately following the prayer, the routine requests through the morning hour be granted.

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

Mr. GRASSLEY. I further ask that there be a period for morning business for 1 hour, with the first 30 minutes under the control of Senator DASCHLE, and the next 30 minutes under the control of Senator LOTT.

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

Mr. GRASSLEY. At the hour of 10 a.m., under the provisions of rule XXII, a cloture vote will occur on the Gorton substitute to the product liability bill. Following that vote, regardless of the outcome, I ask unanimous consent that a vote occur on adoption of the IRS conference report.

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

Mr. GRASSLEY. I ask it be in order now to request the yeas and nays.

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

Mr. GRASSLEY. Mr. President, I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second?

There is a sufficient second.

The yeas and nays were ordered.

## PROGRAM

Mr. GRASSLEY. For the information of all Senators, when the Senate reconvenes on Thursday, a cloture vote will occur at 10 a.m. Immediately following that vote, a second vote will occur on the adoption of the IRS conference report.

Following those two back-to-back votes, it will be the leader's intention to begin the anti-agriculture sanctions legislation for India and Pakistan, hopefully under a brief time agreement. Following that legislation, it will be the leader's intention to begin the higher education bill under the consent agreement of June 25, 1998.

Therefore, several votes will occur during Thursday's session of the Senate, with the first two votes occurring back-to-back at 10 a.m.

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

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

## MEASURE PLACED ON THE CALENDAR—S. 2271

Mr. GRASSLEY. Mr. President, there is a bill at the desk due for its second reading.

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

A bill (S. 2271) to simplify and expedite access to the Federal courts for injured parties whose rights and privileges, secured by the United States Constitution, have been deprived by final actions of Federal agencies, or other government officials or entities acting under color of State law, and for other purposes.

Mr. GRASSLEY. I object to further consideration at this time.

The PRESIDING OFFICER. The bill will be placed on the calendar.

Mr. GRASSLEY. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

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

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

## ORDER FOR ADJOURNMENT

Mr. GORTON. Mr. President, if there is no further business to come before the Senate, I ask unanimous consent that the Senate stand in adjournment under the previous order following the remarks of the Senator from Massachusetts, the Senator from Florida, and this Senator.

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

The Senator from Massachusetts is recognized.

## MANAGED CARE

Mr. KENNEDY. Mr. President, the unholy alliance between the Republican leadership in Congress and the health insurance industry is working overtime to prevent enactment of meaningful patient protections to end the abuses of HMOs and managed care health plans. The tactics of the Republican leadership yesterday made that crystal clear—and continue the obstruction that has been taking place since the beginning of this Congress.

Yesterday, the Democratic leader, Senator DASCHLE, offered our Patients' Bill of Rights as an amendment to an appropriations bill, to address the worst abuses of managed care. The Republican leadership didn't want to debate our amendment in the Senate, because they know that they cannot sustain a position that protects insurance industry profits at the expense of patients.

So what did they do? They pulled down the important appropriations bill in order to avoid a vote on the Patient's Bill of Rights. Then they filed an immediate cloture petition on the Product Liability Bill, to avoid having to debate the Patient's Bill of Rights on that legislation. And I have no doubt that they will continue to engage in any other parliamentary maneuver they can devise—in an attempt to avoid debating and voting on the Patient's Bill of Rights. They are ready to impose a gag rule on the United States Senate, if that is necessary to prevent us from ending gag rules on the Nation's doctors.

It is long past time for Congress to act on the issue of reforming managed care. Individuals and families are increasingly apprehensive about how they will be treated when they are sick. A survey last year found that an astonishing 80 percent of Americans believe that their quality of care is often compromised by their insurance plan to save money. And, too often, their belief is well-founded.

Our Patients' Bill of Rights will end abuses of HMOs and managed care plans across the country. Too often today, managed care is mis-managed care. Decisions on health care should be made by doctors and their patients, not by insurance industry accountants bent on protecting profits instead of patients.

For more than a year, the Republican leadership has been delaying action. I introduced patient protection legislation with Congressman JOHN DINGELL nearly a year and a half ago. Since that time, the President's non-partisan blue ribbon commission has recommended nearly identical protections. Under Senator DASCHLE's leadership, we have introduced the Patients' Bill of Rights legislation in both the House and Senate—and it is supported not only by Democrats but by Republicans as well.

More than 170 organizations have endorsed it. These groups represent tens of millions of patients, doctors, nurses, persons with disabilities or chronic illnesses, those in the mental health community, workers and families, consumers, small businesses, religious organizations, non-physician providers and many others.

Yet, despite this support and the obvious need for action, the Senate leadership continues to delay. The special interests that profit from the status quo have designed a campaign of misinformation to obscure the real issues and prevent action.

There is no mystery about what is going on. The Republican leadership's position is to protect the insurance industry instead of protecting patients. They know they can't do that in the light of day. So their strategy has been to work behind closed doors to kill the bill. Keep it bottled up in committee. Prevent any debate or vote by the full Senate.

Willis Gradison, the head of the Health Insurance Association of America, was asked in an interview published in the Rocky Mountain News to sum up their strategy. According to the article, Mr. Gradison replied ''There's a lot to be said for 'Just say no.''' The author of the article goes on to report that

At a strategy session . . . called by a top aide to Senator DON NICKLES, Gradison advised Republicans to avoid taking public positions that could draw fire during the election campaign. Opponents will rely on Republican leaders in both chambers to keep managed care legislation bottled up in committee.

Instead of participating in a productive debate on how to give patients the protections they need, insurance companies and their allies in the business community have heeded the call of the

Republican leadership, in the words of a leadership aide acting on behalf of Senator LOTT, to ''get off their butts and get off their wallets.'' They are contributing hundreds of thousands of dollars to GOP candidates who toe their line, while simultaneously preparing to spend millions of dollars on TV ads to defeat the Patients' Bill of Rights.

But before we swallow their phony charges of excessive increases in costs and in the number of the uninsured, let's examine their credibility on this issue.

Insurers say it is too costly to guarantee that treatment decisions are made by doctors and patients. Yet, they pay their CEOs and high-ranking executives multi-million dollar compensation packages and spend millions of dollars on luxury accommodations for corporate headquarters.

How can the insurance industry tell the American people with a straight face that this legislation will raise costs, when it is spending millions of dollars—derived from premiums paid by hard working families—on a scare campaign to intimidate patients and deny them the protections they need, deserve, and thought they had paid for?

Mr. President, we have, and I will include in the RECORD, a summary of the various protections that are included in this legislation. But before I do, I think it is interesting to know where we are with regard to the scheduling of this particular provision.

The Patient's Bill of Rights was offered last evening by the Senator from South Dakota, Senator DASCHLE, and was sent back to the desk. We have been denied an opportunity for a markup on this legislation in the Labor and Human Resources Committee. The Republican leadership has refused to schedule this legislation on the floor of the U.S. Senate, with the exception of the phony unanimous consent request. The consent request indicated that when we had the debate on this legislation, and after a vote on or in relation to this legislation, it would be in order for the majority leader to return the legislation to the calendar. That means that after we voted on the legislation, even if we voted for good legislation that protects the consumers in this country, under this consent request, the Republican leader would have been able to send it back to the calendar. The Republican leader would not send it to the House of Representatives for action. The Republican leader would not even take legislation if it was sent over from the House of Representatives and we acted upon it. The Republican leader would not send it to the President of the United States: instead, the Republican leader would put the legislation back on the calendar.

This is a phony initiative by the Republican leadership. There isn't a Member of this body who wouldn't read it and understand how phony it is. It is insulting to the millions of patients in this country who have suffered to say that if we take action to try to protect you, and we have a positive vote in the Senate of the United States, the leader of the Republican Party can put it back on the calendar and frustrate every other Member in the Senate.

This is the first time in 36 years I have ever seen a consent request like this. Last night, the Republican leaders said, ''But, oh, wasn't the Senator from Massachusetts here when there was objection to the leader's request?''

Here is the consent request. I will put it all in the RECORD, Mr. President: ''it be in order for the majority leader to return the legislation to the calendar,'' effectively killing it. To add insult to injury, Mr. President, it points out that we will not be in order to offer any other health care measures for the rest of the session.

Isn't that a beauty? We will not be able to offer any other health measures for the rest of the session. We will not be able to deal with medical records confidentiality issues; we will not be able to deal with Medicare issues. We will not be able to deal with any other health care issue for the remainder of this session.

Why? What is it about debating the health care issues which are of such fundamental importance to families in this country that we cannot get a debate on it? What is it, Mr. President? What does the Republican leadership fear about debating these issues on the floor of the U.S. Senate that are of central concern to every family in America? That is the question we ask.

And you know what our answer is? You know what our answer is, Mr. President? Our answer is that tomorrow at 10 o'clock we are going to vote on the IRS conference report. We are going to vote on cloture of the product liability bill. Are we then going to proceed to health care? No. We are instead going to have a 2-hour debate on agricultural sanctions. Then are we going to proceed to health care? No. We are instead going to the higher education reauthorization. With the higher education reauthorization, by prior agreement that was made many weeks ago, we are prohibited from offering any amendments. And then this week is finished. It is gone. Starting tomorrow, thirty-five more days are left in this session. This week is gone without any opportunity to debate this important issue.

I see members of the Republican leadership here. Maybe the Senator from Oklahoma can explain why we cannot debate health care issues on the floor of the U.S. Senate. We had the opportunity to have health care raised yesterday by the Senator from South Dakota. And here we have the Republican leadership agenda. The vote on the IRS conference report is important and we are going to vote on it.

But is the conference report on the IRS more important than the fact that tonight, across this country, insurance company agents are making decisions on health care that will imperil the health of families? Can we say that the IRS is more important? What about the vote on the product liability bill? Is that more important than this debate? The Republican leadership says that we're going to have a 2-hour debate on agricultural sanctions. And it goes on and on.

Mr. NICKLES. Will the Senator yield?

Mr. KENNEDY. Just let me make a brief comment because I was denied the opportunity last evening by the Republicans to have a conversation or ask questions last night. I will make a brief statement, and then I will yield.

Last night, my friend from the State of Washington said: ''Republicans will decide whether this great body is going to debate health care. I want to say that to the Senator from Massachusetts. Republicans will. They'll make the decision. Democrats won't. And we decided that because the Senator from South Dakota has raised this issue we are not going to permit a debate on this issue on the floor of the U.S. Senate.'' That is what they have said.

Mr. NICKLES. Will the Senator yield?

Mr. KENNEDY. The Republican leadership, in issuing their list of priorities about what we are going to consider during July and during September, has denied us the opportunity to debate the health care issue.

Mr. NICKLES. Will the Senator yield?

Mr. KENNEDY. In 1 more minute I will yield. It has been the Republican leadership who has denied us the opportunity to mark up this legislation in committee, to move it to the calendar, and to permit any certainty about when we would debate it. That is the record.

I will be glad to yield for a question to the Senator from Oklahoma.

Mr. NICKLES. Will the Senator yield? I appreciate——

Mr. KENNEDY. For a question.

Mr. NICKLES. I would like to rebut some of the things the Senator said.

Mr. KENNEDY. The Senator will have an opportunity to do so. I waited last night until after the Senator finished. But I will be glad to yield to respond to a question, if you have one, or I will continue.

Mr. NICKLES. Please continue. I will make the statement afterwards.

Mr. KENNEDY. Mr. President, in the area of the Patients' Bill of Rights, we have provisions supported by four different groups. One group is the President's Quality Commission. The Commission is made up of a number of extraordinary individuals from the insurance industry, from HMOs, from consumer groups. This is a bipartisan group that is universally respected.

Another group is the NAIC, which is the National Association of Insurance Commissioners. The NAIC includes both Republicans and Democrats alike across the country. A third group is the American Association of Health Plans, which is the trade organization of HMOs.

The PRESIDING OFFICER. The Senator's 15 minutes have expired.

Mr. KENNEDY. I ask unanimous consent for 10 more minutes.

The PRESIDING OFFICER. Is there objection?

Mr. NICKLES. Reserving the right to object, and I will not object. I would like to modify the Senator's request, that following his additional 10 minutes, I have 10 minutes to respond.

The PRESIDING OFFICER. Is there objection?

Without objection, it is so ordered.

Mr. KENNEDY. Thank you. And I yield 8 minutes to myself of the 10 minutes.

So we have provisions supported by these four organizations: Medicare; the National Association of Insurance Commissioners; the President's Quality Commission; and the American Association of Health Plans.

Now, we come to the provision regarding access to emergency care to permit individuals to go to the nearest emergency room. All four organizations agree with this. My time tonight is going to be short, so I will get back to this issue at another time when we debate it.

Another provision is access to specialty care, for example when a child has cancer and ought to be able to go to an oncologist. Oh this provision, we have support from three out of the four organizations. The President's Quality Commission, the HMO trade association, and Medicare all say yes.

For the direct access by women to OB-GYNs, the President's Quality Commission says yes.

Continuity of care allows an individual to be able to continue to get treatment by their doctor if the doctor is dropped from an HMO. This provision is effectively favored by all of the various groups.

What in these particular areas can our Republican friends complain about? Let us go on.

Coverage of an individual to participate in clinical trials is absolutely essential if we are going to get breakthroughs, particularly in breast cancer, and allow patients to take advantage of cutting-edge new technology. Access to clinical trials is supported by the American Association of Health Plans.

Provider networks need to ensure adequacy. If you are going to represent yourself as an HMO, all of these groups say you ought to have a balanced number of participating professionals and hospitals.

Nondiscrimination in delivery of services. You cannot discriminate against sick people and cannot discriminate in the delivery of health care by race or religion. Three out of the four groups agree with this provision.

Patients need information about copays, deductibles and standard information so they can make comparisons between different groups. Who can complain about this? All four groups support this provision.

Prohibition on gag rules. All four groups agreed with us on this position. You should not prevent doctors from being able to tell you what is in the best interest of your health.

Prohibition of improper incentive arrangements. Can you imagine we have to put legislate to prevent HMOs from putting the kind of improper incentives into their arrangements with the medical profession? It is extraordinary that we have to do this, but it is necessary.

Internal appeals to have a fair appeal in cases. All four groups agree on that.

The external appeals, to have a third party group. The President's Quality Commission recommends it and Medicare has been doing it for years.

And finally, to hold plans accountable in State courts. We had a vote here in the U.S. Senate the other day not to give blanket freedom of any kind of liability for the tobacco industry, and it passed by two-thirds to three-quarters of the U.S. Senate. We want to give the same kind of protections and accountability on the issues of health care. We will have a chance to debate that. If the Republicans don't want us to do that, then let's have a rollcall vote on that.

These are the essential aspects of the Patients' Bill of Rights. They have been taken from these four different organizations. Most of these items are supported by two, three, in many instances all four, of the different groups. This is a commonsense protection for the patients of this country. If Republicans differ with those kind of protections, let us stand up and debate them. Let us hear their alternative.

We have heard in the last few days that the right to hold plans accountable is going to drive the health care costs through the roof. Read in the Wall Street Journal today an article on a study by Coopers & Lybrand that showed it will only cost pennies a day for this protection. Don't just read the Journal article, but also look at what has happened to the 23 million Americans—most of them State and county officials—who have those kinds of protections, and look at the cost of their premiums. Their premiums are not any higher. This result is better than any study that can be done by the Chamber of Commerce or other group that is wholeheartedly opposed to this legislation.

These are the essential elements of the Patients' Bill of Rights, introduced by Senator DASCHLE. Perhaps they have to be altered, or maybe they ought to be strengthened, or maybe others in this body have better ideas to achieve these kinds of protections. But let us hear the opposition and the reasons for it. Let us hear the reasons. Let them advance those causes. But the silence is deafening. The American public deserve better.

The Republican leadership will have a chance to debate the issue, because Senator DASCHLE and others will continue to press it until we get a time to debate it. If that is wrong, so be it. Some of us are committed to protecting the American family, to make sure that doctors and nurses and patients are going to be making the health care decisions and not the insurance companies. That is the issue, plain and simple. We will challenge the Republican leadership tonight, tomorrow, and every other day for the 35 days remaining in this session, to give us a time to debate this issue.

It is interesting that the essence of this legislation is supported by Republicans in the House of Representatives, including Congressman GANSKE, who is a doctor and was at our press conference. Congressman GANSKE didn't believe this ought to be a partisan issue. Dr. NORWOOD, a Republican, didn't believe this ought to be a partisan issue. But here in the U.S. Senate, the Republicans are making this a partisan issue. Here in the U.S. Senate we are told: No, not only you won't have any one of us support it, but we won't even give you the time to debate it. That is wrong.

How much time remains?

The PRESIDING OFFICER (Mr. BROWNBACK). The Senator has used his 8 minutes.

Mr. KENNEDY. I yield myself the last 2 minutes.

In summary, the Patients' Bill of Rights guarantees the access to specialists, emergency rooms, and other needed care. It expands choices. It ensures independent appeals. It holds plans accountable for the medical decisions, restores doctor-patient relationship, establishes quality and information standards.

The American people are entitled to these rights in their health care. Children in this country are entitled to them. Senior citizens in the country are entitled to them. Hard-working men and women in this country are entitled to them. Doctors are entitled to the kind of protections we provide. The major insurance companies and HMOs should be held to a standard like every other industry in this country.

If that is wrong, let's call the roll and find out who believes in it and who does not.

I yield the floor.

The PRESIDING OFFICER. The Senator from Oklahoma.

Mr. NICKLES. I will respond to a couple of comments made by my colleague and friend from Massachusetts.

One, he is absolutely, totally, completely wrong on many of the statements that he made, particularly in saying the Republican leadership wouldn't allow this bill to come to the floor, allow a debate to happen on the floor of the Senate on health care. As the Senator should be aware, we have already made a couple of offers that we would try to accommodate some type of time agreement to bring up this issue this month. We are still working on it.

My colleague was absolutely incorrect when he said the Republicans were insisting that, if we win, we can still put this bill back on the calendar. That wasn't our request. That wasn't our statement. It is not our last request.

I am reading the unanimous consent request given on June 25 or 26 which said votes held on final passage—if read the third time, the Senate votes on passage of the bill without any intervening action or debate. The Senate will request a conference with the House, the chair will be authorized to appoint conferees, and the Senate-House care bill will be placed on the calendar.

I make those points. We are willing to have debate on the bill. We are willing to consider different options—both the House and the Senate, the proposal by my friend and colleague from Massachusetts, as well as the substitute that I am working on with some of our other colleagues.

We will have a debate on the floor. We are willing to work out a time agreement to where we will have it this month. We don't intend to spend 2 months on this bill or even 1 month on this bill, but we are willing to have a debate on health care legislation. It goes under the title of Patients' Bill of Rights. I happen to think that is a very good title.

I might also mention that the President's Commission on Health Care Quality came up with a lot of recommendations. They have several things that they recommend be included in all health care plans, but they said they should be included voluntarily. I might mention that the bill that our colleague from Massachusetts is promoting mandates; it doesn't have voluntary compliance. It mandates a lot of things that aren't included in the President's Commission—many things. And many of those things have a lot of cost. We have asked the Congressional Budget Office to give us cost estimates of Senator KENNEDY's bill, the Patients' Bill of Rights, and we don't have that. I hope we can get it before we commence debate.

We have stated, and I just want to repeat to all of our colleagues, we are willing to discuss this issue. We are willing to have time on the Democrats' alternative. I might mention, the Democrats' alternative, I believe, to my knowledge, no Republican in the Senate has cosponsored, nor should they, because I think it is a bad bill. I think it definitely would increase consumer cost, drive up the cost of health care insurance, the cost of health care, period, and the net result would be, fewer people would have health care. I don't think that is a result that we want to have. I am willing to say that I am willing to work to try to come up with a package that we can support.

I see my friend and colleague from Florida. Maybe we can come up with a bipartisan package. I am willing to do that. I know the Senator from Florida has met with other Senators in a bipartisan way to see if we can come up with items that will make sense, that will not have dramatic increases in consumer cost, in health care cost, but try to see if we can't work out some things to help cover some of the problems that have arisen with managed care. I am willing to do that. I am not one who says we don't need any legislation whatever. Some people have taken that position. That is not this Senator's position. I am willing to try to legislate responsibly in health care. I don't want to do something we will find out will do damage, like how significant health care cost increases affect our consumers. I don't think they are asking for increased health care costs. I don't think that would be helpful.

So I will repeat to my colleague from Massachusetts and other Senators on the floor—and I know, because I have talked to the majority leader day in and day out—we are working on trying to come up with an arrangement where we will have adequate time, but not an unlimited amount of time, to consider health care legislation—maybe under the guise of the Patients' Bill of Rights—and to allow a couple different alternatives. My colleague from Massachusetts has an alternative; he has a proposal. Some of us are working on a different proposal. There may be some of those things in common. But certainly there will be very significant differences—big differences, philosophically, in cost, in premium increases, and so we need to discuss those.

We need to have an adequate time to discuss those and to consider the different alternatives and then to have a vote. We expect to do so. We don't expect to change the rules of the Senate. We don't expect to guarantee that one side or the other side will have a victory in the process, but we have stated—and, again, as assistant majority leader, I am telling our colleagues on the Democrat side of the aisle that we are willing to try to work out an arrangement, and we will have adequate time to discuss this issue on the floor this month. I think that is fair enough.

The majority leader has been fair. What we are not willing to do is stop the Senate from doing any work. So, yes, we are going to pass IRS reform and we are going to pass it tomorrow. I think it is a giant step in the right direction. Yes, we are going to take up higher education reform, and we need to do that. It is very important to colleges, universities, and students all across the country. That needs to happen. Yes, we need to pass appropriations bills. I think it was very unfortunate that the minority leader of the Senate introduced the Patients' Bill of Rights on the VA-HUD bill, the veterans and housing appropriations bill. It doesn't belong there. He knows that. We have already indicated a willingness and a commitment to bring up the so-called Patients' Bill of Rights this month. Someone might say, wait a minute, you have not passed the tobacco bill. We spent 4 weeks on the tobacco bill. They didn't win. I believe they are not going to win on the Patients' Bill of Rights.

Senator KENNEDY said, ''We are going to bring up minimum wage.'' They have that right. But they don't have a right to have their agenda totally dominate the Senate. The Senate needs to do its work. We will consider some of their issues and some of ours, like IRS reform. We are going to take that up, and, hopefully, we will pass that tomorrow.

So I mention to all of our colleagues that I want them to be aware of the fact that we are trying to be fair, we will be fair, and we will consider this issue. We will have different alternatives—I think significantly different alternatives. I believe the alternative that the Republicans will be offering will be in stark contrast to the Democrats'. Maybe some things will be in common. We are going to offer greater choice and opportunity and competition. Hopefully, that will help change buyer behavior and get health care costs down, instead of the increases that would be achieved by Senator KENNEDY's proposal.

So there will be differences. But that is fine, that is good, that is legitimate. We will have that debate, and we will have adequate time for that. But it can't consume 2 months. It will probably consume 2 or 3 days. The Senate needs to decide what it wants to do. I expect that we will.

So I make that commitment to our colleagues. This is going to be a busy month. We need to pass a lot of appropriations bills. We have a couple appropriations bills we are working on right now that, unfortunately, people have tried to load up with bills that are extraneous, like the tobacco amendment on the agriculture appropriations bill or the Patients' Bill of Rights on the VA–HUD bill. That is not acceptable. It is not going anywhere. It may be good for political posturing, but it is not going to help pass their legislation. We have committed to bring up the legislation in due time this month, have adequate debate and consideration of a couple of different alternatives, and go from there. So I make that commitment to our colleagues. I think we should lower the rhetoric and the volume it has had and see if we can't work together in a bipartisan way to make some positive improvements in health care legislation.

Mr. President, I thank my colleague from Florida. I know he had a unanimous consent request to speak. I didn't mean to delay him. I apologize for interjecting, but I did think it was important to respond to the Senator from Massachusetts for his comments. I appreciate the accommodation.

I yield the floor.

Mr. GRAHAM addressed the Chair.

The PRESIDING OFFICER. The Senator from Florida is recognized.

Mr. GRAHAM. Mr. President, I thank my colleague from Oklahoma and my colleague from Massachusetts for a very interesting, exciting debate which, from the comments of the Senator from Oklahoma, will be a teaser to a future debate that we will look forward to having on these issues in the next few days.

Mr. NICKLES. I thank my colleague.

(The remarks of Mr. GRAHAM pertaining to the introduction of S. 2278 are located in today's RECORD under ''Statements on Introduced Bills and Joint Resolutions.'')

Mr. GORTON addressed the Chair.

The PRESIDING OFFICER. The Senator from Washington.

## THE PEOPLE OF TAIWAN

Mr. GORTON. Mr. President, yesterday the majority leader of the Senate, Senator LOTT, the senior Senator from New Jersey, Mr. TORRICELLI, and a number of other Senators, myself included, introduced a resolution reaffirming our commitment to the right of self-determination on the part of the people of the Republic of China on Taiwan. We did so in shock at the seeming abandonment of those people by the President of the United States on his trip to mainland China. The resolution was referred to the Foreign Relations Committee, and I hope will be reported back favorably and promptly for debate and passage by the Senate of the United States.

For decades it has been the policy of the United States to call for all of the relationships between the people and government on Taiwan and the People's Republic of China to be peaceful. It has been our policy that the people of Taiwan should be permitted to determine their own future, much of which has now been undercut by President Clinton's overwhelming desire for approval on the part of a still Communist dictatorship in mainland China.

In fact, Mr. President, on his trip to China and in the policies immediately preceding that trip, the President of the United States has managed to impose sanctions on the world's most populous democracy, India, for its natural reaction to our assistance to the missile capabilities of the People's Republic of China; has managed to impose sanctions on Pakistan which is greatly harmful to the economy of the United States because of Pakistan's natural reaction to India's nuclear test; has insulted and weakened the people of Japan, a long-time and vitally important democratic ally of the United States, by a refusal to visit Japan on this trip to East Asia; and has undercut one of the most vital democracies anywhere in the world, and particularly East Asia on Taiwan.

As the Washington Post's editors wrote on July 2, and I quote:

> Mr. Clinton has sided with the dictators against the democrats.

It seems vital to me that we should reaffirm our commitment to the rights of self-determination on the part of the people of Taiwan, and encourage them on the successful path they have now traveled for almost half a century.

Mr. President, at the end of the Chinese civil war, when the nationalists were left only with an outpost on Taiwan, a group of Chinese began a separate existence with almost no promise of a bright future, poverty stricken on an island that had just emerged from half a century of Japanese imperialism, threatened by the overwhelming armed force of mainland China, without natural resources, with nothing to sustain them but the brilliance and dedication and the hard-working nature of the Chinese people on Taiwan, and an absolute commitment to their own freedom.

They have been perhaps the most successful example of what can happen to a people who are dedicated to the ideals that have moved the United States since its founding.

On Taiwan, the Chinese people first created a magnificently successful economy—an economy so successful that to this day they purchase more American goods and services than does all of mainland China, and following immediately upon that economic success the creation of a life and vibrant democratic system of government. Where under such threat in the entire world do we see anything remotely similar? Perhaps in Israel, perhaps in Israel under a similar threat from the outside, but I think, Mr. President, nowhere else in the world have we seen such a magnificent success in the building of a free and successful economy and a free and successful democracy.

It seems to me, Mr. President, that it should be our policy in the future that we laud and support that degree of success, that we encourage the Chinese on the mainland to follow that example rather than impliedly tell the people in Taiwan they must follow the example of the mainland.

We as Americans simply cannot abandon those free people on Taiwan. We must clearly indicate to mainland China that it cannot attempt to solve its differences with them by the use of force. We must clearly indicate to mainland China that the people of Taiwan must be in charge of determining their own future. We can, of course, hope for one China, but a one China that has institutions and is created in a fashion that respects the views, the desire for continued freedom, on the part of the people of Taiwan.

How it is that we have managed because of deterioration in our relationship with four democratic nations in east and south Asia without gaining anything of substance, of any real substance in our relationship with China, is beyond my power to explain. But at this point a mild resolution totally consistent with the Taiwan Relations Act passed by this Senate, reaffirming our support for the freedom and rights of self-determination of the people of Taiwan, is, I believe, the minimum we can do to make up for the disastrous remarks of President Clinton on his trip to China.

I repeat, I hope that the Foreign Relations Committee will report this bipartisan resolution promptly, that it will be passed by both the Senate and the House of Representatives. Only in that fashion can we show our dedication for the cause of a country that has followed our leadership, adopted our ideals, and deserves our support.

## ADJOURNMENT UNTIL 9 A.M. TOMORROW

The PRESIDING OFFICER. Under the previous order, the Senate stands in adjournment until 9 a.m. tomorrow morning.

Thereupon, at 7:31 p.m., the Senate adjourned until 9 a.m. Thursday, July 9, 1998, at 9 a.m.