United States of America

Congressional Record

PROCEEDINGS AND DEBATES OF THE 105th CONGRESS, SECOND SESSION

Vol. 144 WASHINGTON, MONDAY, SEPTEMBER 28, 1998 No. 132

Senate

The Senate met at 12 noon 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, You replenish our diminished strength with a fresh flow of energy and resiliency. The tightly wound springs of tension within us are released and unwind until there is a profound peace inside. We relinquish our worries to You and our anxiety drains away. We take courage because You have taken hold of us. Now we know that courage is fear that has said its prayers. We spread out before You the challenges of the week ahead and see them in the proper perspective of Your power. We dedicate ourselves to do things Your way under Your sway. And now, we are filled with Your joy which is so much more than happiness. We press on to the work of this week with enthusiasm. It's great to be alive! In the Name of our Lord and Saviour. Amen.

RECOGNITION OF THE ACTING MAJORITY LEADER

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

Mr. KYL. Thank you, Mr. President.

SCHEDULE

Mr. KYL. Mr. President, for the benefit of all Members, I would like to announce that there will be a period of morning business today until 2 p.m. Following morning business, the motion to proceed to the Internet tax bill will be the pending business. Members are encouraged to come to the floor to discuss the important issue of Internet tax.

At 3:30 p.m., under the previous order, the Senate will resume consideration of the so-called Vacancies Act for debate only until 5:30 p.m. Following that debate, the Senate will proceed to a cloture vote on the vacancies bill. Therefore, the first vote of today's session will occur at 5:30 p.m. Following that vote, the Senate may consider any other legislative or executive items cleared for action. Members are reminded that second-degree amendments to the vacancies bill must be filed by 4:30 p.m. today.

Mr. President, I now ask unanimous consent that Senators FEINSTEIN and KYL control the time during morning business from 12:45 until 1:30 p.m.

The PRESIDENT pro tempore. Without objection, it is so ordered.

Mr. KYL. I thank my colleagues for their attention.

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

The PRESIDENT pro tempore. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

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

The PRESIDING OFFICER (Mr. KYL). Without objection, it is so ordered. The Senator from New Mexico is recognized.

PRIVILEGE OF THE FLOOR

Mr. BINGAMAN. Mr. President, I ask unanimous consent that floor privileges be granted to Dr. Ken Whang, of the staff of the Joint Economic Committee, during morning business today.

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

MORNING BUSINESS

The PRESIDING OFFICER. Under the previous order, there will now be a period for the transaction of morning business not to extend beyond the hour of 2 p.m. with Senators permitted to speak for up to 5 minutes each.

ORDER OF PROCEDURE

Mr. BINGAMAN. Mr. President, I ask unanimous consent that I be allowed to speak for up to 10 minutes.

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

R&D TAX CREDIT

Mr. BINGAMAN. Mr. President, both the House and the Senate are working on what is likely to be a final tax bill for this Congress. As we go about considering tax bills, I hope my colleagues on both sides of the aisle will be thinking about the long-term economic effects of the legislation.

Let me start, of course, by making a distinction that should be obvious to all of us who work around here. That is the distinction between tax bills that are paid for and tax bills that are not paid for and that instead obtain the revenue for the tax cuts from the surplus that we anticipate.

I agree with the President that if we do a tax bill this year—and I hope we are able to do a tax bill—that we will pay for the tax bill, that we take whatever revenue is required to make those cuts in taxes, and that we will find revenue in the current budget with which to do that.

I do not think the American people want us to go ahead and begin to spend an anticipated surplus which we have not even realized as yet. Unfortunately, some of the tax proposals—particularly the one passed by the House on Saturday—have that very major defect.

But let me get back to the primary subject of my comments, which is that if we pass tax legislation we need to be thinking about the long-term economic effects of such legislation. Will such bills enhance our economy by promoting sound investments and sustained future economic growth? Or, instead, will they threaten our projected budget surplus and Social Security without

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

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really doing anything for the future economic well-being of the country?

I raise these questions because there is one crucial element of our Tax Code, more than any other provision in the code, that is directed at our future economic growth. In all the discussions of taxes that have occurred over the past few months, that provision appears to have been given very short shrift. I am referring to the research and experimentation tax credit, commonly called the R&D tax credit, which is slated for yet another minimal, temporary extension, the way tax bills seem to be evolving here today.

As I am sure most of my colleagues are well aware, investment in research and development is the single largest contributing factor to our past, present and future economic growth. In an economy that is increasingly knowledge-based and increasingly globalized, it is also an important factor in the competitiveness of American industry. Research leads to improved productivity, economic growth, better jobs and new technologies—technologies that have spawned entire new industries and revolutionized the way people do business around the world. But our research tax policy has not been keeping pace with today's economic realities.

Research investment is of greater and greater importance to American industry. But the on-again-off-again research credit is becoming less and less certain. It was allowed to expire for the ninth time this past June, and is slated for a renewal for less than 2 years.

Research is being done by large and small businesses in a growing variety of different industries. The way that the credit is currently structured, some companies derive incentive value from it, but others, even though they may be making identical research investments, do not get value.

Research is also being done increasingly in partnerships. Without partnerships between industry and Federal laboratories, we would never have created the Internet. Without collaborations between independent industry and universities, we would never have biotech. Without alliances among large and small firms, and in broad-based research consortia, we would not be seeing the efficiency gains in our manufacturing base that have been bridging the benefits of technological advances to every corner of our economy. But the research credit, as it is currently structured, does little, if anything, to encourage these partnerships.

Research is changing. It is important to American business. Its importance to American business is growing. Yet, our policy is stuck in an outdated status quo.

We have an R&D tax credit that is complicated and difficult for many companies—especially small companies—to use. We have an R&D tax credit that offers almost no incentive—less than three cents per additional dollar of research investment—for many of our, historically, most innovative research-intensive companies. We have an R&D tax credit that does nothing to encourage the interchange of ideas between industry and our great universities, Federal laboratories and other companies. We have an R&D tax credit that cannot even be relied upon as an incentive that will last for more than 1 or 2 years at a time. So the obvious question is: What kind of a commitment is this to America's economic future?

The U.S. Senate has an opportunity, as we consider tax legislation in the remaining days of this Congress, to move beyond this sorry status quo. Improvements to our research tax policy could not come at a more critical time—while our economy and our Federal finances are in good order but as we look with some anxiety toward prospects for continued prosperity.

I introduced legislation this summer—Senate bill 2268—to improve the research credit. As the ranking member of the Joint Economic Committee, I then organized a workshop in conjunction with the Senate Science and Technology Caucus on the topic of R&D tax credits. That workshop received the views of a broad range of experts from government, industry and universities who have studied the problems of the current R&D tax credit, and have proposed changes to make it more effective.

Invitations to attend the workshop on the tax issues were sent to legislative assistants from every Member in the Senate. As a result of that workshop, and the input that I have received from other experts in research groups and small businesses, I have developed an improved research and development tax credit proposal that adds to Senate bill 2268 provisions that will make the bill even more effective in stimulating partnerships through public-benefit research consortia, and that will provide small, high-tech businesses with tax credits for patent filing so that small businesses can more effectively defend their inventions, both here and abroad.

Mr. President, I ask unanimous consent that the text of this new proposal be printed in the RECORD following my remarks.

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

(See Exhibit 1.)

Mr. BINGAMAN. Some of my colleagues will undoubtedly be concerned about the cost of improving and making permanent the R&D tax credit, even though improvements like those in S. 2268 are long overdue. But I think there is an even more important cost to consider. What will it cost us if we don't improve the R&D tax credit?

Limiting an extension of the R&D tax credit to 20 months, as has been proposed in some of the legislation working its way through Congress, just because of the budgetary scoring consequences, and with full knowledge that we will be back in 20 months with another temporary extension that will also be limited by scoring considerations, is a false economy. The long-term revenue cost to the Treasury of ten one-year extensions of the credit, or five two-year extensions, or one ten-year extension are all the same. We are kidding ourselves if we think we were really saving any money by continuing with these piecemeal, temporary extensions. In fact, this scoring-driven strategy of repeated short-term extensions is worse than a fiscal parlor-trick. It is irresponsible public policy. Why? Because the unpredictable, on-off nature of the short-term extensions keeps America from fully realizing the long-term investments that a R&D tax credit should produce. Thus, we are failing to maximize the public benefits of the tax credit, we are reducing the degree to which it can stimulate research and invigorate our economy, and we are losing future tax revenues that would come from R&D-driven economic growth.

Our current policy, of piecemeal extension of an archaic, decreasingly effective tax structure, has gone on for 17 years now—a little longer than I have served in the Senate—and I am not the first to propose that we take a better approach. My colleague, the senior Senator from New Mexico, has proposed similar improvements to the R&D tax credit. Improving and making permanent the R&D tax credit should be a bipartisan cause. When the Senate considers tax legislation, I look forward to working on this issue with all of my colleagues who care about our economic future, and I urge the members of this body to treat research and development as an urgent priority in our upcoming deliberations.

EXHIBIT 1

SEC. 1. PERMANENT EXTENSION OF RESEARCH CREDIT.

(a) IN GENERAL.—Section 41 of the Internal Revenue Code of 1986 (relating to credit for increasing research activities) is amended by striking subsection (h).

(b) CONFORMING AMENDMENT.—Section 45C(b)(1) of the Internal Revenue Code of 1986 is amended by striking subparagraph (D).

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to amounts paid or incurred after June 30, 1998.

SEC. 2. IMPROVED ALTERNATIVE INCREMENTAL CREDIT.

(a) IN GENERAL.—Section 41 of the Internal Revenue Code of 1986 (as amended by section ____1) is amended by adding at the end the following new subsection:

''(h) ELECTION OF ALTERNATIVE INCREMENTAL CREDIT.—

''(1) IN GENERAL.—At the election of the taxpayer, the credit under subsection (a)(1) shall be determined under this subsection by taking into account the modifications provided by this subsection.

''(2) DETERMINATION OF BASE AMOUNT.—

''(A) IN GENERAL.—In computing the base amount under subsection (c)—

''(i) notwithstanding subsection (c)(3), the fixed-base percentage shall be equal to 85 percent of the percentage which the aggregate qualified research expenses of the taxpayer for the base period is of the aggregate gross receipts of the taxpayer for the base period, and

''(ii) the minimum base amount under subsection (c)(2) shall not apply.

''(B) START-UP AND SMALL TAXPAYERS.—In computing the base amount under subsection (c), the gross receipts of a taxpayer for any taxable year in the base period shall be treated as at least equal to $1,000,000.

''(C) BASE PERIOD.—For purposes of this subsection, the base period is the 6-taxable year period preceding the taxable year (or, if shorter, the period the taxpayer (and any predecessor) has been in existence).

''(3) QUALIFIED RESEARCH.—

''(A) IN GENERAL.—Notwithstanding subsection (d), the term 'qualified research' means research with respect to which expenditures are treated as research and development costs for the purposes of a report or statement concerning such taxable year—

''(i) to shareholders, partners, or other proprietors, or to beneficiaries, or

''(ii) for credit purposes.

Such term shall not include any research described in subparagraph (F) or (H) of subsection (d)(4).

''(B) FINANCIAL ACCOUNTING STANDARDS.—

''(i) IN GENERAL.—Subparagraph (A) shall only apply to the extent that the treatment of expenditures as research and development costs is consistent with the Statement of Financial Accounting Standards No. 2 Accounting for Research and Development Costs.

''(ii) SIGNIFICANT CHANGES.—If the Secretary determines that there is any significant change in the accounting standards described in clause (i) after the date of enactment of this subsection—

''(I) the Secretary shall notify the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate of such change, and

''(II) such change shall not be taken into account for any taxable year beginning before the date which is 1 year after the date of notice under subclause (I).

''(C) TRANSITION RULE.—At the election of the taxpayer, this paragraph shall not apply in computing the base amount for any taxable year in the base period beginning before January 1, 1999.

''(4) ELECTION.—An election under this subsection shall apply to the taxable year for which made and all succeeding taxable years unless revoked with the consent of the Secretary.''

(b) CONFORMING AMENDMENT.—Section 41(c) of the Internal Revenue Code of 1986 is amended by striking paragraph (4) and redesignating paragraphs (5) and (6) as paragraphs (4) and (5), respectively.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning after December 31, 1998.

SEC. 3. MODIFICATIONS TO CREDIT FOR BASIC RESEARCH.

(a) ELIMINATION OF INCREMENTAL REQUIREMENT.—

(1) IN GENERAL.—Paragraph (1) of section 41(e) of the Internal Revenue Code of 1986 is amended to read as follows:

''(1) IN GENERAL.—The amount of basic research payments taken into account under subsection (a)(2) shall be determined in accordance with this subsection.''.

(2) CONFORMING AMENDMENTS.—

(A) Section 41(a)(2) of such Code is amended by striking ''determined under subsection (e)(1)(A)'' and inserting ''for the taxable year''.

(B) Section 41(e) of such Code is amended by striking paragraphs (3), (4), and (5) and by redesignating paragraphs (6) and (7) as paragraphs (3) and (4), respectively.

(C) Section 41(e)(4) of such Code (as redesignated) is amended by striking subparagraph (B) and by redesignating subparagraphs (C), (D), and (E) as subparagraphs (B), (C), and (D), respectively.

(D) Clause (i) of section 170(e)(4)(B) of such Code is amended by striking ''section 41(e)(6)'' and inserting ''section 41(e)(3)''.

(b) BASIC RESEARCH.—

(1) SPECIFIC COMMERCIAL OBJECTIVE.—Section 41(e)(4) of the Internal Revenue Code of 1986 (relating to definitions and special rules) is amended by adding at the end the following new subparagraph:

''(F) SPECIFIC COMMERCIAL OBJECTIVE.—For purposes of subparagraph (A), research shall not be treated as having a specific commercial objective if all results of such research are to be published in such a manner as to be available to the general public prior to their use for a commercial purpose.''

(2) EXCLUSIONS FROM BASIC RESEARCH.—Section 41(e)(4)(A) of the Internal Revenue Code of 1986 (as redesignated by subsection (a)) is amended by striking clause (ii) and inserting the following:

''(ii) basic research in the arts or humanities.''

(c) EXPANSION OF CREDIT TO RESEARCH AT FEDERAL LABORATORIES.—Section 41(e)(3) of the Internal Revenue Code of 1986 (as redesignated by subsection (a)(2)(C) of this section) is amended by adding at the end the following new subparagraph:

''(E) FEDERAL LABORATORIES.—Any organization which is a federal laboratory within the meaning of that term in section 4(6) of the Stevenson-Wydler Technology Innovation Act of 1980 (15 U.S.C. 3703(6)).''

(d) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning after December 31, 1998.

SEC. 4. CREDIT FOR EXPENSES ATTRIBUTABLE TO CERTAIN COLLABORATIVE RESEARCH CONSORTIA.

(a) CREDIT FOR EXPENSES ATTRIBUTABLE TO CERTAIN COLLABORATIVE RESEARCH CONSORTIA.—Subsection (a) of section 41 of the Internal Revenue Code of 1986 (relating to credit for increasing research activities) is amended by striking ''and'' at the end of paragraph (1), by striking the period at the end of paragraph (2) and inserting '', and'', and by adding at the end the following new paragraph:

''(3) 20 percent of the amounts paid or incurred during the taxable year (including as contributions) to a qualified research consortium.''

(b) QUALIFIED RESEARCH CONSORTIUM DEFINED.—Subsection (f) of such Code is amended by adding at the end the following new paragraph:

''(6) QUALIFIED RESEARCH CONSORTIUM.—The term 'qualified research consortium' means any organization which—

''(A) either—

''(i) is described in section 501(c)(3) and is exempt from taxation under section 501(a) and is organized and operated primarily to conduct scientific or engineering research; or

''(ii) is organized and operated primarily to conduct scientific or engineering research in the public interest (within the meaning of section 501(c)(3));

''(B) is not a private foundation;

''(C) to which at least 5 unrelated persons paid or incurred (including as contributions), during the calendar year in which the taxable year of the organization begins, amounts to such organization for scientific or engineering research; and

''(D) to which no single person paid or incurred (including as contributions) during such calendar year more than 50 percent of the total amounts received by such organization during such calendar year for scientific or engineering research.

All persons treated as a single employer under subsection (a) or (b) of section 52 shall be treated as related persons for purposes of subparagraphs (C), and as a single person for purposes of subparagraph (D).''

(c) CONFORMING AMENDMENT.—Paragraph (3) of section 41(b) of such Code is amended by striking subparagraph (C).

(d) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning after December 31, 1998.

SEC. 5. IMPROVEMENT TO CREDIT FOR SMALL BUSINESSES.

(a) ASSISTANCE TO SMALL AND START-UP BUSINESSES.—The Secretary of the Treasury or his delegate shall take such actions as are appropriate to—

(1) provide assistance to small and start-up businesses in complying with the requirements of section 41 of the Internal Revenue Code of 1986, and

(2) reduce the costs of such compliance.

(b) REPEAL OF LIMITATION ON CONTRACT RESEARCH EXPENSES PAID OR INCURRED TO SMALL BUSINESSES.—Section 41(b)(3) of the Internal Revenue Code of 1986 (as amended by section 4) is amended by adding at the end the following new subparagraph:

''(C) PAYMENTS TO ELIGIBLE SMALL BUSINESSES.—

''(i) IN GENERAL.—Subparagraph (A) shall be applied by substituting '100 percent' for '65 percent' with respect to amounts paid or incurred by the taxpayer to an eligible small business.

''(ii) ELIGIBLE SMALL BUSINESS.—For purposes of this subparagraph, the term 'eligible small business' means a small business with respect to which the taxpayer does not own (or is not considered as owning within the meaning of section 318) 50 percent or more—

''(I) if the small business is a corporation, of the outstanding stock of the corporation (either by vote or value), and

''(II) if the small business is not a corporation, of the capital or profits interest in the small business.

''(iii) SMALL BUSINESS.—For purposes of this subparagraph—

''(I) IN GENERAL.—The term 'small business' means, with respect to any calendar year, any person if such person employed an average of 500 or fewer employees on business days during either of the 2 preceding calendar years. For purposes of the preceding sentence, a preceding calendar year may be taken into account only if the person was in existence throughout the year.

''(II) STARTUPS, CONTROLLED GROUPS, AND PREDECESSORS.—Rules similar to the rules of subparagraphs (B) and (D) of section 220(c)(4) shall apply for purposes of this clause.''

(c) CREDIT FOR PATENT FILING FEES.—Section 41(a) of the Internal Revenue Code of 1986 (as amended by section 4) is amended by striking ''and'' at the end of paragraph (2), by striking the period at the end of paragraph (3) and inserting '', and'', and by adding at the end the following new paragraph:

''(4) 20 percent of the patent filing fees paid by a small business (as defined in subsection (b)(3)(C)(iii)) to the United States or to any foreign government.''

(d) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning after December 31, 1998.

Mr. President, I yield the floor and I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

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

The PRESIDING OFFICER (Mrs. HUTCHISON). Without objection, it is so ordered.

VICTIMS' RIGHTS

Mr. KYL. Madam President, Senator FEINSTEIN and I have been granted time in this period of morning business to discuss a matter that we began working on about 2½ years ago, and we wanted to give a report to you, to the Members of the U.S. Senate, and, frankly, to all Americans who are interested in the subject of victims' rights.

In April of 1996, during National Victims' Rights Week, along with Representative HENRY HYDE, chairman of the House Judiciary Committee, we introduced a Federal constitutional amendment to guarantee certain rights, fundamental constitutional rights, to all victims of violent crime. Since that time, we have worked with victims' rights groups across the country, with law enforcement officials, with our colleagues in the House of Representatives and here in the Senate, of course, with the Department of Justice, the Attorney General, and even the President of the United States, to craft an amendment that could gain acceptance in the two legislative bodies, and then be adopted by the people of the United States as an amendment to the Constitution. We have come a long way since that time.

I want to take this time to join with Senator FEINSTEIN in giving a brief report about our progress, with the conclusion that we are not going to be presenting this amendment at this late date in this session of the Congress, but that we do hope to have a vote on this amendment in the U.S. Senate early next year.

I want to begin by thanking my colleague, Senator FEINSTEIN from California. She has been an extraordinarily important proponent of crime victims' rights around the country; therefore, it was important for her to be one of the prime sponsors of this constitutional amendment. Her experience brought to bear on the subject made it much easier for people to join with us in the effort, and the work she had done with victims' rights groups before we introduced the amendment was important in galvanizing the support of those groups around the country to support this amendment and to work on the versions of it as we had to hone the language to meet the objections and concerns of various people around the country. I want to thank her also for her patience in working with me and her willingness to spend many, many long hours in working out the details of this amendment and meeting with various groups, trying to gather support among both the outside groups and our colleagues that would guarantee passage of the amendment.

In the final version that passed the Senate Judiciary Committee in July of this year by a bipartisan vote of 11–6, we had sponsorship by 30 Republicans and 12 Democrats. You can see by this bipartisan vote of 11–6 it required cooperation of Republicans and Democrats to move this matter forward. So there is nothing partisan about the matter of victims' rights.

I mentioned the fact that we had over 60 drafts of this amendment. What that demonstrates I think is that Senator FEINSTEIN and I have been willing to meet with anyone at any time to hear their concerns, and objections in some cases, about what we are trying to do in specifics. We have been able to mold an amendment which meets their concerns to the extent that we have this strong, strong support.

I note that in a brand new publication from the Department of Justice called ''New Directions From the Field: Victims' Rights and Services for the 21st Century,'' hot off the press, the very first recommendation of this report from the Department of Justice is that victims' rights should be embodied in an amendment to the U.S. Constitution.

I would like to read from this report for a moment, if I might, because this is recommendation from the field No. 1.

> The United States Constitution should be amended to guarantee fundamental rights for victims of crime.

What are these rights? They are the same ones that Senator FEINSTEIN and I propose in our amendment.

> Constitutionally protected rights should include the right to notice of public court proceedings and to attend them; to make a statement to the court about bail, sentencing, and accepting a plea; to be told about, to attend, and to speak at parole hearings; to notice when the defendant or convict escapes, is released, or dies; to an order of restitution from the convicted offender; to a disposition free from unreasonable delay; to consideration for the safety of the victim in determining any release from custody; to notice of these rights; and to standing to enforce them.

I would like to read on from this report the reasons stated for the conclusion that we need a Federal constitutional amendment, because these reasons summarize a great deal of testimony that we heard in the hearings we held which demonstrated that mere State statutes, or State constitutional provisions, are not adequate to provide a uniform floor of rights for all victims of serious crime in the United States.

Here is what this report goes on to say:

> A federal constitutional amendment for victims' rights is needed for many different reasons, including: (1) to establish a consistent ''floor of rights'' for crime victims in every state and at the federal level; (2) to ensure that courts engage in a careful and conscientious balancing of the rights of victims and defendants; (3) to guarantee crime victims the opportunity to participate in proceedings related to crimes against them; and (4) to enhance the participation of victims in the criminal justice process.

The report goes on to say:

> A victims' rights constitutional amendment is the only legal measure strong enough to rectify the current inconsistencies in victims' rights laws that vary significantly from jurisdiction to jurisdiction on the state and federal levels. Such an amendment would ensure that rights for victims are on the same level as the fundamental rights of accused and convicted offenders. Most supporters believe that it is the only legal measure strong enough to ensure that the rights of victims are fully enforced across the country. They also believe, however, that the efforts to secure passage of a federal constitutional amendment for crime victims' rights should not supplant legislative initiatives at the state and federal level.
>
> Granting victims of crime the ability to participate in the justice system is exactly the type of participatory right the Constitution is designed to protect and has been amended to permanently ensure. Such rights include the right to vote on an equal basis and the right to be heard when the government deprives one of life, liberty, or property.

Madam President, hot off the press from the Department of Justice, the No. 1 recommendation is a Federal constitutional amendment to do the things that the amendment which Senator FEINSTEIN and I have introduced would do for crime victims around this country.

I know Senator FEINSTEIN is going to talk for a moment about how the scales of justice are imbalanced, and what our amendment is intended to do is right that imbalance between the legitimate rights of the accused on the one hand and the legitimate rights of victims on the other hand.

Let me get to the bottom line for those who have been wondering what the status of this amendment is and where we are going to go from here.

In July, as I said, the Senate Judiciary Committee passed out on a bipartisan basis, 11 to 6, the latest version of the amendment that Senator FEINSTEIN and I have proposed. As noted, it has some 42 cosponsors. Since that time, we have sought to obtain floor time to debate and eventually vote on our constitutional amendment.

Madam President, as you are aware, it has been very difficult, in the waning weeks of this congressional session, to get floor time to take up even the most mundane of bills, because the Senate is very much concentrated on getting the appropriations bills passed so that we can fund the Government for the next year. And, of course, with the campaign coming up, leaders are very definitely committed to an adjournment date of around October 9 or 10.

Senator FEINSTEIN and I conferred with the various leaders of the victims' rights movement and with our colleagues to determine what the best course of action would be. We understood that for something as important as amending the Constitution, we wanted to do it right. The last thing that Senator FEINSTEIN or I would ever do is to try to hurry an amendment to the U.S. Constitution, to try to push this through without an adequate debate, without giving everyone an opportunity to have their say.

As I said, we have made changes to the extent of 62 different drafts, which I think establish our bona fides in wanting to hear from everyone with an interest in this important subject.

We determined, under the circumstances, rather than trying to amend another piece of legislation

with our amendment or to try to rush this through in some way, that we would continue to work at the grassroots level with organizations that support the amendment, continue to work with the administration, whose support for an amendment has been very helpful, and continue to work with our colleagues to gain even more support in terms of cosponsorship, so that when we do bring it to the floor, we will have had the widest possible discussion and opportunity for everyone to participate. We understand that will make it more likely that this important effort will have quick success in the House of Representatives and, importantly, in the State legislatures, which would then have to ratify the amendment.

Madam President, we decided that under the circumstances it was better for us not to try to rush that amendment to the floor here in the waning days, literally, of this Congress, but that we would be willing to defer action until early next year. I know that both Senator FEINSTEIN and I would like to see this matter dealt with perhaps during Crime Victims Week in April of next year.

But whatever the timing that is appropriate, we will be urging our colleagues early in the year to join us in cosponsoring the amendment in its final version and ensuring quick passage out of the Judiciary Committee, again because, of course, we will be in a new Congress and we will need to act anew on the legislation because of that and to secure the support of the leadership to quickly bring the amendment then to the floor of the Senate so that we can have a thorough debate and, hopefully, to pass the amendment out, sending it to the House for its subsequent action.

We hope that with that kind of a timetable, with that kind of an opportunity for everybody to participate, we will in the year 1999 have adopted a constitutional amendment that can then be acted upon by the States once and for all to protect the rights of crime victims around this country.

I want to close these brief remarks by again thanking Senator FEINSTEIN and all of the others who have been so active in this effort. The outside groups I will name at another occasion, because they deserve very special recognition for all of the effort that they have put into this.

But, frankly, the amendment would not have gotten to this point without the strong and active support of one of the strongest supporters of victims' rights that I know in the United States, my friend and colleague from California, Senator FEINSTEIN.

At this point, I would be happy to yield for her to make comments.

The PRESIDING OFFICER. The Senator from California is recognized.

Mrs. FEINSTEIN. I thank the Chair and I thank the Senator from Arizona.

I want Senator KYL to know that it has really been a very great pleasure for me to work with the Senator over these past 2 years. I think it has been for me one of the best experiences I have had in the time I have been in the Senate, and that is two Senators from different political parties sitting down to try to work out something which is enormously difficult to do, and that is the drafting of a new constitutional amendment.

The Senator mentioned that we have done 60-plus drafts, and that we have met with the Attorney General, the White House, met members of victims' groups. The Senator brought in the counsel for victims. Larry Tribe, from Harvard University, worked with us, and we believe, I think, that we have an amendment that will now stand the test of public scrutiny and stand the test of time.

I want to share, Madam President, with the Senate how I first became involved in victims' rights. It was in the mid-1970s in San Francisco when a man broke into a home on Portrero Hill. He tied the man in the home to a chair and murdered him by beating him with a hammer, a chopping block and a ceramic vase. He then repeatedly raped his 24-year-old wife, breaking several of her bones. He slit her wrist and tried to strangle her with a telephone cord before setting their home on fire and leaving them to go up in flames.

Miraculously, this young woman, whose name I purposely left out of this, is still alive. She testified against him. He is still in State prison, to the best of my knowledge. But when I became mayor she used to call me every year and say, ''I'm terrified that he might get out. I don't know if and when he will get out. His parole is coming up. Could you help me?''

I recognized then that there really were no rights that victims had. In 1982, California became the first State in the Union to apply some victims' rights. It was a bill of rights. It passed the electorate overwhelmingly. That is the reason when people saw the family of Nicole Brown Simpson and Ronald Goldman in court it wasn't because they had Federal rights or constitutional rights; it was because the constitution of the State of California provided that right in 1982. Some 28 other States have followed.

So you might say, ''Well, what's the problem?'' The problem is each State is different, and there is no basic floor of rights guaranteed to every victim. Therefore, if rights come in conflict, obviously, the rights provided in the Constitution prevail.

Now, what rights are in the Constitution? These are the constitutional rights today. You will see the rights of the accused, 15 specific rights guaranteed in the Constitution: the right to counsel, the right to due process, to a speedy trial, to a prohibition against double jeopardy, self-incrimination, against unreasonable searches and seizures, to have warrants issued only on probable cause, a jury of your peers, to be informed of accusations, and so on. You will then on the other side see the rights granted to victims are ''none.''

Well, one has to look back and say, how did this happen? I have looked back, and how it happened is very interesting. Our Founding Fathers, when they included the rights of the accused in the Constitution, did not think to include the rights of crime victims. Then again in 1789 there were not 9 million victims of violent crimes every year. As a matter of fact, there were not much more than 4 million people in all of our colonies. In fact, there are more victims of violent crime each year, by far, than there were people in the country when the Constitution was written.

Additionally, the way the criminal justice system worked then, victims did not need a guarantee of these rights. In America, up to the late 18th century and well into the 19th century, the concept of the public prosecutor did not exist. Victims could and did commence criminal cases themselves, by hiring a sheriff to arrest the defendant and then initiating a private prosecution. The core rights in our amendment—to notice, to attend, to be heard—were inherently made available to the victim.

As Juan Cardenas, writing in the Harvard Journal of Law and Public Policy, observed:

> At trial, generally, there were no lawyers for either the prosecution or the defense. Victims of crime simply acted as their own counsel, although wealthier crime victims often hired a prosecutor.

Gradually, public prosecution replaced the system of private prosecution. With the explosive growth of crime in this country in recent years—the rate of violent crime has more than quadrupled in the last 35 years—it became easier and easier for the victim to be left out of the process.

Another scholar noted:

> With the establishment of the prosecutor, the conditions for the general alienation of the victim from the legal process further increase. The victim is deprived of his ability to determine the course of a case and is deprived of the ability to gain restitution from the proceedings. Under such conditions, the incentives to report crime and to cooperate with the prosecution diminish. As the importance of the prosecution increases, the role of the victim is transformed from principal actor to a resource that may be used at the prosecutor's discretion.

So there was no need to guarantee those rights in 1789, and, as we all know, the Constitution protects people from government rather than providing most people with certain basic rights. But the criminal justice system has changed dramatically since then and the prevalence of crime has changed dramatically. So we believe that the need and circumstances both combine to restore balance to the criminal justice system by guaranteeing the rights of violent crime victims in the United States.

I am very proud to have 12 coauthors on the Democratic side for this constitutional amendment, and I am particularly proud to have the support of Senator BIDEN of Delaware. Senator

BIDEN of Delaware was the chairman of the Judiciary Committee, I say to the Senator from Arizona, when I came on that committee back in 1992 and was very helpful to me in learning the ropes of the committee. I have great respect for him. So it was very significant to me when we worked with him, made certain compromises in the amendment, and gained his support.

Mr. KYL. Might I just interrupt the Senator to also note that, as supporters of the amendment, we have the current chairman of the Judiciary Committee, Senator HATCH, and also, as I indicated earlier, the chairman of the House Judiciary Committee, Representative HYDE. So this amendment certainly has the support of the people who have been in the leadership of the committee as well as the current leadership of the committee.

Mrs. FEINSTEIN. That is right. And I am delighted the Senator is in the Chamber, because many people have said about this amendment, ''Well, why isn't Federal law enough?'' And if the Senator will recall, we both voted for the Federal clarification law in the case of Oklahoma City that would give victims the right to be notified, to be present in the courtroom, and to make a statement. And even after we clarified the law, the Federal judge held that if a victim was present, that victim could not make a statement. So this again is, I think, an additional rationale for this constitutional amendment.

I do want to point out the valuable support of Professor Laurence Tribe of the Harvard Law School, and I would like to just briefly quote portions of his testimony last year before the House hearing on the amendment.

The rights in question—rights of crime victims not to be victimized yet again, through the processes by which Government bodies and officials prosecute, punish, and release the accused or convicted offender—are indisputably basic human rights against government, rights that any civilized society of justice would aspire to protect and strive never to violate.

Our Constitution's central concerns involve protecting the rights of individuals to participate in all those governmental processes that directly and immediately involve those individuals and affect their lives in some focused and particular way . . . The parallel rights of victims to participate in these proceedings are no less basic, even though they find no parallel recognition in the explicit text of the Constitution of the United States.

The fact that the States and Congress, within their respective jurisdictions, already have ample affirmative authority to enact rules protecting these rights is . . . not a reason for opposing the amendment altogether . . . The problem, rather, is that such rules are likely, as experience to date sadly shows, to provide too little real protection whenever they come into conflict with bureaucratic habit, traditional indifference, sheer inertia, or any mention of an accused's rights regardless of whether those rights are genuinely threatened.

So, in a sense, this is all the heart of our argument. Today, the accused, the defendant, has 15 specific rights in the Constitution.

The victim of a violent crime, or any other crime, has no rights in the Constitution. Consequently, there is no protected, no basic floor of rights across this Nation. Each State varies. And when one of these rights conflicts with a right guaranteed to a victim by a State constitutional amendment, the Federal Constitution will always prevail. We believe very strongly that 15 rights should be balanced by the 7 rights that we would provide to victims under this constitutional amendment.

''The right to receive notice of the proceedings.'' What could be more basic? Somebody assaults you, somebody has raped you, somebody has robbed you—at least you receive a notice to the hearing.

''The right to attend the trial, and any other public proceeding at which the defendant is present.''

''The right to be heard at certain stages in the proceeding: The release of the offender; acceptance of a plea bargain; and sentencing.

''The right to be notified of the offender's release or escape.''

This is something for me which goes back to the 1974 case of a woman having to call to plead to know when her husband's murderer and her own attacker would be released, and because she does not have that information to this day guaranteed to her, to this day she lives in anonymity. She has changed her name and she has changed her place of residence because she believes one day he will get out and one day he will come after her. No American should have to live that way. That is a basic right we provide in this constitutional amendment.

''The right to an order of restitution, albeit $1, presented by a judge,'' which is significant to every victim. We had interested victims testify to this. Senator KYL, I am sure, will remember how meaningful and important just the simple act of restitution was to them.

''To have the safety of the victim considered in determining a release from custody.'' These are, in essence, the basic rights that we would provide to begin to balance this scale of justice throughout time. The only way it can be done is by adding a constitutional amendment to the U.S. Constitution.

I, once again, thank Senator KYL. It has been a great pleasure for me. I hope we will have the time to debate this fully on the floor and have a vote. I yield the floor.

The PRESIDING OFFICER. The Senator from Arizona.

Mr. KYL. Madam President, let me just add some additional thanks to those that Senator FEINSTEIN has indicated here. Before I do, I note the illustrative chart that Senator FEINSTEIN has been referring to refers to the rights of the defendants there. I think it is instructive that for those who say we should not be providing victims' rights by amending the U.S. Constitution, it is very instructive that most of those rights for defendants were added by amendment to the U.S. Constitution. They were not embodied in the original text of the Constitution. So, as times changed and as we determined that rights needed to be added, we did that for the defendants. Now, as Senator FEINSTEIN has pointed out, it is time to add some coequal rights for victims of violent crime.

There are some additional people I think we would be remiss in not thanking at this time. Laurence Tribe certainly was mentioned by Senator FEINSTEIN; Professor Paul Cassell at the University of Utah was equally helpful to us, in drafting language changes.

Mrs. FEINSTEIN. If the Senator will yield for just one moment?

Mr. KYL. Yes, of course.

Mrs. FEINSTEIN. On Paul Cassell, I think the Senator will remember, in the Judiciary Committee he had very compelling testimony and he submitted a brief which he had written particularly on this. I found it very, very compelling. I would like to refer to it in the text of our remarks, so people who might be interested would go back and read that brief.

Mr. KYL. I thank Senator FEINSTEIN. I might add, anyone interested in obtaining more information about what we are doing, and in getting information about the specific provisions, the testimony of the witnesses who answered a lot of the questions that, frankly, our colleagues had, they can contact us. We can provide them transcripts of the hearings, very erudite writings of the people like Laurence Tribe and Paul Cassell who have been working for a long period of time and have so much to contribute, as well as information from people at the Department of Justice and others.

I would also like to thank Steve Twist, an attorney in Arizona, who has spent thousands of hours pro bono, a lawyer who has spent much of his career in advancing the cause of victims' rights and who, frankly, was one of my mentors in learning about this subject and who has also helped us throughout this process.

Also, there are two particular brilliant lawyers on our staff who deserve a lot of credit, Neil Quinter, a member of Senator FEINSTEIN's staff with her today, and Stephen Higgins, a member of my staff; both lawyers who have spent far more than the usual amount of time on a piece of legislation, working this, because not only is it a very interesting legal challenge but also a personal commitment on their parts as much as it is for us.

I indicated we would probably thank a lot of people at another time. Certainly the victims' rights groups and representatives who have been so important in advancing this cause at the grassroots level. But I thought it important, at least at this time as we wind up this session, to note the people who have, professionally, been so helpful to us. We will be working on this over the next 2 or 3 months as we prepare for the next legislative session.

I will allow Senator FEINSTEIN to close. I am pleased to announce that

while we have not been able to get this amendment to the floor for consideration by our colleagues today, or this year, I am quite optimistic we will be able to do that early in the next session of the Senate. I think the additional time we take to allow everyone to have their say, to ask the questions they need to ask, that will allow this to come at a time when we can have a full debate, that that will permit us to adopt this amendment next session and send it to the States for ratification.

Again, I thank Senator FEINSTEIN for her wonderful cooperation and inspiration on this amendment.

Mrs. FEINSTEIN. If the Senator will yield on one point, I would like to add to those thanks, and thank him for being so generous. I would like to add Roberta Roper of the National Victims Constitutional Amendment Network, who worked with Steve Twist so actively; David Beatty of the National Victims Center; and John Stein and Marlene Young of the National Organization for Victim Assistance.

If I might say this: Some people have pooh-poohed—maybe pooh-poohed is not a good senatorial word—let me say denigrated this concept. As one who sat on 5,000 cases, sentencing them, setting sentences and granting paroles for 6 years of my life, I can tell you that I believe this constitutional amendment will make more of a difference in the criminal justice system than virtually anything else that could be done. I think it is extraordinarily important. I know the Senator joins me in this, and I hope we will be able to have that full debate early on in the next Congress.

Mr. KYL. Madam President, it seems like there is always one more thing we want to say on this important subject. Again, we cannot possibly thank everyone here today, but one of the organizations—now that Senator FEINSTEIN mentions a couple of other people—Mothers Against Drunk Driving have been enormously helpful at the grassroots, working with our colleagues gaining cosponsorships. I would be remiss if I did not mention them.

Again, we will have many more opportunities to discuss this. I urge anyone who has questions about it to be in touch with us. But it is certainly an effort that I am going to be pleased to work on in the next session.

Mr. BUMPERS addressed the Chair.

The PRESIDING OFFICER. The Senator from Arkansas.

Mr. BUMPERS. What is the parliamentary situation?

The PRESIDING OFFICER. We are in morning business.

Mr. BUMPERS. Is there any particular order, Madam President?

The PRESIDING OFFICER. The Senator has the right to speak.

TAX CUT AND THE BUDGET

Mr. BUMPERS. Madam President, I want to speak for just a few minutes on what the House did last Saturday in announcing that they had passed an $80 billion tax cut. To tell you the truth, I take a lot of ribbing around here about the length of this cord. And to really say everything I need to say and want to say about what the House did Saturday would take another 10 feet on this cord, because I really think it is one of the most irresponsible acts—knowingly irresponsible acts—I have ever seen since I have been in the Senate. To add insult to injury, I heard a young Congressman Saturday evening on the news saying, ''After all, the Republicans created this surplus. They ought to have some say so about how it is going to be used.''

I have heard hyperbole in my day, but I think that exceeds anything I have ever heard in my life, because it was in 1993, on the floor of the U.S. Senate, where we had to bring the Vice President of the United States over to pass a bill that President Clinton had submitted to us under which he promised would result in balanced budget. When he ran for President in 1992, he didn't promise a balanced budget. What he promised was that he would reduce the annual deficit by 50 percent during his first 4 years in office.

Bear in mind that the 2 years before President Clinton took office, under President Bush—and you can go back as far as 1981—the deficits started running totally out of control, as every economist in the Nation said they would, after we cut taxes and increased spending in 1981 as a part of the Reagan revolution.

By the time George Bush finished his term, if I am not mistaken, the last two deficits for 1991 and 1992 were about $250 billion to $300 billion a year. It was frightening. I am just 1 of 100 Senators here, but I can tell you, I had decided that the place was utterly out of control.

So when the President promised the American people he would cut the annual deficits in half and submitted what was called OBRA 93, the Omnibus Reconciliation Act of 1993, it did, in fact, raise taxes and it cut spending by an equal amount. We were supposed to raise taxes by $250 billion and cut spending by $250 billion for an impact over the ensuing 5 years of a reduction of the deficit by $500 billion.

The people of the country, shortly thereafter, became rather excited about it. The bond daddies in New York City, who pretty much determine economic policy in this country, were excited, too. After all, they said, maybe these clowns really are serious for a change.

I will tell you how serious it was. As I said, when we tallied up the vote, it was 50 ayes and 50 nays. Vice President GORE sat in the Chair of the Presiding Officer, which is his constitutional duty, and untied the vote. So the Clinton bill, OBRA 93, passed 51 to 50 without one single Republican vote. Not one. It had come from the House of Representatives to us where it had passed the House of Representatives without one—without one—single Republican vote. The bill passed the entire Congress, House and Senate, without one Republican vote on either side, and this young House Member stood up on the floor of the House on Saturday and announced to the world, ''After all, the Republicans created this surplus.''

When President Clinton became President and we passed that bill, OBRA 93, in August of 1993, we made it retroactive. Not fair. It really wasn't fair. I didn't like it myself, but I voted for it. A lot of fairly wealthy people—and I have a few wealthy friends, my brother one of them, and he practically threatened to cut me out of his will because we made it retroactive.

What happened as a result of making it retroactive? I will tell you precisely what happened. Instead of the projected $290 billion deficit for 1994, it turned out to be $254 billion, $36 billion less than had been anticipated, $36 billion less than each of the 2 preceding years of the Bush administration. The projections for 1994 had been $290 billion to $300 billion. That year, it turned out to be $207 billion, and people began to get excited about the deficit suddenly going down for a change. People's confidence level rose. The unemployment rate began to go down. When people have confidence, they spend money. The economy began to really soar, and the more it soared, the more taxes people paid.

When 1995 rolled around, it went from—it wasn't $290 billion, as had been predicted the preceding 4 years. It was down to $154 billion in 1995. People were really getting excited. These are sort of round figures. I am not sure of the precise figures, but they are close enough.

In 1996, the deficit went to $107 billion, and in 1997, $22 billion. By this time, the whole country is absolutely incredulous. They cannot believe that a country that had shown every sign of taking leave of its senses had suddenly come to its senses, and the deficit, which was $300 billion a year as far as the eye could see the day Bill Clinton was inaugurated, was suddenly $22 billion last year.

Right now, 3 days from now, on Thursday of this week we feel—OMB and the Congressional Budget Office feel—that the surplus could run between $50 billion and $63 billion. It is the first time in 30 years, and the only reason we did it 30 years ago was because Lyndon Johnson dumped the Social Security trust fund into the budget, and the Social Security trust fund caused us to have a surplus in 1969. We haven't had one since until this year, which hopefully will materialize on Thursday. And this young House Member says the Republicans created this surplus, that they have some rights about what to do with it. They have some rights, of course, but I cannot tell you how offended I am by that when the 1993 bill is the very thing that cost the Democrats control of Congress.

Two of the finest Senators I have ever known in my life, good friends,

lost their seats because they voted for that bill. The House Members were swept out totally because of that bill. I have said on the floor before and I will repeat it, if that is what it took—no matter how traumatic it is to me that the Democrats lost control and still don't have control of Congress—that it was not too big a price to pay to get our fiscal house in order. And here are the Republicans, again, at the same old stand with the same old economic policy saying, ''We've got to cut taxes.''

What is the tax cut? It is the same old tax cut: 53 percent of it goes to the wealthiest 15 percent of the people in America. If I were rich, I would be a Republican, too. No, I wouldn't. My father would be whirling in his grave if I did a thing like that.

Well, let me give you the bad news. The bad news is, the surplus is not real. It is not a certifiable surplus. Do you know why? Because we still use Social Security in the budget. If we had truth in budgeting around here, where all the trust funds—the Social Security trust fund, the highway trust fund, the airport trust fund, the pension funds—if all of those funds were taken out of the budget, not only would we not be looking at a surplus, we would be looking at a very healthy deficit.

And so as rhapsodic and euphoric as most people are about what we call a surplus for the first time in 30 years, it is not a surplus. There is $100 billion in the budget this year that is money right out of the Social Security trust fund. You take the $100 billion Social Security trust fund out, and you have a healthy $40- to—I don't know what the figure is—somewhere $40-plus billion deficit.

This is no time—we know that Social Security under the present system is going to be totally bankrupt in about the year 2029; and by the year 2013, we are going to be paying out more every year than we take in, which is a far cry from a $100 billion surplus we are getting a year now. I think the Social Security trust fund in about the year 2013 will have over $3 trillion in it—$3 trillion. You think about all that money, but by the year 2029 it will be dead broke, it will be on a pay-as-you-go basis. We will be taking in money one day and paying it out the next. There will be no trust fund.

So when the President said, ''Social Security first,'' he meant that.

What does ''Social Security first'' mean? It means that you do not pay for tax cuts with Social Security trust funds. Right now, if we raid the surplus, we are raiding the Social Security trust fund.

As I said in the beginning, I need about 10 more feet of cord on this thing to say everything I want to say. I just do not speak well unless I have an opportunity to walk up and down this aisle. All I want to say to my brethren on the other side —good friends, people whom I like—and I am not in the business of giving Republicans political advice; they have been doing reasonably well without me. But I will say this: They should know—and they do know it, and I think they had a few defectors over in the House the other day who said, ''I'm not about to go home and face people and tell them that I have just voted for a tax cut for the wealthiest people in America and I did it out of the Social Security trust fund.'' I would love to run against somebody who voted that way. I would do my very best to hammer them into the ground, because it is an honest accusation and it is pointing out to the American people what irresponsible conduct this Congress is capable of engaging in.

So I do not think it is any secret to the Speaker of the House or any of the House Republicans who voted for it. And, quite frankly, I do not think it is going anywhere in the U.S. Senate. And in the unlikely chance it should also pass the Senate, I do not think there is a chance in the world that President Clinton—I do not care how weak he is or how weak he is perceived to be, I can almost give you an ironclad promise he will veto that bill. And I promise you, the veto will not be overridden.

While President Clinton has been a friend of mine for 25 years—I guess longer than anybody in the Senate—he is a friend of mine, I do not deny that, has been; we come from the same State; we share the same political friends at home. I do not have any doubt about his absolute commitment on things like this. I am trusting him completely when he says he will veto the bill, and, as I say, I am going to do everything that I can to make sure it never reaches his desk.

Having said that, let me say one final thing. Madam President, in 1981, Ronald Reagan said he would balance the budget by 1984. Ray Thornton—a former Member of the House, told me his 81-year-old father-in-law said one day somebody told him, ''Ronald Reagan is going to balance the budget by spending more money and cutting taxes''—take in less and spend more. He said, ''What a dynamite idea. I wonder why nobody ever thought of that before.''

The day Ronald Reagan held up his hand and was inaugurated, the national debt was $1 trillion; and 8 years later when he left, it was $3.2 trillion. He managed to triple it in 8 years. But you know something? I voted with the President in 1981, not quite the way he suggested, but I voted for the spending cuts that he proposed and against the tax cuts. FRITZ HOLLINGS and Bill Bradley and I were the only three Senators who voted that way, and we would have balanced the budget in 1984 if everybody had voted that way. But, as you know, everybody did not vote that way.

So what happened was, we wound up doubling defense spending within 4 years after Ronald Reagan was elected President—doubled it within 4 years. That was back when we found out, after throwing all that money at the Pentagon, they we were paying $7,000 for toilet seats and $7,000 for coffee makers—the same thing everybody does when you throw that much money at them.

Madam President, I have said about all I want to say except, I will be lying prostrate at the end of this cord in this aisleway the day that tax cut passes here. I plead with my colleagues, let's do something completely apart from politics. Let's not do something that is as irresponsible as that is. Nobody, I guess, ever lost an election by voting for a tax cut.

People here are getting pretty apprehensive about voting against a so-called marriage penalty. The one thing you never hear is that many married people already have a bonus. There is a marriage penalty for some, but many married people are a lot better off filing joint returns than they are filing as single persons.

I would not mind addressing the problem of what the House did the other day which, I think, amounts to an average of $240 a year. That is about $20 a month. Well, that is not beanbag for some people, but it is not enough to rape and pillage the Social Security trust fund for when those very people we are trying to help are also concerned about that Social Security trust fund being viable when they get to 65 years of age. And you ask them, ''Would you rather be assured that the Social Security trust fund will be there for you when you retire or would you rather have a $20-a-month tax cut?'' Talk about no-brainers.

Madam President, I yield the floor and 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. BUMPERS. 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. BUMPERS. Madam President, as I understood the parliamentary situation, at the hour of 2 p.m. there will be 1½ hours to debate the motion to proceed to the Internet bill. Is my understanding of that correct?

The PRESIDING OFFICER. We are in morning business until 3:30.

Mr. BUMPERS. Until 3:30.

MAIL-ORDER CATALOG SALES

Mr. BUMPERS. Madam President, I rise today to once again address an issue that I have addressed a number of times here in the U.S. Senate. It deals with mail-order catalog sales. Everybody within earshot of my voice knows what I am talking about because when they come home at night and pick their mail up, they will find mail-order catalogs. At my house, the average is about 6 to 10 mail-order catalogs on a daily basis. You can buy anything under the shining sun. If you save all of those catalogs, sooner or later you will

get one to offer you every product that can be bought in any retail house in America.

Now, I have two reasons for my strong feelings about this. No. 1, I was a small town Main Street merchant, as well as a practicing lawyer. Most people don't know it, but I was the only lawyer in town—you are listening to the whole South Franklin Bar Association right now—in a little town of 1,200 to 1,500 people.

When I got out of law school, I knew I wouldn't be able to make a living practicing law so I bought back a business that my father had owned before he and my mother were tragically killed in an automobile accident. I was in law school in Chicago at the time, and 3 years later when I got out of law school, I had no intention of going back to the small town. I had left Arkansas to go to Chicago law school because I didn't think Arkansas was nearly big enough for me. But because of that and the fact that Mrs. Bumpers' family all lived in this little town, we went home and I bought the hardware, furniture and appliance business that my father had owned, hoping that it would sustain me while I built my law practice.

Believe you me, I needed a lot of sustaining while I was building a law practice. People would walk into my office and say, ''Aren't you sort of a lawyer?'' And I would have to grudgingly admit yes, that is exactly what I was—''sort of a lawyer.''

So I speak today as a former retail merchant in a little country town in Arkansas called Charleston. But I also speak as the former Governor of Arkansas where in 1971 I had to raise the income tax because we felt that the sales tax, which is a regressive tax, was already about as high as we could make it.

That was quite an undertaking because some of the wealthy people in my State, many years before, had seen to it that the constitution of Arkansas provided that any tax other than a sales tax would require a 75-percent vote of both houses of the legislature. You think about that. If you wanted to raise the sales tax, which affects working people and poor people more than anybody else, it would only require a 51-percent majority; but if you wanted to raise the income tax, which hit the wealthy people, it required a 75-percent vote. I remember it took nine votes in the Arkansas State Senate before we passed an income tax bill. That bill, which raised the marginal rate from 4 to 7 percent, is the thing that made my State—I don't say this to boast, but every economist and every political scientist will tell you that it is the one thing that made Arkansas fairly stable economically thereafter.

Do you know something? While it is a very volatile thing, I got a lot of hate mail when I was championing it, but I got about 65 percent of the vote next time I ran, which shows that people are not dumb, if you go to them and explain your actions. You can always trust the American people to do the right thing. Winston Churchill once said, ''You can always depend on the American people to do the right thing once they have explored all the other possibilities.''

The truth of the matter is, when you talk sense to the American people, they respond sensibly. So this problem of mail-order catalog houses is simply this: If you wanted to come into my store and buy a $500 refrigerator, the tax on that was 5 percent, or $25. If you want to order that refrigerator from a mail-order catalog house in another State, there is no $25 tax, no tax of any kind. If you want to buy almost anything under the shining sun, from a toboggan to hunting boots, you can find a mail-order catalog that sells those items. A lot of these companies will tell you in their advertising that there is no sales tax. They tell you ''no sales tax,'' even though, actually, 45 of the 50 States in this country have what is called a ''use tax,'' and that applies to out-of-State purchases.

Do you know what the problem with that is? You might say, well, what are you up there shouting and shooting your mouth off about if there is already a use tax in 45 out of 50 States. I will tell you why. It is very simple. The tax is on the purchaser, not the seller. So if I buy that refrigerator and they said ''no sales tax,'' that is a deception.

Arkansas has a use tax, which is a tax on anything brought into the State. But the only problem is, it is on me and I don't even know the tax exists. I promise you—I don't know how many people are within earshot of what I am saying, but I guarantee you that precious few of them know there is a use tax on anything they buy from a mail-order catalog house. They don't know it, so they don't pay it.

Maine has become so frustrated that they have a provision in their income tax return requiring them to multiply .004 or .0004, by your adjusted gross income and send it in. That is to make up for anything you bought out of a mail-order catalog, whether you bought anything or not. I said, in 1995—the last time I offered this amendment—that I think it is very suspect, from a constitutional standpoint, to tax people on mail-order sales when you didn't buy anything. Yet, Maine has been doing that.

A lot of people—for example, Indiana—do a little auditing from time to time. Ten thousand people in Indiana—and 1994 is the latest figures we have—paid some kind of a use tax for buying stuff from mail-order houses in another State. But what they collect is just nothing. In 1994—again, the last year we have figures for—if mail-order catalog houses in this country had collected sales taxes on all the merchandise they sold into these States, they would have paid the States, counties and the cities in the neighborhood of $3 billion. My guess would be that 4 years later, that is in the vicinity of $4 billion-plus, because retail sales have skyrocketed since 1994.

But, look, in 1994—as I say, the last time I debated this subject was in 1995—in 1994, my State lost $19.6 million, California lost $482 million, Illinois lost $233 million. That is the reason the National Governors' Conference, National Conference of Mayors, and the National Association of Municipalities favor my amendment. I have a list of the various organizations that support my amendment.

I ask unanimous consent that I be permitted to have printed in the RECORD a list of organizations that favor my amendment.

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

ORGANIZATIONS SUPPORTING THE BUMPER'S AMENDMENT

The International Council of Shopping Centers.
Marine Retailers Association of America.
National Home Furnishing Association.
North American Retail Dealers Association.
World Floor Covering Association.
National Conference of State Legislatures.
National Governors' Association.
National League of Cities.
National Association of Counties.
United States Conference of Mayors.
International City/County Management Association.
Council of State Governments.

Mr. BUMPERS. Senator GRAHAM and I are going to offer this amendment, if we get a chance, on this bill.

What brought all of this about? Well, first of all, it was about 1967, the Supreme Court, in a decision commonly referred to as the National Bellas Hess case, a big mail-order house. I forget where they are located. The Supreme Court said: You States, you cities, and you counties may not charge a use tax on mail-order sales coming into your State from another State unless that mail-order house has a physical presence in your State. Eddie Bauer used to be just a mail-order house. Now Eddie Bauer has outlets in just about every State in the Nation.

For example, if you order something out of the Eddie Bauer catalog and you are a Maryland resident, they will charge you sales tax. You can't buy it without paying the sales tax because they have a physical presence in Maryland. But most of these people like Lands' End and L.L. Bean don't have a physical presence in your State and they don't collect sales taxes. But the Supreme Court said in the National Bellas Hess case, you can't charge sales tax or use tax on mail-order sales because it violates the due process clause, and it is a violation of the interstate commerce clause. That sounds like the end of the story.

However, in 1992, the State of North Dakota challenged the Bellas Hess decision. They went to the Supreme Court and said we think the case was wrongly decided, and lo and behold, the Supreme Court agreed with them on 50

percent of it. They said it was no longer a violation of the due process clause for a State to require a mail-order house in another State to collect sales taxes for them. But the Court found that there was still a violation of the interstate commerce clause. The Supreme Court throughout its history has been very, very zealous in making sure that we didn't pass any laws, or that no State passed a law, that interfered with interstate commerce.

In that decision 25 years later, Quill versus North Dakota, the Supreme Court said requiring companies to collect use taxes was still a violation of the interstate commerce clause unless Congress gives the states permission to collect these taxes. So that is what I am attempting to do.

Senator WYDEN is a dear friend, and one of the finest men to ever serve in the U.S. Senate, in my humble opinion. However, his bill prevents the states from passing any taxes on the Internet for a two year period. My amendment would not exempt the Internet. My amendment would make it possible for the states to require out-of-state companies to collect use taxes whether the products were sold over the Internet or via mail order catalog.

I chaired the Small Business Committee for a long time. I made speeches about being a small businessman a lot of times on the floor of the Senate. But you tell me, is it fair for a Main Street merchant to collect sales taxes on every single thing he sells, from a loaf of bread on up, to support the fire department, to support the police, to support the local schools, to support everything under the shining sun in that community, that county, that State—is it fair for a Main Street merchant who is there with the people, contributing to everything that comes down the pike—is it fair to make him collect the sales tax, but his competitors, who are selling $300-plus billion worth of things over the Internet by the year 2002 and over $100 billion a year on mail-order sales, not collect a dime?

I stand corrected. There are a very, very few who do charge sales taxes, just because they are good citizens.

Let me digress a moment to tell you who one of those good citizens is—none other than our distinguished Senator from Utah, Senator BENNETT.

Senator BENNETT and some of his colleagues a few years ago started an office supply business. He told me that as they sat around discussing various aspects of that business and how they were going to form it, and so on, the question came up: What are we going to do about sales taxes? He said they talked about it and they concluded that they would be a lot better citizens and would feel a lot better about it if they just voluntarily collected taxes on all of the office equipment that they sold.

Incidentally, this business has some retail outlets here in Washington and in Maryland. They would now be required to collect the sales tax because they simply have a physical presence. But they did it long before they were a physical presence; at one time they were a pure mail-order house.

Senator BENNETT joined the Small Business Committee when I was chairman of that committee. In a hearing one day, he said, ''Don't let them tell you how complex this is and how difficult it would be for them to collect taxes in every State for every State municipality and every county in the country.'' Senator BENNETT says it is the easiest thing in the world. At the end of the month, they push a button on their computer and the checks go out.

One thing Senator GRAHAM and I would do would be to give companies the option of collecting a blended rate which covers all state and local taxes. By giving the companies this option, we can reduce the burden on remote sellers when local sales taxes vary within a state.

But the point I am trying to make is, Senator BENNETT told me it is not complicated to collect use taxes. When the debate begins on this amendment, if and when it ever does, I hope my colleagues will take stock of the fact that one of their own colleagues says that is a bogus, specious argument.

Madam President, sometimes these mail-order houses say, ''Well, we don't ask for any services. We don't need police protection. We don't need fire protection. Our kids don't go to school in your State. So why should we be penalized and be required to pay taxes when we are not a burden in your community and in your State?''

With these mail-order catalogs, one of the biggest problems States and municipalities particularly have is disposing of the waste in their landfills. You ask them: What is one of the biggest problems you have in your landfills and operating your landfills? They will tell you it is the unbelievable, staggering tonnage of mail-order catalogs. If I throw 10 of them a day away, multiply that by the people of this country who get those things every day, then call your mayors back home and ask them why they are for the Bumpers-Graham proposal. I will tell you exactly why they are for it. They are for it because they have to dispose of that stuff. They are for it because they don't believe it is right to penalize Main Street merchants by making them collect all the taxes and these people mailing things through the mail every day are getting a free ride.

Back to Senator WYDEN. As I said a moment ago, I don't know of any Senator—certainly not many Senators in the Senate—for whom I have as much respect as I have for Senator WYDEN. But I don't agree with his bill either. When you consider the fact that I have been fighting the battle for years—this losing battle, I might add—for years I have been fighting that losing battle with mail-order houses, which have increased their sales to well over $100 billion a year, and the States are getting whacked, because they are not collecting the taxes on it. But I say that is just a pittance compared to Internet sales and what they are going to be 3 years from now.

According to an article in Time magazine—the most comprehensive article I have read was in Time magazine dealing with this very subject of Internet sales. You can buy an automobile on the Internet. You can buy tapes. You can buy movies. You can buy anything on the Internet.

Amazon Books I don't think has ever made a dime, and their stock is just shooting through the roof. What do you think about Main Street bookstores in the country that are paying taxes for the books they sell in Washington, DC, Maryland, and Virginia, but not Amazon? And Amazon sales are soaring.

But the final point I want to make is that sales of merchandise over the Internet, that you would otherwise buy from a Main Street merchant, are calculated by the year 2002, no later than 2003, to be $300 billion. Now, 5 percent of that in sales taxes, which is about the average, is $15 billion a year that the States are not collecting—$15 billion in taxes that the Main Street merchant is not getting, and it is a travesty.

You should never say on the Senate floor, ''I don't think my amendment is going to pass.'' Considering the fact that in 1995 I did not get one single Republican vote, I think it is fair to say I probably ''ain't'' going to pick up a bunch of them next time. But you know something. Somebody asked me one time, ''Why are you quitting? Why are you not running again?'' And I said, ''Because I have tackled too many losing causes. I don't enjoy it. I don't enjoy losing anymore than Notre Dame enjoys losing a football game, and the few victories I get and I have had in the Senate are simply not enough to offset the trauma of the many losses I have sustained.''

And that is not to denigrate anybody. We are all independent here. We think freely. We are supposed to be representing our constituents back home. And I guess most people just look at this differently.

So I may not win this one either, in fact I probably won't. And that does not dampen my enthusiasm for what I am talking about, nor does it dampen the meritorious nature of what I consider a meritorious cause. I am going back to the beginning because I used to be a small town merchant. I had to compete with big companies. I had to compete with mail-order houses even back then, in the 1950s and 1960s. And I did not enjoy a minute of it. I was on the school board. I was president of the chamber of commerce. I was chairman of the annual banquet of the chamber. I was chairman of the Christmas parade. I did all of those things. And yet I had to compete with people who did not have any of those responsibilities and did not contribute one red cent to my hometown or my home State. And

yet for some reason or other, as meritorious as it seems to sound right now, I don't know how other people justify their vote against this when, as I say, the mayors, the Governors, the city councilmen, municipalities, everybody under the shining Sun charged with the responsibility of making their hometown and their home State function, favors mine and Senator GRAHAM's amendment.

Madam President, I yield the floor and suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

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

The PRESIDING OFFICER (Ms. COLLINS). Without objection, it is so ordered.

THE HOUSE-PASSED TAX CUT

Mrs. HUTCHISON. Madam President, I want to speak for a few moments about the action that was taken by the House of Representatives last week in passing a tax cut for the middle-income, hard-working Americans. I commend the House for doing that and hope that the Senate will follow suit. I think it is very important that every year we give the taxpayers back something of what they have worked so hard to earn when we are looking at a surplus. That is, in fact, what we are looking at.

You know, if I had said to my constituents 5 years ago, ''I'm running for the U.S. Senate, and I'm going to balance the Federal budget,'' most of them would have probably smiled benignly and thought, ''Oh, at least she is naive enough to think that she can make a difference.''

Well, in fact, that is exactly what has happened. I did run saying that I wanted to work to balance the budget. I did not promise that I would come to Washington and do it alone, but I did say that this is something I thought our Congress should do. In fact, in the Congress that came in in 1994, we did make the promise and keep the promise that we would balance the Federal budget. In fact, this year, we will see that balanced budget.

So then, of course, the question comes, What are we going to do with the new surplus? Of course, there are lots of ideas. Of what we think is going to be a $1.5 trillion surplus over the next few years, the lion's share should go toward making sure that Social Security is secure—no question about it. But an $80 billion tax cut every year, I think, will stimulate the economy, will do what is right by America, and will correct some inequities that we have found in the Tax Code—the major portion of what the House passed is the bill that I introduced with Senator FAIRCLOTH last year and the year before; and that is to reduce the marriage tax penalty.

In fact, if a policeman who makes about $33,000 a year in Houston, TX, marries a schoolteacher in Pasadena, TX, they have a penalty of $1,000, or a little more; and every person in those income categories in our country has the same. In fact, the average is about $1,400. Now, this is a young couple who gets married that wants to start saving to buy a new house or buy another car, have their nest egg, get started in life. And they get hit with a $1,000 penalty.

That is not what was ever intended. But the Tax Code, because there are more two-income-earner couples now than when the last revision of the Tax Code was passed, in fact, has penalized those two-income-earning couples, many of whom have two incomes because they are trying to make ends meet. So we are taking away a part of their quality of life. So I commend the House for saying it is time to correct that inequity and it is our highest priority. I am pleased that they passed the bill that Senator FAIRCLOTH and I introduced. It is our highest priority.

It will also help ease the burden for small business owners and farmers and ranchers and others who have been able to accumulate something to realize the American dream; and that is, that they would give their children a better start than they had by increasing the inheritance tax—the death tax—exemption to $1 million starting January 1 of next year. I think that is the right thing to do. It will begin to ease the tax on the elderly. I think we should do that.

We have already eased the capital gains tax. I hope we can eliminate that. But, Madam President, I think it is important that we, every year, make a little bit more progress in giving the hard-working Americans more of the money they earn back to them so they can decide how to spend the money for their families rather than having Government decide for them.

I hope the Senate will pass tax cuts. It is a high priority. I think we can have two goals that are very clear: We are going to save Social Security; and we are going to give a little bit of the money people work so hard to earn back to them to get our Government in perspective.

I think it is time that we lowered the opportunities for spending at the Federal level, let the States and local governments have more leeway, have families have better opportunities to spend the money they earn, and to make sure that Social Security is secure. I think those are the right priorities for spending that surplus. I hope the Senate will follow suit.

Thank you, Madam President.

I yield the floor.

Mr. DORGAN addressed the Chair.

The PRESIDING OFFICER. The Senator from North Dakota is recognized.

TAX CUTS AND SOCIAL SECURITY

Mr. DORGAN. Madam President, the subject about which my colleague from Texas just spoke and the subject addressed by a couple of my colleagues earlier today, the question of a proposed tax cut, is one that I think will engender a great deal of debate in the coming weeks, not with respect to the question of whether the American people could use a tax cut or deserve a tax cut, not about whose money it is. The issue, instead, is going to be, that there is an election 5 weeks from tomorrow.

On Saturday of this past weekend, the House of Representatives passed an $80 billion tax cut. And the discussion by many, including those on the other side of the aisle, and by those on the other side of the Capitol, is about what to do with the so-called ''surplus.''

I want to make the point again, as I have made before, that there is not at this point a budget surplus, evidenced by the fact that even though there are those who say there is a budget surplus, the Federal debt will increase this year to next year, and next year to the year after.

Now, why would the Federal debt be increasing if there is a surplus? The answer is, the Federal debt is increasing because there is not a surplus. What is called a surplus, in fact, is the Social Security dedicated funds that are to go into a ''trust'' fund to be used on behalf of future generations.

This chart shows that what is called a surplus can only be called a surplus if you take these Social Security funds and put them over here. Take the Social Security moneys away, and you don't have a surplus in the 5-year budget window. Instead, you are short $130 billion. The point is that, without using the Social Security revenues in the trust fund, there is no surplus.

Now, there have been two arguments made in the last days about this subject. One is we are not using Social Security trust funds; the second is that we are only using 10 percent of the surplus. Those arguments don't mean very much to me. These numbers do not lie.

The Federal debt will increase. To those who argue for this tax cut by saying that there is a surplus, I would simply point to the following fact: the Federal debt will continue to increase because there is no surplus.

We have made enormous progress in tackling this Federal budget deficit. Most people would not have predicted we would have been this successful. And we have very nearly balanced the Federal budget, but not quite. We will have truly and honestly balanced the Federal budget when you can call it ''in balance'' without using the Social Security trust funds, and that is not now the case.

If we here in the Senate debate using Social Security trust funds for this tax cut, we should be honest and call it theft. It will be a theft; yes, theft. It will be a theft to use the trust funds to give a tax cut. If that debate exists, I will offer an amendment to take the word ''trust'' out of the trust fund. Why call it a trust fund if people reach in and grab the money and use it for something else?

I happen to believe that most of the recommendations on tax changes are recommendations that I support: Eliminating or substantially reducing the marriage tax penalty makes good sense; full deductibility for health insurance for sole proprietorship, and I've supported that for years. I can go down the list. All of them, or almost all of them, make good sense.

But none of them make good sense if they are paid for with Social Security trust funds, the funds that were taken from American workers' paychecks and pledged to go into a trust fund to be used for only one dedicated purpose.

What the supporters of this tax cut are saying is, let us use those funds now, 5 weeks from election day, so we can tell the American people we gave them an $80 billion tax cut in the coming 5 years. I believe that those who support it should have to say, we took $80 billion out of the Social Security trust funds. We took that money despite the fact we told you we were going to save it for your future. We took it and we used it for something else.

That is not honest budgeting. Try to do that in a business, try to claim in a business that you have now reached a break-even stage, or you are even seeing profits in your business because you have been able to take your employees' retirement funds and show them as part of your business profit, you would get sent off to 5 years of hard tennis at some minimum security prison someplace. That is against the law. You can't do that. That is stealing from the funds. You can't do that. And you ought not be able to do it in Congress.

One thing the American people ought to be able to rely on is that when taxpayers put money into trust funds that comes straight from their paychecks, and which we promise is going to stay in this trust fund to be used for their future, we ought not allow this money to be used, 5 weeks from an election day, so that the majority party can brag to the American people that they handed out a tax cut.

If they do that, and if they brag about it, I want them to brag with full disclosure. Let's see if they will brag about taking money out of the Social Security trust funds. That would be theft in any other avenue of public or private life, and it ought to be theft here as we describe it.

This will consume a fair amount of debate in the coming couple weeks of the closing days of this Congress. I would like to see a tax cut. I support most of the provisions of the tax cut that was debated this weekend, but I will not ever support a proposition that says take the trust funds from the Social Security accounts and use those to give a tax cut 5 weeks before the election.

That is not good government, not good politics, not good for this country's future. I hope in the next 10 or so days of legislative activity those of us who feel that way will band together and say to this majority that appears determined to want to do this that we will not let them. When this country has truly balanced its budget, when we have finished the job—and we have come a long way and made a great deal of progress on fiscal policy—then, and only then, is it time to talk about the kind of tax cuts that are being discussed.

I yield the floor.

Mrs. FEINSTEIN addressed the Chair.

The PRESIDING OFFICER. The Senator from California is recognized.

PROGRESS IN THE MIDDLE EAST PEACE PROCESS

Mrs. FEINSTEIN. Madam President, I rise today to take note of the first signs of progess in the Middle East peace process in many months. This morning, Prime Minister Benyamin Netanyahu of Israel, and Chairman Yasser Arafat of the Palestinian Authority met with President Clinton at the White House to try to move the implementation of the stalled Oslo peace ageeements forward.

While no agreement was reached, these talks produced enough progress for the President to decide to send Secretary of State Albright and Special Middle East Coordinator Dennis Ross to the Middle East next week to try to bring the parties to an agreement. Prime Minister Netanyahu and Chairman Arafat are expecting to return to Washington in mid-October, with the hope that they will be able put the finishing touches on a deal at that time.

The progress representated by today's meeting is significant, I believe, for several reasons. First, it reminds us of the essential need for there to be strong American leadership if there is to be progress on the Middle East. No Middle East peace agreement has ever been concluded without high-level U.S. involvement, and this time is no differnt. The personal attention of the President of the United States and the Secretary of State are crucial to advancing this process, especially at a time when the parties have reached an impasse.

Among supporters of Israel, who long for it to live at peace with its neighbors, there is broad recognition of the centrality of the American role in Middle East peacemaking. That certainly is the view expressed by a group of over 100 senior Jewish community leaders from California, in a letter they sent to Presdient Clinton last week.

This letter is signed by 105 prominent Jewish leaders (rabbis, community activists, academics, and philanthropists). It expresses what I believe to be the widespread feeling of the American Jewish community. In clear language, they appeal to the President not to lose sight of the essential American role in helping Israel reach the peace it is longing for. They write:

> We have been strongly supportive of your Administration's efforts to narrow the gaps between the two parties and help them to reach an agreement. As in past Arab-Israeli negotiations, the American role in getting both sides to say yes is indispensable. Although mediating this complex dispute can be a thankless task, and some naysayers may urge you to put the peace process on the back burner, now is not the time to stop searching for ways to help both peoples resolve their differences.

Today's meeting shows that the President shares their sense of urgency and is taking it to heart.

I ask unanimous consent that this letter and the 105 signatories be printed in the RECORD at the conclusion of my remarks.

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

(See Exhibit 1.)

Mrs. FEINSTEIN. Today's meeting is also important, not just because of what it says about the process and the U.S. role, but also for what the prospect is that it can yield an agreement in just a few more days or a few weeks. Far too much time has been lost.

Israel and the Palestinians have been stuck for months on how to complete the interim agreements launched by the Oslo process, so that they can move on to the critical final status talks. These interim talks deal with hard and important questions: How much of the West Bank Israel will redeploy from, what steps the Palestinian Authority will take to ensure a sustained crackdown on terrorist groups, how the security services of the two sides will work together to prevent acts of terrorism, and the understanding that both sides must refrain from unilateral actions that undermine the other side's confidence in the peace process.

Nothing about these talks is easy, but the time has long since come for both sides to take politically difficult, but fundamentally necessary, decisions that will allow this process to move forward. Israel's security and Palestinian dreams of self-determination can only be realized through a mutually agreed permanent peace agreement.

To the extent that today's meeting and the talks set for upcoming days represent a chance to complete the interim agreements and begin final status talks, there is reason for hope. The final status talks—which are supposed to be completed by May 4, 1999, but will probably take much longer—are going to be difficult enough. They will deal with the hardest questions of all: sovereignty, settlements, refugees, water, and Jerusalem.

Every day these final status talks are delayed, they only become more difficult. Every day they are delayed, the temptation on each side to take unilateral measures only increases. Every day they are delayed is another opportunity for extremists on each side to use violence to try to destroy the chances for peace altogether.

If the Israeli government and the Palestinian Authority are truly committed to peace, as I believe they are, they cannot let that happen. They must work hard in the next several days to complete the interim agreement, and then move quickly to make progress in the final status talks.

At this season of renewal in the Jewish calendar, when a new year and new beginnings are at hand, it is my hope and prayer that a new day may at last be dawning in the lives of Israelis and Palestinians. For that to happen, their leaders, with the strong support of the United States, must act to now to seize the opportunities that are before them.

I thank the Chair and yield the floor.

EXHIBIT 1

September 24, 1998.

Hon. WILLIAM JEFFERSON CLINTON,
The White House, Washington, DC.

DEAR MR. PRESIDENT: As American Jews dedicated to Israel's security and to a strong U.S.-Israel relationship, we want to express our appreciation for your steadfast commitment to the Jewish state and its quest for a secure peace.

As you face the many formidable challenges confronting your Administration and our country, we urge you to reestablish the Middle East peace process as an urgent American priority. We believe it is important for the U.S. to encourage Israel and the Palestinian Authority to redouble their efforts to achieve an agreement on further Israeli redeployment and enhanced security measures as soon as possible. The longer this process drags on inconclusively, the greater the danger of a total collapse of the entire peace process, which inevitably will lead to more violence and bloodshed.

We have been strongly supportive of your Administration's efforts to narrow the gaps between the two parties and help them to reach an agreement. As in past Arab-Israeli negotiations, the American role in getting both sides to say yes is indispensable. Although mediating this complex dispute can be a thankless task, and some naysayers may urge you to put the peace process on the back burner, now is not the time to stop searching for ways to help both peoples resolve their differences.

The success of the peace process is, in our view, crucial to Israel's long-term security and the strategic interests of the United States. Polls consistently show that this position reflects the widespread feeling in the American Jewish community. We hope that, buoyed by this support, you will keep striving to remove obstacles from the road to a secure Arab-Israeli peace.

Sincerely,

SIGNATORIES TO LETTER TO PRESIDENT BILL CLINTON FROM CALIFORNIA JEWISH LEADERS

Rabbi Mona Alfi, Sacramento; Eric Alon, Palos Verdes Estes; Rabbi Melanie Aron, Los Gatos; Arnold J. Band, UCLA; Rabbi Lewis M. Barth, Los Angeles; Rabbi Haim Dov Beliak, Los Angeles; Michael Berenbaum, Los Angeles; Rabbi Brad L. Bloom, Sacramento; Martin Block, San Diego State University; Donna Bojarsky, West Hollywood; Harry R. Brickman, UCLA.

Eli Broad, Los Angeles; Rabbi Samuel G. Broude, Oakland; Rabbi Steven A. Chester, Oakland; Rabbi Helen Cohn, San Francisco; Bruce C. Corwin, Beverly Hills; Rabbi Mark Diamond, Oakland; Rabbi Shelton J. Donnell, Santa Ana; Richard Dreyfuss, West Hollywood; Rabbi Steven J. Einstein, Fountain Valley; Irwin S. Field, Beverly Hills; Rabbi Harvey J. Fields, Beverly Hills; Sybil Fields, Beverly Hills; Rabbi Allen I. Freehling, Los Angeles.

Elaine Galinson, La Jolla; Murray Galinson, La Jolla; Rabbi Robert T. Gan, Los Angeles; Rabbi Laura Geller, Beverly Hills; Don L. Gevirtz, Santa Barbara; Guilford Glazer, Beverly Hills; Stanley P. Gold, Beverly Hills; Carole Goldberg, UCLA; Danny Goldberg, Malibu; John Goldman, Atherton; Lucy Goldman, La Jolla; Jona Goldrich, Culver City.

Bram Goldsmith, Beverly Hills; Osias Goren, Pacific Palisades; Rabbi Roberto D. Graetz, Lafayette; Danny Grossman, San Francisco; Lois Gunther, Los Angeles; Richard Gunther, Los Angeles; Rabbi Jason Gwasdoff, Stockton; Rabbi Johanna Hershenson, Aliso Viejo; Stanley Hirsh, Los Angeles; Rabbi Steven B. Jacobs, Woodland Hills; Carol Katzman, Los Angeles; Rabbi Bernie King, Irvine.

Rabbi Allen Krause, Aliso Viejo; Luis Lainer, Los Angeles; Mark Lanier, Los Angeles; Susan B. Landau, Los Angeles; Gary Lauder, San Francisco; Laura Lauder, San Francisco; Rabbi Martin Lawson, San Diego; Irwin Levin, Los Angeles; Carol Levy, Los Angeles; Mark C. Levy, Santa Monica; Peachy Levy, Santa Monica; Rabbi Richard N. Levy, Los Angeles.

Rabbi Alan Lew, San Francisco; Rabbi David Lieb, San Pedro; Peter Loewenberg, UCLA; Rabbi Brian Lurie, Ross; Rabbi Janet Marder, Los Angeles; Michael Medavoy, Culver City; Arnold Messer, Beverly Hills; Rabbi Herbert Morris, San Francisco; David Myers, UCLA; Raquel H. Newman, San Francisco; Joan Patsy Ostroy, Los Angeles; Norman J. Pattiz, Culver City.

Debra Pell, San Francisco; Joseph Pell, San Francisco; Sol Price, San Diego; Jon Pritzker, San Francisco; Lisa Pritzker, San Francisco; Arnold Rachlis, Irvine; David Rapoport, UCLA; Rob Reiner, Beverly Hills; Kenneth Reinhard, UCLA; Rabbi Steven Carr Reuben, Pacific Palisades; Rabbi Moshe Rothblum, North Hollywood.

Edward Sanders, Los Angeles; Rabbi Harold Schulweis, Encino; Paul Siegel, La Jolla; Rabbi Robert A. Siegel, Fresno; Alan Sieroty, Los Angeles; Rabbi Steven L. Silver, Redondo Beach; Richard Sklar, UCLA; Terri Smooke, Beverly Hills; Marcia Smolens, San Francisco; Fredelle Z. Spiegel, UCLA; Steven L. Spiegel, UCLA; Rabbi Jonathan Stein, San Diego.

Arthur Stern, Beverly Hills; Faye Straus, Lafayette; Sandor Straus, Lafayette; Rabbi Reuven Taff, Sacramento; Allan Tobin, UCLA' Rabbi Martin Weiner, San Francisco; Sanford Weiner, Los Angeles; Howard Welinsky, Culver City; Steven J. Zipperstein, Stanford University.

Mr. DOMENICI addressed the Chair.

The PRESIDING OFFICER. The Senator from New Mexico is recognized.

JUVENILE DIABETES FOUNDATION ''WALK TO CURE DIABETES''

Mr. DOMENICI. Madam President, on September 26, people all across America joined in the Juvenile Diabetes Foundation's ''Walk to Cure Diabetes.''

Today, approximately 16 million Americans suffer from diabetes. Heart and kidney disease, strokes, blindness, loss of limbs, and nerve damage are just some of the complications associated with this dread disease. An estimated 179,000 people die from this deadly disease and its complications every year. Unfortunately, diabetes rates are growing worldwide.

I rise today to commend the ''Walk to Cure Diabetes,'' which is an effort to increase public awareness about this disease and to raise private sector funding for the search for a cure.

In Albuquerque, my hometown, hundreds of New Mexicans participated in the ''Walk to Cure Diabetes.'' They joined thousands of Americans who walked and ran to raise more than $40 million to support research for better diagnosis, treatment and, ultimately, a cure to diabetes.

I am heartened by the fact that participation in this grassroots effort is growing in New Mexico, where diabetes hits especially hard among our American Indian and Hispanic people. Among these populations, this disease is exacting a devastating toll.

I would like to thank the ''Team Domenici'' runners, most of whom are associated with Albuquerque's Mountainside YMCA, who will represent my support for this endeavor. These ''Walk to Cure Diabetes'' team members included: Mary Howell, Chris Howell, Loretta Koski, Rosanna Thomas, Kim Babb, Loren Schneider, Mike Green, Chrissy Dukeminier, Becky Voccio, Stephanie Browne, Carole Smith, Jim Hughes, Debby Baness, and Lisa Breeden.

Where the Juvenile Diabetes Foundation and other organizations work to shore up private sector support, I am pleased that Congress and the administration have strengthened the federal government's investment in diabetes treatments and the search for a cure.

When we negotiated the five-year Balanced Budget Agreement in 1997, I was pleased to have initiated $30 million annually for a five-year Indian Health Service (IHS) diabetes treatment effort aimed at American Indian populations where diabetes rates are almost three times the rate in the general population. We also provided another $150 million over five years for the Centers for Disease Control (CDC) for a similar effort aimed specifically at juvenile diabetes.

As part of these national efforts, new resources will be put toward understanding Type 1 diabetes, which adversely afflicts thousands of young Americans. This form of diabetes occurs when the insulin-producing cells in the pancreas are inexplicably destroyed.

This infusion of federal resources will also allow the IHS and CDC to establish a Diabetes Prevention Research Center in Gallup, N.M., to develop coordinated preventative efforts to help control the growing number of diabetes cases among American Indians.

Dr. Gerald Bernstein of the American Diabetes Association has reported that the gene that predisposes a person to diabetes is five times more prevalent in American Indians than in whites, and twice as prevalent in blacks, Hispanics and Asians than in non-Hispanic whites. In the 1950's, the IHS officially reported negligible rates of diabetes among Navajo Indians. In less than 50 years, diabetes has gone from negligible to rampant and epidemic.

In part, the diabetes problem in the United States can be helped by lifestyle changes among those people predisposed to the disease. A concerted effort is needed to teach people how proper nutrition, early detection and treatment can help save lives. This will not be easy. In the case of Navajo and Zuni Indians, for example, prevention can be difficult to incorporate into

daily reservation life. Exercise programs may not be readily available, dietary changes may be contrary to local custom for preparing foods, or soft drinks may be routinely substituted for drinking water that is not plentiful or potable.

These kinds of factors in Indian life will be studied carefully at the Gallup Diabetes Prevention Research Center. Recommendations and CDC assistance will be provided to IHS service providers throughout the Navajo Nation, the Zuni Pueblo, and other Apache and Pueblo Indians in New Mexico and Arizona. The improved diagnostic and prevention programs will flow from this Gallup center to all IHS facilities around the country.

Through these efforts we hope diabetes rates will drop, and not continually increase as they have for the past four decades. The number of U.S. diabetes cases reported annually between 1980 and 1994 has risen steadily, from 5.5 million cases to 7.7 million cases. The number of diagnosed cases is up from 1.6 million Americans in 1958.

The human toll is devastating and the medical costs of treating diabetes will continue to escalate unless our medical and prevention research efforts are more successful. While we still have not found a cure for diabetes, enough is known today to significantly control the negative end results of diabetes like blindness, amputation, and kidney failure.

The '''Walk to Cure Diabetes'' has been helpful in raising public awareness of the growing diabetes problem. I am pleased that we in the Senate join this effort through federal funding, policy initiatives and moral support.

Madam President, I would encourage my colleagues to note the 1998 ''Walk to Cure Diabetes.'' It is one step in the American quest to attack this awful disease and improve the situation for all the people who are susceptible to the ravages of diabetes.

URGENT SUPPLEMENTAL FUNDING

Mr. DOMENICI. Madam President, I come to the floor not to discuss the pros and cons of an urgent supplemental, or any of the ingredients contemplated to be within it, but to render an accounting to the Senate, as best I can, of the request that the President has made for urgent supplemental funding that would come as an emergency funding, which means we would be spending the surplus that we have worked so hard to protect to pay for these items.

The calculations that the Budget Committee staff has worked up for me would indicate that, as of now, the President's requests amount to $14.148 billion. That means that the President asks us to spend $14.148 billion for such things as agriculture emergencies, Y2K emergencies—the computer situation that may result in a disaster if we don't try to use some new system and the purchase of new computers to alleviate the problem that may occur in the year 2000—there is some Bosnia money; embassy security money; interior security, or terrorism money; state embassies money; treasury security; and an economic support fund. They are listed in detail in this statement.

I ask unanimous consent that this part of the budget bulletin, issued by the Budget Committee staff on September 28, which encapsulates these and then goes through a narrative as to how each one has occurred, be printed in the RECORD at this point.

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

EMERGENCY, EMERGENCY: WHO'S GOT THE REQUEST?

President's pending request fiscal year 1998 emergency funding

[In millions of dollars]

Request	*Amount*
Y2K, contingency	3,250
Agriculture:	
President	1,800
Daschle/Harkin (net impact)	5,200
Defense:	
Bosnia [1]	1,859
Embassy Security	200
Disaster Recovery	224
Disaster Recovery, contingency	30
Interior—Security: Terrorism	6
State—Embassies	1,398
Justice	22
Treasury—Security	90
Funds to President:	
Economic Support Fund	50
Security Assistance	20
Total	14,148

[1] FY 1999 Emergency Funding.

In terms of how much emergency spending has come out of the surplus, the Bulletin notes that $5.7 billion in FY 1998 supplemental emergency appropriations has already been enacted since the beginning of the year. The continuing issue for this week is how much additional emergency spending does the President thus far want to take from the surplus: $14.1 billion for a 1998 total of $19.8 billion.

Last week's Bulletin, expected that the President's requests for emergency appropriations for both Fiscal Year 1998 and 1999—but not yet acted upon by Congress—total $8.0 billion.

Following last week's Bulletin, on Tuesday, September 22, President Clinton made official the Administration's request for emergency funding in a number of areas, that had been assumed would be requested but had not been official transmitted to Congress.

The Bulletin now believes it can accurately quantify the President's emergency requests pending before Congress. The table above allocates the pending $14.148 billion of Presidential emergency request to each affected agency, except for Y2K contingency appropriations. The Y2K emergency appropriation request transmitted on September 2 would be made available to the Office of the President for unanticipated needs to be transferred as necessary to affected agencies.

Officially, the September 22 emergency request for agricultural programs was for $1.8 billion. However, President Clinton states: ''The proposals I am transmitting today do not include income assistance to farmers for low commodity prices. On September 10, Secretary Glickman communicated the Administration's support for such assistance through Senators Daschle and Harkin's proposal to remove the cap on marketing loan rates for 1998 crops.'' CBO estimates the 1999 cost of such a proposal would reach $6.2 billion, with repayments in 2000 of nearly $1.0 billion. Hence, the table below includes a net cost for this Clinton supported emergency proposal of $5.2 billion.

On September 22 the President requested $1.8 billion for emergency expenses arising from the ''consequences of recent bombings of our embassy facilities.''

The President has still not requested amounts anticipated for defense readiness. The President did send a letter to Chairman of the Armed Services Committee, Strom Thurmond, on September 22 stating that: ''I have asked key officials of my Administration to work together over the coming days to develop a fully offset $1 billion funding package for these [defense] readiness programs.'' But this does not constitute an official request for emergency defense funding from the Administration.

Mr. DOMENICI. Madam President, I do not pass judgment on whether each and every one of these is something we should fund, nor whether each and every one of them is something we should not fund. I merely want to state to the Senate, and to those who are interested, that there seems to be a big argument going on now as to what is happening to the surplus and whether or not the Republicans in the U.S. House who want a tax bill are spending the surplus.

Actually, I will tell everybody that in the first year, the 1999 year, that bill spends $7 billion of the surplus—if anybody is interested. The President's request for supplemental funding, emergency funding, not included in the budget—therefore, using the same fund—in the first year already amounts to $14.148 billion, and I believe I can say it is growing, because there is nothing in this number for special moneys that the Defense Department might need. There is some indication of a billion dollars for readiness. But the President's people are quick to say that won't be new money, it will be offset. Well, we will see what they are offsetting it with.

The chiefs of staff are meeting here in the Congress to tell us what they think they need for readiness, and I understand their message is not a good one. It is one that says we are really getting behind with reference to the kinds of things needed to keep a strong military which is totally built around voluntarism—such things as getting behind in the amount of pay we are giving them, the kind of pensions we are giving them, and the readiness equipment. So we don't have anything in this accumulation that equals $14.148 billion. There is nothing for that part of anything that would be an emergency.

I want to make one observation. Again, on this occasion, in speaking to the Senate and to anybody interested, I am not passing judgment on the use of the surplus for any of these things, I am merely saying that there is one surplus and there are two ways to use it. One is to spend it; one is to cut taxes.

They both, in a sense, spend it, or some small portion of it. I just want everybody to know that the President of the United States, who seems to be saying, ''Don't cut any taxes,'' is at the same time saying, however, ''Give me $14.148 billion in new money,'' out of that same surplus for things that the country needs that he calls emergencies. They are all listed and they are all detailed in this statement that has been printed in the RECORD.

I repeat, I don't believe, from the surplus standpoint, that there is any difference between the two. In other words, if you want to spend a huge amount of the surplus and you want to spend it for $100 billion worth of American programs, needed or otherwise, you have diminished it by $100 billion. If you choose to cut taxes by $100 billion, you have diminished this surplus by $100 billion. It is the same diminution. It is the same reduction, the exact same effect. We estimate the surplus to be $1.6 trillion over the next decade. And now we will engage here and elsewhere in a debate with reference to these emergency supplementals, which will be year long, which will spend some of that. We will engage in a discussion of whether there should be some for tax cuts.

I repeat. The tax cut bill that the House proposed in the first year is $7 billion. The new expenditures requested by the President is $14.1 billion. It seems to me that deserves consideration when we start saying we shouldn't have tax cuts, but we should spend the money.

I yield the floor.

FEDERAL VACANCIES REFORM ACT OF 1998

The PRESIDING OFFICER. Under the previous order, the Senate will now resume consideration of debate of Senate bill 2176, which the clerk will report.

The assistant legislative clerk read as follows:

A bill (S. 2176) to amend sections 3345 through 3349 of title V, United States Code (commonly referred to as the ''Vacancies Act'') to clarify statutory requirements relating to vacancies in and appointments to certain Federal offices, and for other purposes.

The Senate resumed consideration of the bill.

Mr. THOMPSON. Madam President, the Senate today will vote on whether to invoke cloture on the Federal Vacancies Reform Act. This legislation, which enjoys bipartisan cosponsorship, is necessary to restore the Senate's authority as an institution in the process of appointing important Federal officials.

Madam President, I request that I be allotted 20 minutes of our time.

The PRESIDING OFFICER. The Senator has that right.

Mr. THOMPSON. Madam President, I want to make sure that we reserve plenty of time for the distinguished Senator from West Virginia, Senator BYRD, who is really in many ways the author of this legislation and has been such a guiding light and firm supporter for so long a period of time.

Article II, section 2 of the Constitution provides that

The President shall nominate, and by and with the advice and consent of the Senate, shall appoint Ambassadors, other public ministers and consuls, judges of the Supreme Court and all other officers of the United States, whose appointments are not herein otherwise provided for, and which shall be established by law, but the Congress may by law vest the appointment of such inferior officers, as they think proper, in the President alone, in the courts of law, or the heads of departments.

This is an important provision of the Constitution's system of checks and balances.

The Supreme Court, in 1997, said that the appointments clause ''is more than just a matter of etiquette or protocol; it is among the significant structural safeguards of the constitutional scheme.'' By requiring the participation of the Senate with the President and selecting officers, the framers believed that persons of higher quality would be appointed than if one person alone made those appointments.

One of the ways in which those persons would be better would be in respecting individual liberties.

So the appointments clause serves to protect better government administration and the rights of the American people.

The appointments clause was also adopted because manipulation of official appointments was one of the revolutionary generation's greatest grievances against executive power.

As participants in the appointments process, we Senators have an obligation, I believe, to ensure that the appointments clause functions as it was designed, and that manipulation of executive appointments not be permitted. Nonetheless, we also need to recognize that despite the appointments clause, there will be times when officers die or resign in office. Their duties should continue to be performed by someone else on a temporary basis. It may not be possible as a matter of logistics that each temporary official serving as an acting officer in a position subject to the appointments clause will himself or herself receive Senate confirmation. Early Congresses recognized the need for persons to serve temporarily in advice and consent positions when vacancies arose, even when the person had not received Senate confirmation.

The Vacancies Act has existed one way or another since then, with length of temporary service increasing to 120 days in legislation that was passed in 1988. The 1886 Vacancies Act was intended to provide the exclusive means for filling temporary appointments. And it has operated that way for several years.

However, in 1973, the Justice Department, in seeking to appoint a temporary FBI Director in the midst of the Watergate scandal, appointed L. Patrick Gray without complying with the terms of the Vacancies Act. The Department for the first time made a public declaration that its organic statute created an alternative method for designating temporary appointments at the Department of Justice not subject to any time limit was there position. Since 1973 the Department has continued to make acting appointments outside the strictures of the Vacancies Act.

The Justice Department relies on its organic statute's ''vesting and delegation'' provision, which states that the Attorney General can designate certain other powers to whomever she chooses in the Department, since specific statutory functions were not given to the subordinate officials. The Department makes this claim although current law states that a

. . . temporary appointment . . . to perform the duties of another under the Vacancies Act . . . may not be made otherwise than as provided by the Vacancies Act.

But the Justice Department's organic statute was designed simply to coordinate all Federal Government litigation, and did not change the Vacancies Act.

The legislative history of the Department's organic statute confirmed this. In 1988, Congress, recognizing that the Justice Department was not applying the Vacancies Act as Congress clearly intended, sought to amend the act to make it more clear. They changed the law to eliminate this unsupported position of the Justice Department largely through the efforts of Senator JOHN GLENN of Ohio. The Department of Justice, however, refused to read the language as Congress intended, relying on its same old arguments.

As a result, the Department of Justice believes that the Attorney General can designate acting officers for 2 or even 3 years. The head of the Criminal Division—an important position with respect to guidance in Federal prosecutions, including independent counsel—was vacant for 2½ years without a nomination.

An acting Solicitor General served an entire term at the Supreme Court, and no nomination for the position was ever sent to the Senate. Even the administration claims that an acting person can serve for only 120 days. But after an acting person served for 181 days, the administration designated another person to serve as the Acting Assistant Attorney General for Civil Rights.

Today all 14 Departments have similar language in their organic statutes. Now many Departments, at DOJ's urging, are claiming similarly that the Vacancies Act doesn't apply to them either as an exclusive means for filling vacancies.

There is no time limit on temporary services. That has been adhered to under the organic statutes, making both the Vacancies Act and the appointments clause effective nullities,

according to the Comptroller General. The Comptroller General disagrees with the Justice Department's reading of current law, and all of the other Departments who have tagged along after the Justice Department.

Each Department has at least one temporary officer now who has served longer than 120 days, allowed by the Vacancies Act. The nomination should be able to be sent to the Senate within 4 months. Since the President lacks any inherent authority to make appointments for offices that require Senate confirmation, the President's noncompliance with the Vacancies Act means noncompliance with the Constitution.

As of earlier this year, when the Governmental Affairs Committee held its hearing on oversight of the Vacancies Act, of the 320 executive Department's advice and consent positions, 64 were held by temporary officials. Of the 64, 43 served longer than 120 days before a nomination was even submitted to the Senate. Other Departments are following Justice's lead.

The acting head of the Census Bureau is neither the first assistant, nor a person who has been confirmed by the Senate, which is what the Vacancies Act currently requires.

Of the nine vacant advice and consent positions at Commerce, seven have been filled by acting officers for more than 120 days. And one had been acting temporarily for 3 years.

It is true that the Senate has not always acted on nominees as soon as it should. But that issue should be addressed separately.

Many of the criticisms of the Senate's handling of the nominations is unwarranted since vacancies often remain open for lengthy periods before nominations are submitted.

The Senate is now being publicly criticized for holding up the confirmation of Richard Holbrooke to be the U.N. Ambassador, for example, when in fact the administration has not even submitted his nomination to the Senate. The fact is that the administration is under a current statutory duty to have acting officers serve for 120 days, which can be extended simply by the administration sending the Senate a nominee.

That means that if the Senate does not act it has to bear the responsibility for an acting person's service at that point. Responsibility is clearly placed where it belongs if an acting person continues to serve. But since the administration does not follow existing law, the Senate in many instances never gets a chance to even consider a permanent nominee.

Under the administration's view, the entire set of confirmed officials in our Government could resign the day after they were confirmed, and acting officials who have not received the advice and consent of the Senate can run the Government indefinitely.

That situation is completely at odds with what constitutional scheme and the framers created to protect individual liberties.

There is another reason this bill should be enacted—the Court ruling recently that undermines the Vacancies Act further. Under the current law, if a vacancy in a covered position occurs, the first assistant to that officer becomes the acting officer for up to 120 days. In the alternative, the President can designate another Senate confirmed officer to act as the acting officer for 120 days. The 120 days can be extended if the President submits a permanent nominee for the position to the Senate. That creates an incentive for the President to submit nominations to the Senate. Recent court interpretations have greatly confined the operation of the Vacancies Act.

In March, the United States Court of Appeals for the District of Columbia circuit approved the legality of actions taken by an acting director of the Office of Thrift Supervision who had served for 4 years without a nomination for the position ever having been submitted to this body. The Senate-confirmed director resigned in 1992 and purported to delegate all of his authority to OTS' deputy director for Washington operations. This person, who was neither the first assistant nor the Senate-confirmed individual, served as the acting director until October 1996.

The President then invoked the Vacancies Act to designate a confirmed HUD official to serve as the acting director and submitted the nomination to the Senate for the position within 120 days. The bank challenging the legality of the acting officer's appointment argued that the 120 days had expired 120 days after the Senate-confirmed director's resignation created a vacancy, long before the Senate-confirmed person was named the acting officer. But the Court held that the 120 days is a limitation only on how long an acting officer can serve, not a limitation on how soon after the vacancy arises that the President must submit a nomination.

It allowed the later Senate-confirmed director to ratify the actions of the prior acting director. Thus, if there is no first assistant, the President can wait for 4 years to send a nomination to the Senate while an acting official, in this case selected by the head of the agency, not the President, runs an important agency. This is not what the framers thought that they had established. It runs contrary to the Vacancies Act itself and corrective action therefore is necessary.

In any case, this administration, as stated above, has allowed many acting officers to serve for more than 120 days as permitted by the Vacancies Act without submitting a nomination to the Senate. The Vacancies Act presently has no enforcement mechanism, so once again the Senate's constitutional advice and consent prerogative is undermined. In Federalist Paper 76 Hamilton cautioned that:

> A man, who had himself the sole disposition of offices, would be governed much more by his private inclinations and interests than when he was bound to submit the propriety of his choice to the discussion and determination of a different and independent body; and that body, an entire branch of the legislature. The possibility of rejection would be a strong motive to care in proposing.

So by disregard of the Vacancies Act and installing at its sole disposition numerous officials to important positions in the Government who escape the independent body's review is contrary to the original intent of the framers. Without a possibility of rejection, there is much less care taken in the proposing. S. 2176 will restore the constitutional balance and cloture should be invoked on the bill.

Madam President, let me briefly discuss the provisions of S. 2176. Upon the death, resignation or inability to serve of an officer of an executive Agency, the first assistant to the officer becomes the acting officer subject to the bill's time limits. Because of additional background processing that is now required of nominees, the bill proposes lengthening the time of acting service from the current 120 days to 150 days.

If the President so directs, a person who has already received Senate confirmation to another position can be made the acting officer in lieu of the first assistant. This is basically the framework, Madam President, that is currently the law except we are extending the time period that the President has within which to make his decision. The first assistant has to have served 180 days in the year preceding the vacancy in order to be the acting officer, in order for someone to be put in in a very short period of time to be the first assistant so that they may then be appointed the acting officer.

The acting officer may serve 150 days beginning on the date the vacancy occurs. The acting officer may continue to serve beyond 150 days if the President submits a nomination for the position even if that occurs after the 150th day. So at the 150-day expiration, the President still has it within his sole discretion to make the nomination; just simply send the nomination up and the acting officer can come back once again and assume his duties. If a first or second nomination is withdrawn, rejected, or returned, the person can serve as the acting officer until 150 days after the withdrawal, rejection, or return.

Recognizing the large number of positions that are to be filled in a new administration, the bill extends the 150-day period by 90 days for any vacancies that exist when a new President is inaugurated or that arise in the 60 days following a new Presidential inauguration.

The bill will extend the provisions of the Vacancies Act to cover all advice and consent positions in executive Agencies except those that are covered by express specific statute that provide for acting officers to carry out the functions and duties of the office. Forty-one current statutes now allow

the President or the head of an executive Department to designate or provide automatically for a particular officer to become an acting officer. The bill also exempts multimember commissions, and it retains holdover provisions of current law.

The bill expressly states that vesting and delegation statutes do not constitute statutes that govern the appointment of acting officers to specific positions. The bill will thus end the specious argument of the Justice Department that it and other Departments' organic statutes provide an additional means, and really a superseding means of appointing acting officials apart from the Vacancies Act.

The bill also creates an enforcement mechanism for the Vacancies Act, something that is also sorely needed. Today, acting officers regularly exceed the 120-day limitation without consequence. Under 2176, an office becomes vacant if 150 days after the vacancy arises no Presidential nomination for the position has been submitted to the Senate. For offices other than the heads of Agencies, the functions and duties that are specifically to be performed only by the vacant officer can be performed by the head of that particular agency. That means that all functions and duties of every position can be performed at all times. But if a nomination is not submitted within the Vacancies Act period, only the head of the Agency can perform the specific duties of the vacant offices. Hopefully, that will create an incentive for the President to go ahead and submit a nomination. As soon as the nomination is submitted, the acting officer can then resume performing the duties and functions of the vacant office. No one may ratify any actions taken in violation of the bill's vacant office provisions.

Madam President, this approach will not penalize the acting person in any way, but it will encourage the submission of nominees within 150 days without jeopardizing the performance of any Government function if that deadline is missed.

The Vacancies Reform Act also establishes a reporting procedure. Each Agency head will report to the General Accounting Office on the existence of vacancies, the person serving in an acting capacity, the names of any nominees, and the date of disposition of such nominee. The Comptroller General will then report to the Congress, the President, and the Office of Personnel Management on the existence of any violations of the Vacancies Act. This will provide useful information to the President so he will know the progress of the 150-day clock and will benefit the Senate as well.

This bill has been modified to take into account objections raised by members of the committee and elsewhere as well as the administration. In committee, we lengthened the Presidential transition period. We permitted the President to name an acting officer by submitting a nomination even after the 150-day period has expired. We agreed to consider shortening the length of service prior to the vacancy a first assistant must satisfy to become an acting officer. This bill is institutional and not partisan. Members should vote for cloture in recognition of the fact that the Senate and the Presidency will not always be controlled by the parties that control these institutions today, and in recognition of the duty that we all share to uphold the Constitution and protect the legitimate prerogatives of this institution.

Madam President, I yield the floor.

The PRESIDING OFFICER. Who yields time?

Mr. LEVIN addressed the Chair.

The PRESIDING OFFICER. The Senator from Michigan

PRIVILEGE OF THE FLOOR

Mr. LEVIN. Madam President, I ask unanimous consent that a legislative fellow on my Governmental Affairs subcommittee staff, Antigone Potamianos, be granted floor privileges during consideration of S. 2176.

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

Mr. LEVIN. I thank the Chair.

The PRESIDING OFFICER. Who yields time?

Mr. THOMPSON. Madam President, I yield such time to the Senator from West Virginia as he may consume.

The PRESIDING OFFICER. The Senator from West Virginia.

Mr. BYRD. Madam President, I thank the distinguished Senator from Tennessee, Mr. THOMPSON, who is chairman of the Governmental Affairs Committee in the Senate. Let me commend him and his committee for reporting this bill. That committee has worked long and hard and very industriously in an effort to craft legislation that, in its final analysis, goes a long way toward protecting the prerogatives of the Senate under the Constitution, in particular with reference to the appointments clause, which appears in article II, section 2, of the Constitution.

Madam President, nearly two weeks ago, on September 15th, I had the high privilege of addressing my colleagues in the Old Senate Chamber as part of the Leadership Lecture Series sponsored by the distinguished Majority Leader. In my remarks, I emphasized two points which I thought were important for all Senators to consider. First, I maintained that, if the legislative branch were to remain a coequal branch of our government, then it must be eternally vigilant in protecting the powers and responsibilities vested in it by the Constitution. Secondly, I noted that, throughout its history, the Senate has been blessed with individuals who were willing to rise above party politics, and instead act in the best interest of this nation and this institution.

The legislation before us today goes to precisely the type of concern I raised in my remarks. S. 2176, the Federal Vacancies Reform Act, would strengthen existing law, thus protecting the Senate's constitutional ''Advice and Consent'' role in the process of nominating and appointing the principal officers of our government. And, because this bill speaks to the very integrity of the separation of powers and the system of checks and balances embedded in our Constitution, it is a measure which I believe all Senators can support, regardless of party affiliation.

To give my colleagues some idea of the dimensions of this problem, earlier this year, I asked my staff to survey the various cabinet-level departments to ascertain how many of these so-called ''advice and consent'' positions were being filled in violation of the Vacancies Act. I can report that the trend is disturbing: Of the 320 departmental positions subject to Senate confirmation, 59, or fully 18 percent, were being filled in violation of the Vacancies Act. At the Department of Labor, for example, one-third of all advice and consent positions were being filled in violation of the Vacancies Act. At the Department of Commerce, 9 of 29, or 31 percent, of those positions were being filled in violation of the Act. And, at the Department of Justice, 14 percent of the advice and consent positions were being filled by individuals in contradiction of the Vacancies Act. Clearly a problem exists.

As my colleagues know, the process used by the President to staff the executive branch is laid out in the Appointments Clause of the Constitution. That clause, found in Article II, section 2, states, in part, that the President

> . . . shall nominate, and by and with the Advice and Consent of the Senate, shall appoint Ambassadors, other public Ministers and Consuls, Judges of the Supreme Court, and all other Officers of the United States, whose Appointments are not herein otherwise provided for, and which shall be established by Law: but the Congress may by Law vest the Appointment of such inferior Officers, as they think proper, in the President alone, in the Courts of Law, or in the Heads of Departments.

Because vacancies in these advice and consent positions may arise from time to time when the Senate is not in session, the Constitution also provides that

> The President shall have Power to fill up all Vacancies that may happen during the Recess of the Senate, by granting Commissions which shall expire at the End of their next Session.

Madam President, in an effort to secure the Senate's constitutional authority under the Appointments Clause, Congress established a statutory scheme that lays out not only the order of succession to be followed should one of these senior positions become vacant, but which also sets a strict limit on the length of time an individual may temporarily fill such a position. That legislation, which has been in place since July of 1868, is known as the Vacancies Act, and is codified in sections 3345 through 3349 of Title 5 of the U.S. Code.

For those who may not be familiar with the Vacancies Act, this is the essence of what it says. First, section 3345 provides that if the head of an executive department—a member of the President's Cabinet, for example—dies, resigns, or is otherwise sick or absent, his or her first assistant shall perform the duties of that office until a successor is appointed. Second, section 3346 states that when a subordinate officer—generally those positions at the deputy and assistant secretary levels—dies, resigns, or is otherwise sick or absent, that officer's first assistant also moves up to take over the duties of the office until a successor is appointed. And third, despite either of those self-executing methods for temporarily filling a vacant position, section 3347 authorizes the President to direct any other officer, whose appointment is subject to Senate confirmation, to exercise the duties of the vacant office. In any event, absent a recess appointment, those three sections of the Vacancies Act provide the exclusive statutory means of temporarily filling a vacant advice and consent position.

But whichever method is used—either automatic succession, as contained in sections 3345 and 3346, or presidential selection, as contained in section 3347, Madam President, the key to protecting the Senate's constitutional role in the appointments process lies in section 3348 of the Vacancies Act. That section plainly states that, should one of these positions become vacant due to death or resignation, it shall not be filled on a temporary basis for more than 120 days, unless a nomination is pending before the Senate. Originally, Madam President, when the legislation was enacted in 1868, the period of time was only 10 days. And then in 1891 that period was extended to 30 days. And in 1988 that period was extended to 120 days.

It is precisely that time restriction on the filling of these vacant positions that is, I believe, the linchpin of this issue. Without that barrier, without the 120-day limitation on the length of time a vacancy may be temporarily filled, no President need ever forward a nomination to the U.S. Senate. Instead, the President—any President, Democrat or Republican—can staff the executive branch with ''acting'' officials, who may occupy the vacant position for months, or even years at a time, as the distinguished manager of the bill, Mr. THOMPSON, has already alluded to.

In short, to eliminate the time constraint in the Vacancies Act, or to effectively eliminate it by tolerating noncompliance, is to wholly undermine the integrity of the U.S. Senate's constitutional advice and consent authority. So this is a serious matter.

Yet, despite the seemingly plain language of this 130-year-old Act, the Department of Justice has challenged the force of the Act on the grounds that those provisions are not the only statutory means of filling a vacancy. In fact, for more than a quarter of a century, through Democratic administrations and Republican administrations, the Justice Department has simply refused to comply with the requirements of the Vacancies Act. Instead, the Department claims that the Act is somehow superceded by other statutes which give the Attorney General overall authority to run the Department of Justice.

On December 17, 1997, I wrote to the Attorney General requesting clarification of the Department's position with respect to the Vacancies Act. Specifically, I wanted to know whether or not the Attorney General believed that this 130-year-old statute had any application to the Justice Department. On January 14 of this year I received a response to my letter in which the Department reiterated its position that the Attorney General's authority under sections 509 and 510 of Title 28 ''. . . is independent of, and not subject to, the limits of the Vacancies Act.''

For the benefit of those who have never read those two sections of Title 28, let me refer to the relevant language so that everyone will understand the fallacy of the Justice Department's argument. Section 509 states that, with certain exceptions that are not at issue here today, ''all functions of other officers of the Department of Justice and all functions of agencies and employees of the Department of Justice are vested in the Attorney General. . . .'' Section 510, meanwhile, states that ''the Attorney General may from time to time make such provisions as he considers appropriate authorizing the performance by any other officer, employee, or agency of the Department of Justice of any function of the Attorney General.''

Those two very broad, very general provisions—the first placing all functions of the Department under the control of the Attorney General, and the second allowing the Attorney General to delegate those functions—are being used to justify what amounts to an end run around the Vacancies Act, which is protective of the Senate's rights under the Appointments Clause of the Constitution.

As I have noted, defiance of the plain language of the Vacancies Act is not an isolated case. In 1973, for example, the Department of Justice refused to admit that L. Patrick Gray, who had been appointed acting Director of the Federal Bureau of Investigation following the death of J. Edgar Hoover in May of 1972, was serving in that capacity in violation of the time limitation contained in the Vacancies Act. In 1982, the Department's Office of Legal Counsel dismissed out of hand—dismissed out of hand the restrictions of the Vacancies Act as simply ''inapplicable'' to the Department—meaning the Justice Department. In 1984, the Department again asserted that ''. . . the specific provisions of 28 U.S.C. §510 override the more general provisions of the Vacancies Act.'' And, in 1989, the Justice Department determined that the Vacancies Act ''. . . does not extinguish other statutory authority for filling vacancies and that the Act's limitations do not apply to designations made pursuant to those authorities.''

Madam President, I submit that that position is untenable, and is untenable for two simple reasons: First, there is no historical basis—absolutely none—for the suggestion that Congress ever meant sections 509 and 510 of Title 28 to exempt the Department of Justice from the requirements of the Vacancies Act. And, secondly, the logical extension of the Department's argument—now get this, the logical extension of the Department of Justice's argument would render meaningless—meaningless the entire advice and consent prerogative contained in the Appointments Clause, article II section 2, of the U.S. Constitution.

Turning first to the Department's claim that sections 509 and 510 of Title 28 somehow preempt the Vacancies Act, I note that those provisions trace their origin to, and are a codification of, a 1950 congressional action known as Reorganization Plan No. 2. As my colleagues may know, throughout the 1950's, Congress passed a series of plans designed to reorganize the various executive branch departments. The purpose of Plan No. 2 was to establish direct lines of authority and responsibility within the Department of Justice, and to give the Attorney General overall responsibility for the effective and economic administration of the Department.

However, there is nothing—I repeat, absolutely nothing—in the language of Plan No. 2 that would indicate that it was ever meant to supersede the Vacancies Act. On the contrary, as the Senate's report which accompanied the measure made clear at that time, and I quote from that committee report, ''Plan No. 2 does not give to the Department of Justice any more powers, authority, functions or responsibilities than it now has.'' What could be more clear?

Finally, it is worth noting that the general language contained in Plan No. 2 is virtually identical to language found in the reorganization plans for the Departments of the Interior, Labor, Commerce, and Health and Human Services. In fact, every one of the 14 cabinet-level departments has these general provisions in its basic charter. Every one! Every one of the 14 cabinet-level departments. And it is precisely that common linguistic thread that leads to the second fatal flaw of the Justice Department's analysis.

If we accept this fallacious argument—that these broad, housekeeping provisions somehow override, or are, in the Department's words, ''independent of, and not subject to'' the more specific provisions of the Vacancies Act—then any executive branch department—any executive branch department whose functions are vested in the department's head, who, in turn, can

delegate those functions to subordinate officers, would be exempt from the provisions of the Vacancies Act. Of course, exemption from the Vacancies Act would then mean that an individual could be appointed to an advice and consent position for an indefinite period of time. Who thinks that the Founding Fathers meant for that to be?

Consequently, to accept the position of the Department of Justice is to accept the position that the United States Senate—that is this body—with the concurrence of the House of Representatives, has systematically divested itself of its constitutional responsibility to advise and consent to Presidential nominations.

Madam President, I wonder how many Senators believe that. I wonder how many of my colleagues are prepared to accept such a specious argument. How many of my colleagues truly believe that the Senate has simply handed over one of the most effective checks against the abuse of executive power? How many will agree that we have given away what the Supreme Court has rightly characterized as ''. . . among the significant structural safeguards of the constitutional scheme''? It was referring to the Appointments Clause in the Edmund v. United States case of 1997.

I, for one, do not subscribe to that specious argument, nor do I believe that any other Senator would support such a contention.

After all, don't we swear an oath, ''so help me God,'' to support and defend the Constitution of the United States, before we enter into office?

At the same time, it is not fair to say the fault for this situation lies entirely in the executive branch; a part of it lies with us. An honest assessment of this matter will show that Congress must bear a good deal of the responsibility for its failure to aggressively demand strict compliance with the provisions of the Vacancies Act.

For 46 years I have been in the Congress, and I have noticed a steady decline in the desire, the willpower, and the determination of Members of Congress to speak out in protection of the powers of the legislative branch.

When I came here it wasn't like that, but more and more and more, it seems that there is an inability, or at least an unwillingness, on the part of Congress to stand up in support of its constitutional powers against the executive branch and those in the executive branch who would make incursions into and upon the constitutional powers of the Congress.

Each of us, individually and collectively, must concede that this institution, this Senate, and the other body, have been less than strenuous in protecting the constitutional rights and powers of the legislative branch.

Congress did, of course, make an attempt to assert the supremacy of the Vacancies Act when it last amended the statute some 10 years ago. That was the second year of the 100th Congress. I was majority leader in the Senate at that time, and on April 20, 1988, the Senate's Committee on Governmental Affairs, in a report accompanying a broader bill of which the Vacancies Act amendments were a part, stated thusly:

> . . . the present language, however old, makes clear that the Vacancies Act is the exclusive authority for the temporary appointment, designation, or assignment of one officer to perform the duties of another whose appointment requires Senate confirmation. The exclusive authority of the Vacancies Act would only be overcome by specific statutory language providing some other means for filling vacancies. As such, the Committee expressly rejects the rationale and conclusions of other interpretations of the meaning and history of the Vacancies Act. . . .

That was the language that was contained in the 1988 committee report.

And yet, despite that language, it remains a fact that the Vacancies Act has not been complied with. As a result, the time has come, and the time is now, for Congress to take the matter into its own hands and address the situation foursquare, right head on. That is what we are attempting to do here. I believe that S. 2176, the Federal Vacancies Reform Act, is the vehicle that will accomplish that goal.

This bill was introduced on June 16 by Senators THOMPSON, THURMOND, LOTT, ROTH, and myself. Three months before, on March 16, I had introduced S. 1761, the Federal Vacancies Compliance Act. Although my bill took a slightly different approach, I believe it is fair to say that it served as a basis for the bill before us today. I was privileged, through the courtesy of the distinguished chairman of the committee, Mr. THOMPSON, to be the lead witness at the March 18 hearing held by the Governmental Affairs Committee. Senator LEVIN was there; Senator GLENN was there; Senator DURBIN was there; and other Senators, I believe.

This legislation here today is the result of months of study, months of discussion, and months of difficult negotiation. By extending the time limitation on how long an acting official may serve, it is a bill that clearly recognizes the realities inherent in today's nominating process. It is a bill that goes out of its way to accommodate the inauguration of a new President by giving the new administration up to 8 months to forward nominations, something not currently contained in the Vacancies Act. So we are going the extra mile in an effort to accommodate the problems of the executive branch. And it is a bill that works to encourage the timely forwarding of nominations. Most importantly, though, it is a bill which will, once and for all, put an end to these ridiculous, specious, fallacious arguments that the Vacancies Act is nothing more than an annoyance to be brushed aside.

Madam President, it is time for this institution to state, in no uncertain terms, that no agency—no agency—will be permitted to circumvent the Vacancies Act, or any other Act for that matter, designed to safeguard our constitutional duties. We cannot, as James Madison warned in Federalist 48, simply rely upon the ''parchment barriers'' of the Constitution if we are to remain a coequal branch of this government.

I urge my colleagues to reflect upon this issue, and, in so doing, to hopefully conclude, as I have, that what is at stake here is something much greater than the Vacancies Act. I hope all Senators will understand that, each time a vacancy is filled by an individual in violation of the Vacancies Act, yet another pebble is washed off the riverbank of the Senate's constitutional role, and that, as more and more of these pebbles tumble downstream, the bank weakens, until, finally, it collapses. But above all, I hope my colleagues will agree that we have a responsibility to the American people and to this institution, the Senate of the United States, to shore up that riverbank, to stop the erosion that has taken place, and to reverse the wretched trend of acquiescing on our constitutional duties that seems to have so ominously infected this Senate.

Let us wait not a day longer in defending the Senate's rights of the Constitution. We are told by the great historian Edward Gibbon that the Seven Sleepers of Ephesus were seven youths in an old legend who were said to have fled to the mountains near Ephesus in Asia Minor to escape the prosecution of the emperor Decius, who reigned in the years 249–251 A.D. Pursuers discovered their hiding place and blocked the entrance. The seven youths fell into a deep slumber, which was miraculously prolonged, without injury in the powers of life. After a period of 187 years, the slaves of Adolius removed the stones to supply materials for some rustic edifice. The light of the sun darted into the cavern and awakened the sleepers, who believed that only a night had passed. Pressed by the calls of hunger, they resolved that Jamblichus, one of their number, should secretly return to the city to purchase bread. The youth, Jamblichus, could no longer recognize the once familiar aspect of his native country. His singular dress and obsolete language confounded the baker, and when Jamblichus offered to pay for the food with coins 200 years old and bearing the stamp of the tyrant Decius, he was arrested as a thief of hidden treasure and dragged before a judge. Then followed the amazing discovery, said Gibbon, that two centuries had almost elapsed since Jamblichus and his companions had escaped from the rage of a pagan tyrant. The emperor Theodosius II believed a miracle had taken place, and he hastened to the cavern of the Seven Sleepers, who related their story, following which they all died at the same moment and were buried where they had once slept.

Madam President, the moral of the story, as far as I am concerned, is this:

The Senate has slept on its rights for all too many years.

Let us awaken to the threat posed by circumventions by the executive branch of the appointments clause and act to preserve the people's rights and the people's liberties, assured to them by the checks and balances established by our forefathers.

In the proverbs of the Bible, we read: ''Remove not the ancient landmark, which thy fathers have set.'' The landmark of the appointments clause was established by our forefathers. We can suffer its removal only at our peril, at the Senate's peril, and at the people's peril. Let us, as Senators, not be found wanting at this hour.

It would require more than ''a mere demarkation on parchment'' to protect the constitutional barriers between the executive and legislative departments. It will require nothing less than an ambition that counteracts ambition. Senators, vote for this legislation. Vote for cloture today so that we can move on with the legislation. In the words of Hamilton, in the Federalist No. 76, ''It would be an excellent check upon a spirit of favoritism in the President, and would tend greatly to preventing the appointment of unfit characters from State prejudice, from family connection, from personal attachment, or from a view to popularity. And, in addition to this, it would be an efficacious source of stability in the administration.''

Madam President, I yield the floor.

Mr. LEVIN addressed the Chair.

The PRESIDING OFFICER. The Senator from Michigan.

Mr. LEVIN. Madam President, I yield myself 15 minutes.

The PRESIDING OFFICER. The Senator from Michigan is recognized.

Mr. LEVIN. Madam President, I, too, think we need to amend the Federal Vacancies Act, because the current act has too many loopholes and insufficiently protects the constitutional prerogative of the Senate to have Senate-confirmed officials serving in top positions in the executive branch. It is because I believe we should amend the Federal Vacancies Act that I voted to report the bill out of committee and, along with, I think, all or most of our colleagues, voted to proceed to Senate consideration of the bill.

But I will oppose cloture on the bill at this time, because if we adopt cloture now, it would mean that relevant amendments could not be considered. After cloture, only what are called germane amendments, as we all know, can be considered. That is a very narrow and a very strict rule. And for us to preclude the possibility of relevant amendments, relevant to this subject, being offered, without the opportunity even to offer those amendments, it seems to me, does not do justice to this subject.

I commend Senator BYRD and Senator THOMPSON for bringing this issue to our attention. Senator BYRD was the witness who appeared before our committee—and the Chair is also a distinguished member of this committee—and brought to our attention, very forcefully, the current loopholes that exist, at least the alleged loopholes that exist, in the Federal Vacancies Act.

These loopholes have been used by Presidents—I think inappropriately used. And surely Senator BYRD has laid out a very powerful case in this bill. And Senator THOMPSON and others laid out a very powerful case that we should close those loopholes. But we should close those loopholes considering relevant amendments in the process. And obtaining cloture immediately upon proceeding to the consideration of the bill will preclude the consideration of relevant amendments.

The bill before the Senate would make several important changes to the current Vacancies Act to close a number of those loopholes. First, it would make clear that the act is the sole legal statutory authority for the temporary filling of positions pending confirmation. Both Senator BYRD and Senator THOMPSON have stated forcefully why it is so important for us to close that loophole. In our judgment, that loophole does not exist. I think in the opinion of probably most Senators that loophole does not exist. But, nonetheless, whether it is a real one or an imaginary one, it has been used by administrations in order to have people temporarily fill positions pending confirmation for just simply too long a period of time, which undermines the Senate's advice and consent authority.

So the first thing this bill would do would be to make clear that the act, the Federal Vacancies Act, is the sole legal statutory authority for temporarily filling positions pending confirmation. Agencies would no longer be able to claim that their organic statutes trump the act and empower them to have acting officials indefinitely.

Second, the act's time period authorizing an individual to be acting in the vacant position would be increased to 150 days from the date of the vacancy. The current act provides for 120 days, and it is unclear on whether the period runs from the date of the vacancy or the date a person assumes the acting position.

Finally, the bill would provide for an enforcement mechanism for violations of the time period. And that is really an important point, because without some kind of an enforcement mechanism, these violations can take place without being corrected.

So the enforcement mechanism provides that if no nomination is submitted within the 150-day period, the position would have to remain vacant and any duties assigned just to that position by statute could be performed only by the agency head. As soon as a nomination is submitted, the bill provides that an acting official could then assume the job temporarily until the Senate acts on the nomination.

While the staff was making efforts to try to negotiate a unanimous consent agreement and perhaps a managers' amendment for Senate consideration of this bill, a cloture motion was filed. In my judgment, it was filed prematurely. And now if, indeed, this cloture motion passes, amendments which are relevant to this subject, important amendments, relevant to this subject, would not be subject to consideration and debate by the U.S. Senate.

Again, I am one who would like very much to see a reform of the Vacancies Act and to see that reform enacted in this Congress. Senator BYRD and Senator THOMPSON and others deserve the thanks of all of us for bringing the Senate's attention to this issue. Senator BYRD, again, took the lead in prompting the Governmental Affairs Committee to hold a hearing on this topic last March and pointed out the Justice Department's regrettable practice of having persons serve as acting officials in top-level positions for significant periods of time without Senate confirmation.

By having acted, officials serve in this way; and ignoring the purpose of the existing Vacancies Act, the Department delays or avoids Senate confirmation.

The Vacancies Act was originally enacted in 1868. Its whole purpose is to encourage the President to submit nominations in a timely fashion. In 1988, the Governmental Affairs Committee amended the act to preclude an agency—in particular, the Justice Department—from avoiding Senate confirmation and the requirements of the Vacancies Act by arguing that the act did not apply to their Departments. Unfortunately, the technical language that the committee used back then to accomplish this didn't do the job, at least in the eyes of the Department of Justice, and some agencies—and the Department of Justice, for one—have continued to operate outside of the intent of that law.

The bill before the Senate, then, attempts to rein in agencies like the Justice Department. It also attempts to set clearer guidelines on what agencies can and can't do with respect to vacancies, and it creates an action-enforcing mechanism that will encourage Presidents to act promptly on submitting nominations.

Now, in the eyes of many Members of this body, the Senate also has an important responsibility to act promptly on the nominations once they are received. That is why it would be relevant to debate the question as to whether or not a bill which amends the Vacancies Act to force the President to make timely nominations—in order to evade the clear constitutional role of the Senate in advising and consenting to such nominations—that such a bill could also appropriately address the Senate's duty to act on such nominations once they are submitted. That doesn't mean approve the nominations, that simply means to act on those nominations.

When we take up this subject of nominations, we need a bill which will

ensure that nominations are made in a timely way, but we also have to avoid crafting an unrealistic bill that could leave many key positions vacant. I don't think any of us want to do that. That is why this bill extends the time that a new administration would have in order to fill these positions without triggering the action-enforcing mechanism.

We need to recognize, however, that this vetting process for nominees—the exploratory process, the FBI checks—has become much more complicated and complex than it was even a decade ago when the act was last amended. Increasingly adversarial confirmation proceedings have required that background investigations and other steps in the vetting process are more thorough and lengthy.

We asked the Congressional Research Service to look at the length of time it took for the first Clinton administration to make nominations and the time for Senate confirmation of those nominations, and to compare those numbers to the time it took the first Reagan administration in 1981 to make those nominations and for the Senate to act on those nominations. The results reflect that both the nomination and the Senate confirmation process are simply taking longer. In 1981, President Reagan took an average of 112 days to submit a nomination; President Clinton, in 1993, took an average of 133 days to make a nomination.

In addition to Presidents taking longer because the process simply takes longer, the Senate is also taking much longer to confirm nominees. In 1981, the Senate took an average of 30 days to confirm nominees; in 1993, the Senate took an average of 41 days to confirm Clinton administration nominees. So the reality that it takes a greater period of time for these nominations to be made should be reflected in the bill. It is reflected by a 30-day extension for the time period, which we have all referred to. Whether or not that is enough is subject to debate, and there will be amendments on that subject as well.

As I have indicated, in addition to crafting a bill that reflects today's more adversarial nominations climate, there are many who feel strongly that we in the Senate should acknowledge our own responsibility to act on nominations that we receive from the administration. We, in the Senate, rightfully want to protect our constitutional prerogative to advise and consent on nominations and not to have positions filled by people whose nominations have not been confirmed by the Senate. By the same token, we should discharge our duties in a prompt matter once those nominations are submitted to us.

Currently, there are many, many examples of the Senate failing, both in committee and on the floor, to act on nominations. We are appropriately critical of the administration for not sending up nominations in a timely way, but it is also appropriate for us as an institution to act one way or the other on those nominations once they are received. It is the desire of some of our colleagues to offer amendments that would require the Senate to act in a timely fashion on nominations, both by considering them in committee and by requiring a vote on them on the Senate floor. Again, not a positive vote guaranteed, just a vote.

Madam President, I think this bill moves us in the right direction. It is a bill that would close loopholes which many of us did not think even existed but which are being utilized by administrations to make appointments of these temporary people for long periods of time without submitting the nominee's name to the Senate for advice and consent. There are many provisions about which concerns have been raised, and it is perfectly appropriate, I believe, for those issues to be debated and to be resolved here on the Senate floor.

I also would plan on offering an amendment to provide for a cure of a violation; that is, to allow an official to temporarily act in a vacant position once a nomination has been submitted, even if that nomination is submitted during a long recess. The bill is not clear, in my judgment, as to what happens when the 150-day period runs prior to, for instance, a sine die recess but when the intention to nominate a particular person is submitted to the Senate to the extent that is permitted during a sine die recess.

It would seem to me that, just as the bill appropriately holds the 150-day period when a nomination is submitted and permits somebody to serve in that capacity where there is an intent to nominate, so if the 150-day period happens to run out before a recess but the intention to nominate a particular person is submitted to the Senate during that recess, then also a temporary appointment ought to be permitted.

Madam President, I will offer an amendment at an appropriate time to have a person as an acting official permitted after the 150-day period has expired, when a recess occurs and the nominee or a nominee's name is submitted to the Senate during that recess.

There are a number of concerns which a number of our colleagues have raised with the bill as drafted, and some of these concerns, again, would be reflected in relevant amendments but which are not technically germane and would be precluded and foreclosed if cloture were invoked.

For example, the bill restricts who can be an acting official, in case of a vacancy, to a first assistant or another advice and consent nominee. That is too restrictive a pool of acting officials and does not give this administration, or any administration, the ability to make, for instance, a long-time senior civil servant within the agency an acting official. Such senior civil servants may be the best qualified to serve as acting officials. First assistants may not exist for all vacant positions. Further, designating another advice and consent nominee to serve as an acting official takes that person away from the duties of their regular job. The category of persons who can act needs to be made larger, in my judgment, and in the judgment of others who will be offering amendments along this line—who, at least, want to offer amendments along this line, assuming that they are afforded the opportunity to do so.

This provision that I have referred to, the restriction that I have referred to, may be operating particularly harshly at the start of a new administration when many vacancies exist. At such times, not many first assistants may be holding over from previous administrations. Therefore, the first assistant slots may be empty, also. Similarly, few other Senate-confirmed officers will exist that the President could choose from to serve in a vacant position. One of our colleagues intends to offer an amendment to allow qualified civil servants to be acting officials, also. And again, this amendment, like some of the other amendments that are sought to be offered here, may not be technically germane and can be foreclosed after cloture.

I don't think it is appropriate that relevant amendments should be foreclosed. That is why I am somebody who believes we need to amend the Federal Vacancies Act in order to close the existing loophole, and in order to protect the constitutional prerogative of the President, and I also want to protect the prerogative of Senators to offer relevant amendments. That is the issue we are going to be voting on—whether or not Senators ought to have an opportunity to offer relevant amendments, or whether they should be precluded from doing that by cloture being invoked so prematurely, when a bill has just been brought to the floor, and then being denied the opportunity to offer amendments on issues that are clearly relevant to this issue.

So the bill is an important one. The issue is an important one. I think we are all in the debt of the sponsors for bringing this bill to the floor. It is appropriate that the Senate debate this bill and that Senators who have relevant amendments, although not technically germane, be offered the opportunity to offer those amendments, have them voted on, and to have these issues, some of which I have discussed, resolved.

I hope we will vote against cloture and that we will proceed to continue on the bill and have people offer amendments—hopefully relevant amendments—and to try to work out a unanimous consent agreement to see if we can't come up with a list of relevant amendments that people could offer on this subject so that they would not be foreclosed, being in a postcloture situation, from offering amendments that are relevant to this important issue, but not technically germane.

I yield the floor.

Mr. THOMPSON addressed the Chair.

The PRESIDING OFFICER. The Senator from Tennessee is recognized.

Mr. THOMPSON. Madam President, I yield the Senator from South Carolina 10 minutes.

The PRESIDING OFFICER. The Senator is recognized for 10 minutes.

Mr. THURMOND. Madam President, I rise today in support of cloture on S. 2176, the Federal Vacancies Reform Act. This legislation should be entirely nonpartisan because it is essential to the advice and consent role of the Senate.

Recent Administrations, both Republican and Democrat, have failed to send nominations to the Senate in a timely manner. Instead, they have appointed people to serve in an acting capacity for long periods of time without seeking confirmation.

This is a matter of great significance. One of the primary fears of the Founders was the accumulation of too much power in one source, and the separation of powers among the three branches of government is one of the keys to the success of our great democratic government. An excellent example of the separation of powers is the requirement in Article 2, Section 2 of the Constitution that the President receive the advice and consent of the Senate for the appointment of officers of the United States. As Chief Justice Rehnquist wrote for the Supreme Court a few years ago, ''The Clause is a bulwark against one branch aggrandizing its power at the expense of another branch.''

The Vacancies Act is central to the Appointments Clause because it places limits on the amount of time that the President can appoint someone to an advice and consent position in an acting capacity without sending a nomination to the Senate. For too many years, the Executive Branch has failed to comply with the letter or the spirit of the law.

I raised this issue for the first time this Congress in April of last year at a Justice Department oversight hearing. At the time, almost all of the top positions at the Justice Department were being filled in an acting capacity. They included the Associate Attorney General, Solicitor General, Assistant Attorney General for Civil Rights, Assistant Attorney General for the Criminal Division, and Assistant Attorney General for the Office of Legal Counsel.

President Clinton allowed the Criminal Division of the Justice Department to languish for over two and one half years before submitting a nomination. The government had an Acting Solicitor General for an entire term of the Supreme Court. Most recently, the President installed Bill Lann Lee as Acting Chief of the Civil Rights Division in blatant disregard of the Judiciary Committee's decision not to support his controversial choice. Mr. Lee has been serving as Acting Chief for ten months, and the President apparently has no intentions of nominating someone the Judiciary Committee can support.

Let me be clear. The issue is not about any one President or any one nominee. It is about preserving the institutional role of the Senate. A Republican President has no more right to ignore the appointments process than a Democrat President.

I responded to this problem by introducing a resolution about one year ago. However, I soon realized that a total rewrite of the Vacancies Act with an enforcement mechanism would be required to force the Executive Branch to follow the law in this area. Thus, earlier this year, I sponsored a bill on behalf of myself and the Majority Leader to rewrite the law regarding vacancies.

Today, I am pleased today to be an original cosponsor of S. 2176, the bill that we are debating today. It contains the two primary objectives that I outlined when I testified before the Governmental Affairs Committee earlier this year: the need to totally redraft the Vacancies Act and to provide a mechanism for enforcement. Senator THOMPSON has done a fine job in drafting S. 2176 and in shepherding it through the Governmental Affairs Committee. He has worked hard to create a bipartisan consensus for this legislation. In that regard, I am pleased that my distinguished colleague who is an expert on the institution of the Senate, Senator BYRD, is an original cosponsor of this legislation.

S. 2176 would correct the Attorney General's misguided interpretation of the current Vacancies Act. In fact, she practically interprets the Act out of existence. Based on various letters to me, it is clear that if her interpretation were correct, no department of the Federal government would be bound by the Vacancies Act. There would be no limitation on the amount of time someone could serve in an acting capacity. There would be no limitation on how long the advice and consent role of the Senate could be ignored.

Additionally, the bill has an enforcement mechanism, while the current law has none. Because there is no consequence if the Vacancies Act is violated today, the Executive Branch simply ignores it. This change is essential for the Act to be followed in the future. The bill provides that the actions of any person serving in violation of the Vacancies Act are null and void, until a nominee is forwarded. There can be no argument that this will paralyze an office because the President can make the office active by simply forwarding a nomination.

It is also important to note that the bill gives the President an extra 30 days to submit a nomination. It extends the time from 120 days to 150 days, with even more time at the start of the administration. These were concessions to the Executive Branch. Indeed, the bill overall makes no more change than necessary in the Vacancies Act to make sure it will be followed in the future.

The question before us is cloture on S. 2176. We should invoke cloture now and move to any amendments that members wish to propose. Cloture on the motion to proceed was easily invoked last week in a completely bipartisan vote, and I hope we can get a similar consensus today.

Madam President, we must act in a bipartisan fashion to preserve the advice and consent role of the Senate. We must require any administration in power, whether Democrat or Republican, to respect this Constitutional role of the Senate. As the Supreme Court has stated, ''The structural interests protected by the Appointments Clause are not those of any one branch of Government but of the entire Republic.'' By passing the Vacancies Reform Act, we can reaffirm the separation of powers for the sake of the Senate and the entire Republic.

Madam President, I yield the floor.

Mr. LEVIN. Madam President, I yield 15 minutes to the Senator from Illinois.

The PRESIDING OFFICER. The Senator from Illinois is recognized for 15 minutes.

Mr. DURBIN. Thank you, Madam President.

I thank the Senator from Michigan for yielding.

Madam President, I rise today to oppose this effort to bring to a close debate on the Vacancies Act reform legislation, S.2176. I urge my colleagues to join me in voting against cloture.

Without so much as a blink, a breath, or a blush, a cloture motion on the bill itself was immediately filed last Thursday morning on the heels of the Senate's agreement to proceed to this bill. This quick flinch maneuver is an attempt to deny Members the opportunity to offer meaningful relevant amendments to improve this legislation, such as those I intend to pursue to address the Senate's responsibility to act expeditiously on pending nominations.

Before I outline the importance of assessing both sides of the process and outline my specific reservations about the bill as presently drafted, I wish to emphasize that I share the convictions and concerns of the sponsors, notably Senators BYRD, THURMOND, and THOMPSON, about the critical need to preserve and protect the constitutional prerogative of the Senate to advise and consent to Presidential nominations to executive branch positions. I am sure that I am not alone in this view.

I appreciate the sponsors' zeal to remedy what has grown to be, numerous instances and examples throughout the government, of outright challenges to Senate authority by ignoring the Vacancies Act. There has been flagrant and contagious disregard for the application of the existing law as the sole mechanism for temporarily filling advise and consent positions while awaiting the nomination and confirmation of the official candidate.

I wholeheartedly concur that this law needs clarification so that moves to end-run its application are halted. The bill as advanced by the Governmental Affairs Committee laudably addresses this exclusivity question.

Thus, I do not oppose efforts to bolster the Vacancies Act as the exclusive mechanism (with limited and explicit exceptions) for the president to designate officials to temporarily fill vacancies in positions requiring Senate confirmation.

Unfortunately, in its current form this bill goes well beyond that justifiable but limited goal in several respects. Moreover, it fails to go far enough to address the Senate's duty to timely act on nominations.

While the Administration may well bear some responsibility for the slow pace of nominations, I am dismayed that the Senate would want to so severely restrict the ability to fill vacant positions temporarily and to conduct the people's business while at the same time impeding the nominations process and confirming nominees at a snail's pace.

The Senate bears partial responsibility for the time it takes to nominate officials for Senate confirmed positions. This Congress has subjected the Administration's nominees to unprecedented scrutiny, using almost any prior alleged indiscretion—no matter how trivial—by a nominee as an excuse to delay or prevent a vote.

Senators have also interjected themselves into the President's nominations process to an unparalleled degree. As a result, that front-end process—the selection, recruitment, and vetting of candidates—takes longer than ever before.

The nomination and confirmation process, it has been observed, is one of ''the President proposing, the Senate disposing.'' If the Senate expects adherence to the rigid parameters this bill would impose on advancing candidates, we as its Members need to be ready and willing to diligently consider these candidates for public office and take prompt and deliberate action to confirm or reject them.

The Senate has frequently declined to exercise its advice and consent responsibility in a timely and appropriate manner. Too often, nominations die in Committee, languish interminably on the Executive Calendar, or simply take months or years to move through this Chamber.

Just as the President has a responsibility to forward nominees to the Senate in a timely fashion, we in the Senate have a concomitant obligation to discharge our constitutional prerogative of advice and consent on those candidates in an efficient and expeditious fashion.

We cannot simply confront practical deficiencies in the front-end phase of the process for recruiting and evaluating qualified candidates and ignore our own responsibilities.

We owe it not only to the Executive, but to the American public, to offer—not withhold—our advice and where appropriate, our consent.

I have filed and certainly hope to have an opportunity to offer some relevant amendments designed to address those instances of dilatory Senate Committee processing and floor inaction once a nominee is advanced to the calendar.

One amendment would provide that any nomination submitted to the Senate that is pending before a Senate committee for 150 calendar days shall on the day following such 150th day, be discharged and placed on the Senate executive calendar and be considered as favorably reported.

Another amendment would require the Senate to take up for a vote any nomination which has been pending on the Executive Calendar in excess of 150 days. Such Senate consideration must occur within 5 calendar days of the 150th day. In effect, it creates an end point after which we can no longer hold up a nominee.

I am not suggesting that we would give our consent to all of these nominees. I am basically saying that this process should come to a close. The Senate should vote. It should make its decision.

If we want to reasonably time-limit the front end of the process—with which I do not disagree—and promptly fill vacancies, we need to be equally willing to build some finality into the back-end of the process and impose some time limits on our own consideration of these candidates.

The first problem I find with this bill is that filling positions in the Government requires time far longer than that specified in this bill.

I have an amendment which suggests increasing the 150-day period to 210 days. I am sure people are wondering, if they are following this debate, why it would take so long for any kind of process to review a nominee. Well, as it turns out, the average number of days that a vacancy exists prior to a Senate nomination for the White House is 313 days. What could possibly take 313 days in investigating the qualifications of an individual to fill the job?

Consider all of the things that are going to be investigated. Not only the lengthy forms the individual must fill out, ethics disclosures, financial statements, fingerprints and the like, but also an FBI investigation, a Federal Bureau of Investigation report on that person, the opportunity for groups to contact the White House and say that they either oppose or support the individual, the opportunity for Members of Congress to come forward and suggest to the administration that they either support that nominee or they oppose it. And as it turns out, some of these things such as an FBI report may not happen as quickly as some people imagine. We have heaped on that agency additional responsibilities every year. We entrust them with very important jobs. We tell them that we want them to fingerprint and make certain that those who want to be citizens of the United States, in fact, have no criminal record in any foreign country. That is a valid question, but it is an additional administrative responsibility.

The list goes on and on and on. As a consequence, when the administration comes to this agency, and it is only one example, and asks for a timely review of an individual nominated for a position, they sometimes have to wait in line. And while they wait the clock is ticking.

And consider this as well. As a result of this legislation, saying the administration shall only have 150 days, what if in the midst of this process—say, for example, 4 or 5 months into the process—the administration reaches a conclusion that the individual should not go forward and the nomination should not be sent to the Senate. Does the clock start to run again? No. The clock continues to run 150 days, so the new nominee, starting over going through all these processes, trying to clear all these hurdles, is still burdened by the original clock ticking at 150 days. I don't think it is realistic. I don't think it is fair. Merely adding 30 additional days to the current 120-day timeframe within which an acting official may temporarily perform the duties and functions of the vacant office unless the Senate has forwarded a nominee to the Senate within that span is impractical. It is unrealistic, and I do not believe it is adequate.

Mr. BYRD. Madam President, will the Senator yield?

Mr. DURBIN. I will be happy to yield.

Mr. BYRD. The Senator from Illinois has suggested an amendment, Madam President, as far as I am concerned, I could accept. Why not let us invoke cloture; that amendment is certainly a germane amendment, and have the Senator put it up for action by the Senate? I am one who would vote for it.

Mr. DURBIN. I thank the Senator from West Virginia, and I certainly appreciate those comments. But we are told by the Senate Parliamentarian that the amendment would be relevant but not germane, and therefore any action for cloture which would put a burden on the Senate to act within a certain period of time on nominees that are sent would be wiped away, or could be wiped away by this cloture motion.

Mr. BYRD. Madam President, will the Senator yield further?

Mr. DURBIN. I will be happy to yield.

Mr. BYRD. I may have misunderstood the Senator. I thought the Senator was suggesting that the 150 days is not enough and that he would like to see 30 additional days. That would certainly seem to be germane as far as I am concerned.

Mr. DURBIN. If the Senator will allow me to respond, that amendment is germane. The only other amendments which would impose a responsibility on the Senate to move a nominee out of committee within 150 days after it is sent from the White House or

to move it off the Executive Calendar for a vote within 150 days, I am told by the Senate Parliamentarian, may not be allowed if cloture is invoked.

Mr. BYRD. Yes. I expect the Parliamentarian is right on that. I would not argue with that, nor would I probably support it.

If the Senator will allow me, the Constitution doesn't say that the Senate has to confirm the nominees. It simply says the President cannot have the full responsibility and power himself to name people to important positions. This is a matter that has to be shared under the Constitution between the President and the Senate. This constitutional provision—the appointments clause—I am trying to protect today is being given the runaround by the Justice Department and several other Departments, and I want to protect that constitutional power that is given to the Senate. As to whether or not the Senate acts on nominations, the Constitution doesn't require the Senate to act, but I think that the Senate does act, and would continue to act, on nominations within a reasonable period of time.

Having been the majority leader of the Senate during three different Congresses, I can say to the distinguished Senator that when I was majority leader we had nominations left on the calendar at the end of a Congress, in all three of the Congresses in which I served as majority leader. When we adjourned sine die that Executive Calendar was not wiped clean. We all did the best we could, but we did leave some nominations on the calendar. And I certainly share the Senator's feeling that the Senate ought to act expeditiously, in a reasonable fashion, but when it comes to requiring the Senate to act on all nominations, I don't think the Constitution requires that. And I might have to part company with the Senator at that point. But some of his other suggestions, I think, are very well made.

Mr. DURBIN. I thank the Senator from West Virginia. It pains me to believe we would have a difference of opinion, but those things do occur. I am certain the Senator as majority leader did his constitutional responsibility—there has never been a doubt about that—and also acted with dispatch in a timely manner.

I think the Senator makes a good point. We not only want to protect the clear constitutional responsibility and right of the Senate in this process, we want to bring the best men and women forward to continue serving our Government, and we want it all done in a timely fashion. My concern with this bill is it addresses one side of the equation. It says to the executive branch, you have to move in a more timely fashion to bring these men and women to the Senate for consideration. If we are clearly looking for filling vacancies in a timely fashion, that is only half the process. Once the nomination is brought to the Senate, we should move in a timely fashion, too. Otherwise, using the old reference to equity, we don't come to this argument with clean hands, and that is why I think there should be some symmetry here in the requirement of the executive as well as the legislative branch.

Mr. BYRD. Madam President, will the Senator yield?

Mr. DURBIN. I will be happy to yield.

Mr. BYRD. And I thank him for yielding. The Senator, as I think I understand, suggested that if we are going to deal with one part of the equation, namely, the nominating process by the executive, and protect ourselves in that regard, we ought to be equally interested in dealing with the other half of the equation by requiring action by the Senate to confirm or reject nominees.

May I with great respect suggest—and I am doing this for the record. I am sure I am not ahead of the Senator in thinking this—I am trying to address the constitutional side of the equation and stop the administration, not only this administration but also previous administrations, from conducting a runaround of the constitutional advice and consent powers of the Senate. I am suggesting we deal with that constitutional side of the equation.

Now, the other side, which the distinguished Senator mentions, if he will pardon my saying so, I think what he is talking about is the political side of the equation. That part is not included in the Constitution. The Constitution doesn't require the Senate to act on any nomination. But that is the political side. I would like to deal with the constitutional side, and that is the purpose of this legislation. And then we can do the best we can on dealing with the political side. The Senator is quite right; neither side comes into this matter with perfectly clean hands. That is an old equity maxim.

It reminds me of Themistocles who happened to say, one day, ''that he looked upon it as the principal excellence of a general to know and foresee the designs of the enemy;'' Aristides answered, ''that is indeed a necessary qualification; but there is another very excellent one, and highly becoming a general, and that is to have clean hands.'' The same thing would apply here. Neither party has clean hands when it comes to moving all nominations sent by a President to an up or down vote. As majority leader during the Presidential years of Mr. Carter and again during the 100th Congress, I can remember that the calendars were not always cleared of items that had been reported by committees when adjournments sine die occurred. I hope that we will not get bogged down in this way about a purely political matter when a far more important constitutional matter, important to the prerogatives of the Senate in the matter of appointments is at hand.

And let me state to the Senator the number of nominees that were left on the executive calendar when I was majority leader, at the time of sine die adjournment.

When I was majority leader—I will just take one Congress, for example, the 100th Congress.

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

Mr. BYRD. Mr. President, I ask unanimous consent the Senator have an additional 5 minutes.

Mr. LEVIN. Reserving the right to object, and I surely hope I will not, I wonder how much time remains.

Mr. BYRD. And that that time not be charged against either side.

The PRESIDING OFFICER. The Senator from Michigan has 21 minutes; the Senator from Tennessee has 9 minutes. Is there objection to the request?

Mr. LEVIN. The modified request, we have no objection to.

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

Mr. BYRD. I will just say this. To show that we all sometimes fail to have clean hands, when I was majority leader in the second session of the 100th Congress—I don't mind saying this—the civilian nominations totaled 516, including 112 nominations carried over from the first session; 335 of these were confirmed, 170 were unconfirmed, and 11 were withdrawn. So, this is a failing that can be ascribed to both Democrats and Republicans when they are in control of the Congress.

But, yet, I come back to my original premise; namely, that the Constitution did not require me to call up all those nominations off the calendar. It didn't say I had to do that. But it did say, with respect to nominations, that appointments to vacancies were to be shared by the President and the Senate, and that is what this bill is contemplating to enforce and what I am fighting for today.

I thank the distinguished Senator.

Mr. DURBIN. I thank the Senator from West Virginia.

I would just say that I can't believe that I hurried back from Chicago this morning to come to the floor of the U.S. Senate to actually engage my friend and fellow Senator from West Virginia in any debate about the Constitution. I plead nolo contendere. I am not able to join you in that. And I can't even reach back in Greek or Roman history for any kind of solace or defense.

I am not sure who the author was, it could have been a Greek or Roman, maybe a West Virginian, or even an Illinoisan, who once said the profound statement, ''What is sauce for the goose is sauce for the gander,'' and that is what I am attempting to argue here. That is, if we are going to impose on the executive branch a requirement to produce the nominee in 150 days, or if the time goes beyond that to suffer the possibility of not having an acting person in that slot, then we should accept the responsibility on the Senate side as well, to act in a timely manner on these nominees.

Mr. BYRD. Mr. President, will the Senator yield? I hope he will forgive me.

Mr. DURBIN. I will be happy to yield.

Mr. BYRD. I am not here to engage in challenging his statements. He is one of the fine Members of this Senate; one of the newer Members, in a way. He served a long time in the House of Representatives. He comes to the Senate well prepared to be a good Senator, and he is a good Senator.

But, again, I am concerned about that part of the responsibility which the Constitution places on both the executive and the legislative. I think the legislative is being given the runaround by the Judiciary Department. It has not just been during this administration. It has been, as I say, going on for over 25 years, and this is an opportunity for us to correct that, I hope we would vote for cloture and perhaps some of the Senators' amendments—which are certainly worthy of consideration and probably of adoption, some of them—could be given a chance to be offered and debated. I hope we would invoke cloture, indeed, to have an opportunity to do that.

Mr. DURBIN. I thank the Senator from West Virginia.

I think what we have found is that rarely do we visit this rather obscure area of the law, the Vacancies Act. I am hoping in this visitation on one side, that we have some balance and impose requirements on the Senate to act in a timely fashion, as we impose a requirement on the executive branch to report a nominee in a timely fashion. But I also hope the time periods that we choose are realistic. I think anyone involved in this process at any level understands that when a person's name comes up in nomination, they are subjected to far greater scrutiny than ever before. It discourages many good people from even trying public service, and I am sure that many have been disappointed.

But let us, I hope, during the process of this debate, be sensitive to this reality. And it is a reality that, under the bill, the meter keeps on ticking even when this scrutiny is underway, even if it is interrupted and a new nominee is proposed for a post. And if, in fact, at 150 days the nomination is not forthcoming, then, as I understand this bill, we would preclude the President from filling the spot with an acting person. That, to me, is a sort of decision which on its face makes sense but may have some practical ramifications. It may affect the ability of the administration to choose the person most able to handle a matter that involves public health, public safety, or the national defense. I also think that this bill too narrowly restricts who can function in an acting capacity.

The PRESIDING OFFICER. The additional 5 minutes of the Senator has expired.

Mr. LEVIN. Mr. President, how much time do I have remaining?

The PRESIDING OFFICER. The Senator from Michigan has 21 minutes remaining.

Mr. LEVIN. I will be happy to yield an additional 5 minutes to the Senator from Illinois.

Mr. DURBIN. Mr. President, I am concerned this bill too narrowly restricts those who can function in an acting capacity. I am worried that, in fact, the administration will not be able to pick that person best able to fill the spot, to conduct the duties, and to perform the functions of the office in the best way. I don't think that serves our country well. This bill could preclude the President from naming the most qualified person to serve as an acting officer. I do not think that will help us in any way.

Third, while it would not affect this President, experience has shown that at the beginning of a new administration filling positions in the Government requires far longer than specified in this bill. At the outset of any new administration, the President must nominate individuals to at least 320 positions in 14 different executive departments. The new President cannot possibly make all the required nominations within the 240 days allowed by this bill.

In 1993, when the nominations process was, if anything, simpler than today, the new administration was able to forward only 68 percent of the nominees within the first 240 days. Unless this time period is changed, the next administration could face departmental shutdowns because of this bill.

The enforcement mechanism of this bill, which establishes that no one can perform the functions and the duties of the vacant office, is a sanction which would lead to administrative immobilization.

I would like to also note it is ironic that we are here today debating whether to close off consideration of a measure designed to limit how long an acting official may temporarily fill an executive branch vacancy and legally perform the duties while awaiting an advancement of a nominee. The impetus is on the President to send nominees more expeditiously; yet with acting officials in many of these agencies, the work can continue. Such is not the case with the sister branch of Government which has eluded our debate here today, the Judiciary. In fact, a more serious crisis sits on the doorstep of the U.S. Senate, one that has been sorely neglected this year by many of the same people on the other side of the aisle who are proposing this change in the Vacancies Act.

We must recognize there is no similar vehicle or parallel authority like the Vacancies Act for filling vacancies on the Federal bench. There are presently 22 candidates to fill judicial vacancies on the Executive Calendar of the U.S. Senate, and 24 pending before the Senate Judiciary Committee—3 of those from my State. Unlike the executive branch where qualified acting officials may step in, in the judicial branch we don't have ''acting'' or ''interim'' judges.

I think, frankly, if we are going to assume some responsibility here, as we should, and impose responsibility on the executive branch, we should meet our responsibility. I think that responsibility requires us to act in a timely fashion on nominees sent before us. The reason I oppose cloture is I would like to see that the Senate shall also be held to the responsibility of acting in a timely fashion. If, after 150 days languishing in a committee there is no report on an individual, the name should come to the floor. If, after 150 days languishing on the Executive Calendar that name has not been called for a vote, it should be. Vote the person up or down. They are qualified or they are not. But to impose all of the burden on the executive branch and to step away from our responsibility I don't think is fair. It doesn't engage the symmetry, which I think is important.

I will concede, as Senator BYRD has said, the constitutional question is directly addressed by this bill, but I think there is a larger question about the process and whether or not we meet our twin goals: timely consideration and ultimately the very best and most able people who are selected to serve us in Government.

Mr. President, I yield back my remaining time.

The PRESIDING OFFICER. Who yields time?

Mr. THOMPSON addressed the Chair.

The PRESIDING OFFICER. The Senator from Tennessee.

Mr. THOMPSON. I yield myself 5 minutes.

The PRESIDING OFFICER. The Senator is recognized.

Mr. THOMPSON. Mr. President, I have a couple of points. With regard to the desire for symmetry, I point out that the symmetry and the balance are provided for in the Constitution itself. It is not symmetrical to take a constitutional provision and our constitutional duties, on the one hand, and equate it with legislation that people might be for or against, on the other. The Constitution provides that the President has the power to make the appointment, but only with the advice and consent of the Senate. It is part of our separation of powers, part of our checks and balances. Therein is the balance.

What we have today is a situation where the President, the current President, as Presidents in the past, has made nominations and figured out ways around the prerogatives of the Senate. We are in a situation today where we are not doing our duty. The U.S. Senate is not doing its duty in upholding its right and protecting and preserving its right.

We can bring this matter back. We cannot have cloture and bring this matter back time and time again. But we must recognize, with the provision, of course, of being able to offer germane amendments, we must recognize

that this situation is ongoing. We can debate legislation at any time. If it is deemed desirable to put a time limit on the U.S. Senate to consider appointments, we can debate that.

I think it is very bad legislation. As most Senators, I think, know, there is more than one reason why nominations languish up here sometimes. Sometimes they languish for very good reasons. Sometimes it is an attempt to work with the White House with regard to someone who has problems. Instead of just saying no and sending it back or telling them to take it back, we find ways to work around the problems we have. There are many reasons why that would be bad legislation, but it is something that can be considered at any time.

We have had this vacancies situation with us about 130 years now in terms of this legislation, and there are all kinds of things that can be added to it at this date, that it would probably be better if it were considered separately and invoke cloture today so we can address a problem that is really important in terms of the constitutional responsibilities of this body.

With regard to the other objections of the bill and talking about that this is too confining on the front end, actually we either are continuing practices that have been with us for 130 years or we are making them more liberal. We are giving the President greater leeway. We are giving him 150 days instead of 120 under current law. If we do not pass this legislation, he will keep 120 days instead of the 150 we are trying to give him. People are concerned about a new President coming in. We have added an additional 90 days to the 150 days in which a new President will have to make his nominations. We also added another liberalizing provision that, if he lets the 150 days expire and then there is a period of time and then he makes the nomination, the acting person can go back and resume his duties. These are all liberalizing provisions.

I understand the need to consider amendments. I was hoping that the possibility of germane amendments would get us through this, in light of the fact that we have spent a lot of time working on a bipartisan basis and making several changes.

We have made changes since this legislation was introduced to allow the President to cure a vacancy by sending up a nomination even after 150 days; by modifying the exclusion provision to exclude chief financial officers, for example; to allow a 150-day period when it expires during a recess to be extended to the second day after the Senate reconvenes; to reduce from 180 days to 90 days the length of time a first assistant held that position and can be eligible to be a nominee; extended the transitional period following a new President's inauguration, as I said, from 180 days to 240 days. In most of these cases, we have worked out on a bipartisan basis extensions and liberalizations from what is the current law.

While there would not be an opportunity to offer relevant amendments that are not germane, I suggest that this is something whose time has come and that we would be doing a disservice if we did not go ahead and move this legislation—something that, as I say, has to do—it is not just a normal piece of legislation, it has to do with the carrying out of our constitutional duties.

I yield the floor.

Mr. GLENN. Mr. President, I rise today to discuss S. 2176, the ''Federal Vacancies Reform Act of 1998'' introduced this summer by Senator THOMPSON, Chairman of the Governmental Affairs Committee with jurisdiction over the Act. I want to thank Senator LEVIN for managing the bill today. I also want to thank Chairman THOMPSON for the accommodations his staff has afforded Democratic staff in the negotiations leading up to this brief debate. We, on our side of the aisle, were blindsided, to say the least, by the filing of the cloture petitions last week as staff were negotiating the terms of a unanimous consent agreement on, and the substance of a managers' amendment to this very bill.

As we know, the Vacancies Act governs the temporary filling of what we call ''advise and consent'' or PAS positions (Presidentially-appointed, Senate-confirmed) in the Executive Branch. As I have said many times before, I remain concerned about two important goals of any new law we pass: (1) As Senator BYRD—the best expert this body has on Senate procedure and constitutional law—has repeatedly noted, this is one of the Senate's most important and serious constitutional prerogatives in that we are expected—required, in fact, under the Constitution—to provide our advise and consent on the nominees the President submits to us for our consideration; and (2) maintaining the smooth functioning of government with the large number of vacancies we seem to have to deal with. On one hand, we have more slots in government than ever before which means more vacancies. On the other hand, our confirmation process is long and tedious keeping acting officials (many of whom are very qualified to fill their slots) in their positions for longer than we intend.

Combined, these concepts make the continuity of the functioning of government a challenge to achieve, but certainly not impossible. We should be creating a process that reflects reality and provides the proper safeguards and enforcement mechanisms.

I believe the bill as it stands now improves on current law, but I think there is still work to be done. The White House has issued a veto letter on this bill. While I consider this important legislation, I remain concerned about many of the issues raised by the Administration, and I have filed amendments to address many of these concerns.

For instance, are we being too limiting in who can become an acting official? Current law mandates that an acting official can be the first assistant or anyone the President designates. We will be narrowing current law to include the first assistant or any PAS official the President designates. The importance of this change is that in the absence of a first assistant or at the President's discretion, we will be requiring someone whom the Senate has already approved to fill a slot for which the Congress has required the Senate's advise and consent. But do we really want a President to designate a PAS from HUD to assume the additional responsibilities of a PAS position at Department of Education? Or vice versa? Do we want these folks who already have plenty of responsibility as it is to assume the added responsibility of a second position? With the vetting process taking longer and the noteworthy downsizing in government that has occurred over the last 6 years, perhaps it's time to consider a hybrid category of who can be a temporary acting official.

I intend to offer an amendment to add a third category which would include qualified individuals of a certain level or higher who are already within an agency in which a vacancy occurs. Such individuals—who could include high-level members of the civil service—would be familiar with the agency, its processes and culture; possess some institutional memory; and be fully capable of the task. This gives the President a larger pool from which to choose an acting official, particularly in a case where there is no first assistant, and the President must turn to another PAS official to temporarily fill the slot. In addition, it allows a larger category of who can act at the beginning of an administration to keep government functioning at a time when there are not many PAS officials. I think this amendment is critical to the success of the legislation, and I hope Senators on both sides will give it serious consideration. I will not be able to support the bill if this issue is not addressed in it.

In addition, I hope to offer amendments which would give the President the authority to extend the period for a temporary official if a case of national interest arose and a nomination for the position had not yet been sent up. In such cases, under the amendment the President upon certification to Congress of the particular national interest—be it national security, natural disaster, economic instability or public health and safety—would be able to extend the temporary appointment one time for 90 days.

Finally, I hope to offer an amendment which would further decrease the requirement for a first assistant who will be an acting officer and the nominee to 45 days. At the beginning of a new administration, there may not be enough PAS officials to perform their own duties let alone those of another position. This will be the case particularly where there is a change in party

in the White House. In addition, because of the restriction in the bill on first assistants who serve in acting capacities who will also be the nominees, the administration will be required to fill the first assistant slot as well as the vacant PAS slot. My amendment would allow first assistants to be appointed, act in the vacant slot for 45 days and then be nominated to fill the slot on a permanent basis before the end of the 60-day period for which extensions are granted at the beginning of a new administration.

I hope that other amendments that may be offered which would impose the same constraints on the Senate as this legislation would impose on an administration will also have a fair opportunity to be considered. While some see no connection between the Vacancies Act and the responsibilities of the Senate to act on nominations, I believe the two are inextricably linked. I do not believe we can go forward in reforming one process until we commit to reforming our own.

I want to note that as the negotiations on this bill proceeded, we were not only looking to see how this law would operate in this second-term Democratic administration. Indeed, some day this law will be utilized by a Republican administration. With this in mind, we attempted to help craft a fair piece of legislation.

In that vein, I want to emphasize again that the process by which this bill has come to the floor for such limited debate with no opportunity for action prior to the cloture vote, is discouraging both for our faith in a fair process and for the fate of this legislation.

NOMINATION OF BILL LANN LEE

Mr. LEAHY. Mr. President, as the Senate considers possible amendments to the Vacancies Act, we have occasion to focus on the Senate's advice and consent role for all presidential nominations and the American people have an opportunity to review how well, or how badly, this Senate has fulfilled that constitutionally-mandated role.

It is important to explore ways to help the Executive Branch improve the process by which the President nominates, the Senate confirms and then the President appoints people to serve in important positions within the executive and judicial branches of our federal government. Indeed, I have often joined with Senator BYRD to defend the authority of the Senate on this issue and to protect the Senate's role against the executive encroachments by way of excessive use of the recess appointment power.

I recall when the Reagan and Bush administrations were abusing the power of recess appointment and note, by contrast, how sparingly President Clinton has used that constitutional authority. I am advised that while President Reagan made 239 recess appointments in 8 years and President Bush made 78 recess appointments in 4 years, President Clinton has used his recess appointment power only 45 times over the last 5 years.

I also recall how President Clinton acted with great restraint last year when he and the Attorney General joined to appoint Bill Lann Lee the Acting Assistant Attorney General for Civil Rights rather than using his power to make that a recess appointment.

Let us focus on the nomination of Bill Lann Lee. He was initially nominated to head the Civil Rights Division in July 1997. At the end of 1997, that nomination got caught up in one of the narrow, partisan-driven whirlwinds that hit Washington every now and then. The result was that the nomination became a victim of the anti-affirmative action lobby and was denied a vote by the full Senate. Bill Lee was mischaracterized last fall as a wild-eyed radical and as someone ready to impose an extreme agenda on the United States. He was misportrayed as a supporter of quotas. The Republican majority demonized this fine man and killed his nomination by denying him a Senate vote.

After looking at Bill Lee's record, I knew he was a man who could effectively lead the Civil Rights Division, enforce the law and resolve disputes. I reviewed his record of achievement and saw a practical, problem solver and noted last year that no one who has taken the time to review his record could call him an idealogue. I recognized that Bill Lee would be reasonable and practical in his approach to the job, and that he would be a top-notch enforcer of the Nation's civil rights laws.

Bill Lann Lee has been serving for almost 10 months now as the Acting Assistant Attorney General for Civil Rights, and he has established a solid track record. He is doing an outstanding job for all Americans. I have had a chance to take a close look at what he has been doing while serving as the acting head of the Civil Rights Division. What I find is a record of strong accomplishments. I see professionalism and effective problem solving. I find him enforcing the law in a sensible and fair manner.

Accordingly, I urge the Senate finally to consider the nomination of Bill Lann Lee and to confirm him to this important post. The President renominated Bill Lann Lee to be Assistant Attorney General in charge of the Civil Rights Division on January 29 of this year. Given his outstanding performance over the past 10 months, I urge the Senate to show him the fairness of a vote on his nomination. I am confident that when Senators consider his nomination and review his record, a majority of the United States Senate will vote to confirm this outstanding nominee.

It is to raise this matter to the attention of the American people and for action by the Senate, that I have filed an amendment to the Vacancies Reform Act bill to provide for a vote on the longstanding nomination of Bill Lann Lee before the Senate ends this year's session.

As we consider how to improve the Vacancies Act, the Senate would do well to consider its lack of action on the many outstanding nominations that the President has sent to us over the past several years on which the Senate has taken no vote. In addition to unprecedented delays in the consideration of judicial nominations—46 judicial nominations are pending and 22 are on the Senate calendar—there have been a number of executive branch nominations who have been denied consideration and a vote for many, many months.

Bill Lann Lee is an example. He was first nominated for the important position of Assistant Attorney General for Civil Rights on July 21, 1997, over 14 months ago. When no Senate vote was taken on his nomination last year, he was renominated on January 29, 1998. For the past 8 months his nomination has, again, been bottled up in committee.

This is an historic nomination. Bill Lann Lee is the first Asian-American to head the Civil Rights Division. He deserves to be confirmed by the Senate and to be accorded the full measure of recognition for all that he has achieved and all that he is doing on behalf of all Americans.

The Senate was denied the opportunity to vote on that nomination before adjournment in 1997. With one notable and courageous exception, the Republican majority of the Judiciary Committee would not report the nomination to the Senate so that the Senate could vote whether to confirm this outstanding nominee. Although the Republicans have a majority in the Senate, they have been unable to pass legislative proposals to undermine the nation's commitment to equal opportunity and civil rights. As a result, the Republican majority decided to stall the Lee nomination without a vote as a trophy to its extremist factions. This nomination could not be defeated in a fair up or down vote, so they determined to avoid that Senate vote altogether and at all costs.

I understand that Senator DURBIN, a thoughtful member of both the Senate Government Affairs Committee, from which this bill emerged, and the Senate Judiciary Committee, which refused to report the Lee nomination to the Senate for action, has filed a series of amendments to the Vacancies Reform Act to begin to deal with this aspect of the problem—Senate inaction on nominations. I will study those proposals with great interest.

I was disappointed this year that the Senate Judiciary Committee repeatedly postponed and eventually canceled hearings regarding the performance of the Civil Rights Division of the Justice Department under the leadership of Bill Lann Lee. I was disappointed because such a hearing would have offered us a chance to look at the outstanding on-the-job performance of our

Acting Assistant Attorney General for Civil Rights.

Over the past 10 months, the Division has focused most intensely on three areas of the law: violations of our Nation's fair housing laws, enforcement of the Americans with Disabilities Act (''ADA''), and cases involving hate crimes. Bill Lee and his team of civil rights attorneys have made advances in each of these areas of the law.

The Division has resolved a number of housing discrimination cases over the past few months, including the following: An agreement was reached with two large New Jersey apartment complexes resolving allegations that the defendants had discriminated against potential renters based on family status and race.

A housing discrimination case in Michigan was settled involving an apartment manager who told black applicants that no apartments were available at the same time that he was showing vacant apartments to white applicants. An agreement was also reached with the second largest real estate company in Alabama, which had been steering applicants to agents and residential areas based on race.

The Civil Rights Division has also focused on educating the public about the ADA and enforcing it where necessary. These cases have included: resolution of a case in Hawaii to allow those who are vision impaired to travel to the State without having to quarantine their guide dogs for four months in advance of arrival;

a consent decree with the National Collegiate Athletic Association so that high school athletes with learning disabilities have the opportunity to compete for scholarships and participate in college athletics; an agreement with private hospitals in Connecticut to ensure patients who are deaf have access to sign-language interpreters; and assistance to the State of Florida to update their building code to bring it into compliance with the ADA. Florida joins Maine, Texas and Washington State in having a certified building code thereby ensuring better compliance with the ADA by architects, builders and contractors within the State.

The Civil Rights Division has also resolved several hate crimes cases over the past 7 months, including:

In Idaho, six men pleaded guilty to engaging in a series of racially motivated attacks on Mexican American men, women and children, some as young as 9; in Arizona, three members of a skinhead group pleaded guilty to burning a cross in the front yard of an African American woman; and in Texas, a man pleaded guilty to entering a Jewish temple and firing several gun shots while shouting anti-Semitic slurs.

The Division has also been vigorously enforcing its criminal statutes, including: indictments against three people in Arkansas charged with church burning; guilty pleas by 16 Puerto Rico correctional officers who beat 22 inmates and then tried to cover it up; cases arising from Mexican women and girls, some as young as 14, being lured to the U.S. and then being forced into prostitution; and guilty pleas from 18 defendants who forced 60 deaf Mexican nationals to sell trinkets on the streets of New York. Out of concerns about slavery continuing in the U.S., Bill Lann Lee has created a Worker Exploitation Task Force to coordinate enforcement efforts with the Department of Labor. I commend the Acting Assistant Attorney General for putting the spotlight on these shameful crimes.

Other significant cases which the Civil Rights Division has handled in the past few months include the following: several long-standing school desegregation cases were settled or their consent decrees were terminated, including cases in Kansas City, Kansas; San Juan County, Utah; and Indianapolis, Indiana. Japanese-Latin Americans who were deported and interned in the United States during World War II finally received compensation this year. Lawsuits in Ohio and Washington, D.C. were settled to allow women access to women's health clinics.

The record establishes that Bill Lann Lee has been running the Division the way it should be run. Here in Washington, where we have lots of show horses, Bill Lee is a work horse—a dedicated public official who is working hard to help solve our Nation's problems. I commend him and the many hard-working professionals at the Civil Rights Division.

Bill Lee has served as acting head of the Civil Rights Division for 10 months now. Given the claims made by many in the Senate last fall that Mr. Lee would lead the Division astray, you might expect that he would be in the headlines every day associated with some extreme decision. Instead, we have seen the strong and steady work of the Division—solid achievements and effective law enforcement.

A few weeks ago, I received a letter from Governor Zell Miller of Georgia that is emblematic of the record that Bill Lee has established. Governor Miller discusses Bill Lee's efficient and effective ability to settle an action which involved Georgia's juvenile detention facilities. He notes that he was not exactly a fan of the Civil Rights Division before Bill Lee came along and writes that he ''was fearful that Georgia would be unable to get a fair forum in which to present our position, and that we would once again be compelled to engage in protracted and expensive litigation.'' Governor Miller writes that his fears were unfounded, that the parties engaged in ''intensive and expeditious negotiations'' and reached a fair agreement. Governor Miller also notes:

I have indicated to Mr. Lee both personally and publicly that he and his staff treated Georgia with professionalism, fairness, and respect during our negotiations. Under the direction of Bill Lann Lee, what began as a potentially divisive and litigious process was transformed into an atmosphere where the State was able to have its case heard fairly, resulting in a reasonable agreement benefiting all parties. This is the way in which the Civil Rights Division should operate in its dealings with the states, and I am pleased to commend Mr. Lee and his staff for their efforts in this matter.

The Acting Assistant Attorney General continues to build on his reputation as a professional and effective negotiator, who routinely earns praise from opposing parties. I had high expectations for Bill Lann Lee when he was nominated and I have not been disappointed. He is doing a terrific job. It is time for the Senate to end his second-class status and confirm him.

We need Bill Lee's proven problem-solving abilities in these difficult times. It is wrong for the Senate to ignore his nomination any longer and a shameful slight to him, to his family and to all who care about fairness and equal rights.

I remember vividly when Mr. Lee appeared at his confirmation hearing almost one year ago. He testified candidly about his views, his work and his values. He understood that as the Assistant Attorney General for the Civil Rights Division his client is the United States and all of its people. He told us poignantly about why he became a person who has dedicated his life to equal justice for all when he spoke of the treatment that his parents received as immigrants.

Mr. Lee told us how in spite of his father's personal treatment and experiences, William Lee remained a fierce American patriot, volunteered to serve in the United States Army Air Corps in World War II and never lost his belief in America. He inspired his son and Bill now inspires his own children and countless others across the land. Mr. Lee noted:

My father is my hero, but I confess that I found it difficult for many years to appreciate his unflinching patriotism in the face of daily indignities. In my youth, I did not understand how he could remain so deeply grateful to a country where he and my mother faced so much intolerance. But I began to appreciate that the vision he had of being an American was a vision so compelling that he could set aside the momentary ugliness. He knew that the basic American tenet of equality of opportunity is the bedrock of our society.

Bill Lann Lee has remained true to all that his father and mother taught him. I continue to work to end the ugliness of Senate inaction on his nomination. If opponents want to distort his achievements and mischaracterize his beliefs, let them at least have the decency to engage in that debate on the floor of the Senate so that this long-standing nomination can be acted upon—either vote it up or vote it down, but vote on it. His career of good works and current efforts should not be rewarded with continued ugliness. Such treatment drives good people from public service and distorts the role of the Senate. I have often referred to the Senate as acting at its best when it serves as the conscience of the nation. In this case, I am afraid that the Senate has shown no conscience.

Bill Lann Lee is a man of integrity, of honesty and of fairness. Born in Harlem, to Chinese immigrant parents, he has lived the American dream and stayed faithful to American values. He has done nothing to justify the unfair treatment by the Senate.

As a child he worked in his parents' laundry after school. He went on to graduate magna cum laude from Yale College and to obtain a law degree from Columbia University. Bill Lann Lee has spent his life helping others—helping them to keep their jobs, to keep their homes, to have a chance at a well-earned promotion and to raise healthy children.

As western regional counsel for the NAACP Legal Defense Fund, a public interest law firm founded by Thurgood Marshall in 1939, Mr. Lee litigated hundreds of cases ranging from employment discrimination claims to efforts to ensure probation offices are widely dispersed throughout Los Angeles to ensuring that poor children are tested for lead poisoning. His extensive experience and renowned skill at settling cases has served him well as Acting Assistant Attorney General for the Civil Rights Division.

Most impressive is the array of former opposing counsels and parties who support Mr. Lee's nomination. In addition to Governor Miller, consider the words of Los Angeles Mayor Richard Riordan: Our ''negotiations could not have concluded successfully without Mr. Lee's practical leadership and expertise.'' I believe Mayor Riordan's enthusiastic support and assurance that Mr. Lee has ''practiced mainstream civil rights law'' should carry some weight.

Mr. Lee is a top quality candidate. He has all the essential qualities for this job—a legal career devoted to top-notch civil rights work, an outstanding degree of integrity and a commitment to practical solutions. This year he also has a proven track record as the Acting Assistant Attorney General.

No one can argue that the President has sent to us a person not qualified by experience to lead the Civil Rights Division. Bill Lee's record of achievement is exemplary. He is a man of integrity and honor and when he said to this Committee that quotas are illegal and wrong and that he would enforce the law, no one should have any doubt about his resolve to do what is right. The Senate should vote on this outstanding nominee. He is the right person to lead the Civil Rights Division into the next century. We need his proven problem-solving abilities in these difficult times.

Unfortunately, last year's consideration of this outstanding nominee took a decidedly partisan turn when the Speaker of the House chose to intervene in this matter and urge the Senate Republican Leader to kill this nomination. In his unfortunate letter, Speaker GINGRICH unfairly criticized Mr. Lee and accused him of unethical conduct. The allegations of wrongdoing carelessly lodged against Mr. Lee are contradicted by the Republican Mayor of Los Angeles, Richard Riordan, as well as the Vice-President of the Los Angeles Police Commission, T. Warren Jackson, the Assistant City Attorney, Robert Cramer, and the City Attorney, James K. Hahn, but the damage had been done.

I recall when times were different. I recall when charges were raised against Clarence Thomas and the Judiciary Committee held several days of additional hearings after that nomination had already been reported by the Judiciary Committee to the full Senate. There was a tie vote in Committee on the Thomas nomination, which would not have even been reported to the Senate had we not also voted virtually unanimously, with six Democrats joining seven Republicans, to report the Thomas nomination to the floor without recommendation. Of course, ultimately the nomination of Judge Thomas to become Justice Thomas was confirmed by the Senate.

It remains my hope that the Senate will now give Bill Lann Lee the same fairness that we showed Clarence Thomas and allow his nomination to be voted upon by the United States Senate. It would be ironic if, after the Senate proceeded to debate and vote on the Thomas nomination—one that included charges that he engaged in sexual harassment—the Republican leadership prevented the Senate from considering a nominee because he has worked to remedy sexual harassment and gender discrimination.

After consultation with Senators, the President acted after Congress's adjournment last fall to name Bill Lann Lee the Acting Assistant Attorney General for Civil Rights. The President then followed through on his commitments and renominated this distinguished civil rights attorney and public servant on January 29, 1998. This Senate is now approaching adjournment, again, and, again, the Senate is not voting whether to confirm or reject this nomination. The President has fulfilled his end of the bargain and acted with restraint and respect in this regard. The Senate has done nothing with respect to this nomination but ignore it. So, when we criticize this President for not sending up nominees fast enough, let us not forget that the Senate has now had ample opportunity for over two years to act on the nomination of Bill Lann Lee and the Senate has not.

Last year, I was honored to stand on the steps to the Lincoln Memorial, where the Rev. Martin Luther King Jr. spoke 35 years ago and inspired the nation toward the promise of equality. I heard our colleagues Senator KENNEDY and Senator FEINSTEIN speak about the continuing struggle to provide equal opportunity to all Americans. I took inspiration from the wisdom of Rep. JOHN LEWIS whose compass is ever true on these matters. We heard Rep. MAXINE WATERS declare in no uncertain terms the support of the Congressional Black Caucus for Bill Lann Lee, Representative PATSY MINK take pride in reiterating the support of the Congressional Asian Pacific Caucus and Representative XAVIER BECERRA add the support of the Congressional Hispanic Caucus.

I heard Justin Dart, a dedicated public servant who worked with President's Reagan and Bush, declare that people with disabilities support Bill Lann Lee and Representative BOB MATSUI recount the dark days before the civil rights laws when his family had to suffer the indignity of internment because of the Japanese ancestry.

Just last week when Congress presented Nelson Mandela with the Congressional Gold Medal, we drew upon the American tradition of Lincoln, King and so many who labored long and sacrificed much in the struggle toward equality for all Americans. We honored that past last week. We could extend it today by taking up and voting upon the nomination of Bill Lann Lee to be Assistant Attorney General for the Civil Rights Division. I call upon the party of Lincoln to be fair to Lee and vote on this nomination.

Let the Senate debate and vote on the nomination of Bill Lann Lee. If the Senate is allowed to decide, I believe he will be confirmed and will move this country forward to a time when discrimination will subside and affirmative action is no longer needed; a time when each child—girl or boy, black or white, rich or poor, urban or rural, regardless of national or ethnic origin and regardless of sexual orientation or disability—shall have a fair and equal opportunity to live the American dream.

JUDICIAL NOMINATIONS

Mr. President, as we debate how to change federal law to require executive nominations within certain time frames and to preclude responsibilities from been fulfilled when a confirmed nominee is not present, we also need to consider how the Senate fulfills its duties with regard to nominees who have been before us for many months without Senate action. Since July I have been comparing the Senate's pace in confirming much-needed federal judges to Mark McGwire's home run pace. As the regular season ended over the weekend, Mark McGwire's home run total reached 70. Unfortunately, the Senate's judicial confirmation total remains stalled at 39.

As recently as 1994, the last year in which the Senate majority was Democratic, the Senate confirmed 101 judges. It has taken the Republican Senate 3 years to reach the century mark for judicial confirmations—to accomplish what we did in one session.

The Senate went ''0 for August,'' risks going ''0 for September'' and is threatening to go ''0 for the rest of the year.'' Indeed, I have heard some say that the Republican Senate will refuse to confirm any more nominations all year. That would be wrong and would

certainly harm the administration of justice and perpetuate the judicial vacancies crisis. Senate action has not even kept up with normal attrition over the past 2 years, let alone made a real difference in filling longstanding judicial vacancies. Both the Second Circuit and the Ninth Circuit have had to cancel hearings due to judicial vacancies. Chief Judge Winter of the Second Circuit has had to declare a circuit emergency and to proceed with only one circuit judge on their 3-judge panels. Recently, he has had to extend that certification of emergency.

Yet in spite of that emergency, the Senate continues to stall the nomination of Judge Sonia Sotomayor to the Second Circuit. Her nomination has been stalled on the Senate calendar for over six months. Chief Judge Winter's most recent annual report noted that the Circuit now has the greatest backlog it has ever had, due to the multiple vacancies that have plagued that court.

For a time Judge Sotomayor's nomination was being delayed because some feared that she might be considered as a possible replacement for Justice Stevens, should he choose to resign from the Supreme Court. After the Supreme Court term had ended and Justice Stevens had not resigned, the Senate might have been expected to proceed to consider her nomination to the Second Circuit on its merits and confirm her without additional, unnecessary delay. Unfortunately, that has not been the case.

When confirmed she will be only the second woman and second judge of Puerto Rican descent to serve on the Second Circuit. Just as Sammy Sosa is a source of great pride to the Dominican Republic and to Latin players and fans everywhere, Judge Sotomayor is a source of pride to Puerto Rican and other Hispanic supporters and to women everywhere.

Judge Sonia Sotomayor is a qualified nominee who was confirmed to the United States District Court for the Southern District of New York in 1992 after being nominated by President Bush. She attended Princeton University and Yale Law School. She worked for over 4 years in the New York District Attorney's Office as an Assistant District Attorney and was in private practice with Pavia & Harcourt in New York. She is strongly support by Senators MOYNIHAN and D'AMATO.

I note that one of her recent decisions, Bartlett v. New York State Board of Law Examiners, that had been criticized by her opponents, was affirmed in principal part on September 14 by a unanimous panel of the Second Circuit. In an opinion written by Judge Meskill, the Court agreed ''with the district court's ultimate conclusion that Dr. Bartlett, who has fought an uphill battle with a reading disorder throughout her education, is among those for whom Congress provided protection under the ADA and the Rehabilitation Act.'' In this, as in her other decisions that opponents seek to criticize, Judge Sotomayor applies the law. That is what judges are supposed to do. This affirmance belies the charge that she is or will be a judicial activist.

Ironically, it was Judge Sotomayor who issued a key decision in 1995 that brought an end to the work stoppage in major league baseball. If only the breaking of the single season home run record could signal the end of the work stoppage in the Senate with respect to her nomination.

Instead of sustained effort by the Senate to close the judicial vacancies gap, we have seen extensive delays continued and unexplained and anonymous ''holds'' become regular order.

I began this year challenging the Senate to maintain the pace it achieved at the end of last year when 27 judges were confirmed in the last nine weeks. Instead, the Senate has confirmed only 39 judicial nominees in 25 weeks in session. Had the Senate merely maintained the pace that it set at the end of last year, the Senate would have confirmed 75 judges—not 39 judges—by now.

We have 22 qualified nominees on the Senate calendar awaiting action. Including those still pending before the Committee, we have a total of 46 judicial nominations awaiting action, some of whom were first received over three years ago.

The Senate continues to tolerate upwards of 75 vacancies in the federal courts with more on the horizon—almost one in 10 judgeships remains unfilled and, from the looks of things, will remain unfilled into the future. The Senate needs to proceed more promptly to consider nominees reported to it and to do a better job fulfilling its constitutional responsibility of advice and consent.

Unfortunately, the record that the Senate is on pace to set this year with respect to judicial nominations is the record for the amount of time it takes to be confirmed once the nomination is received by the Senate. For those few nominees lucky enough to be confirmed as federal judges, the average number of days for the Senate confirmation process has continued to escalate. In 1996, that number rose to a record 183 days on average. Last year, the average number of days from nomination to confirmation rose dramatically yet again. From initial nomination to confirmation, the average time it took for Senate action on the 36 judges confirmed in 1997 broke the 200-day barrier for the first time in our history. It was 212 days.

The time is still growing and the average is still rising, to the detriment of the administration of justice. The average time from nomination to confirmation for judges confirmed this year is 259 days. That is three times as long as it was taking before this partisan slowdown.

I have urged those who have been stalling the consideration of the President's judicial nominations to reconsider and work to fulfil this constitutional responsibility. Those who delay or prevent the filling of these vacancies must understand that they are delaying or preventing the administration of justice. Courts cannot try cases, incarcerate the guilty or resolve civil disputes without judges.

The federal judiciary's workload was at least 60 percent lower than it is today when the Reagan-Bush administrations took office. The federal court's criminal docket alone is up from 28,921 cases in 1980 to 50,363 last year. That is an increase of over 70 percent in the criminal case filings in the federal courts.

During the Reagan and Bush administrations, whether it had a Democratic or Republican majority, the Senate promptly considered and confirmed judges and authorized 167 new judgeships in response to the increasing workload of the federal judiciary. While authorized judgeships have increased in number by 25 percent since 1980, the workload of the federal courts has grown by over 60 percent during the same period. That is why the prolonged vacancies being perpetuated by delays in the confirmation process are creating such strains within the federal courts.

Unlike other periods in which judicial vacancies could be attributed to newly-created judgeships, during the past four years the vacancies crisis has been created by the Senate's failure to move quickly to consider nominees to longstanding vacancies.

In the early and mid-1980's, vacancies were between 25 and 34 at the beginning of each session of Congress. By the fall of 1983, the vacancies for the entire federal judiciary had been reduced to only 16.

With attrition and the 85 new judgeships created in 1984, vacancies reached 123 at the beginning of President Reagan's second term, but those vacancies were reduced to only 33 within two years, by the fall of 1986. A Democratic Senate in 1987 and 1988 reduced the vacancies still further to only 23 at the end of the 100th Congress.

It was not until additional judgeships were created in 1990 that the next significant increase in vacancies occurred and then, again, a Democratic Senate responsibly set about the task of helping fill those vacancies with qualified nominees. Although President Bush was notoriously slow to nominate, the Democratic Senate confirmed 124 nominees in President Bush's last two years in office and cut the vacancies in half.

With respect to the question of vacancies, it is also important to note that in 1997 the Judiciary Conference of the United States requested an additional 53 judgeships be created. The Republican Congress has refused to consider that workload justified request. My bill to meet that request, S. 678, the Federal Judgeship Act of 1997, has received no attention since I introduced it over a year ago. Had those additional judgeships been created, as

they were in 1984 and 1990 under Republican Presidents, current judicial vacancies would number 128 and total almost 14 percent of the federal judiciary.

Last week Senator GRAHAM spoke about authorizing the additional District Court judges recommended by the Judicial Conference and needed around the country. These are the judges who try federal criminal cases and hear complex federal civil litigation. Given the Republican Senate's tenacious refusal to consider and confirm judges for the vacancies that currently exist, it seems unlikely that the Republican majority would be willing to authorize the additional federal judicial resources that are needed around the country. That is a shame. The Senator from Florida is right to try and I join him in his efforts.

No one should take comfort from the number of confirmations achieved so far this year. It is only in comparison to the dismal achievements of the last two years that 39 confirmations could be seen as an improvement. The President has been doing a better job of sending the Senate scores of nominees more promptly. Unfortunately, qualified and capable nominees are still being delayed too long and stalled.

I have pledged to continue to work to end the judicial vacancies crisis and to support efforts to provide the federal judiciary with the resources it needs to handle its growing caseload and serve the American people.

When the Senate is asked to consider amendments to the Vacancies Act, it should also reconsider its own inaction on the many outstanding nominees that the President has sent the Senate and that the Senate is refusing to consider.

Indeed, earlier this year I proposed a bill that requires the Senate to vote on nominations for Court of Appeals vacancies that created an emergency under federal law. The week after Chief Judge Winter of the Second Circuit certified such an emergency last spring, I introduced the Judicial Emergency Responsibility Act, S. 1906. The purpose of this bill is to supplement the law by which Chief Justice Winter certified the judicial emergency, a judicial emergency that still persists in the Second Circuit, and to require the Senate to do its duty and to act on judicial nominations before it recesses for significant stretches of time. The Senate should not be taking vacations when a Circuit Court is suffering from a vacancy emergency.

I introduced the bill just before the Senate adjourned for a 2-week recess and I urged prompt action on the nominations then pending to fill those Second Circuit vacancies. At that time, the nomination of Judge Sonia Sotomayor was among those favorably reported and had been on the Senate Calendar awaiting action for a month. That was five months ago. Still, there has not been any action.

I did not believe that the Senate should be leaving for a two-week recess in April or a four-week recess in August and leaving the Second Circuit with vacancies for which it had qualified nominations pending. I do not believe that the Senate should adjourn this year without voting on the many qualified judicial nominees that have been pending before the Senate for so long without action. I have been urging action on the nominees to the Second Circuit for more than a year. The Senate is failing in its obligations to the people of the Second Circuit, to the people of New York, Connecticut and Vermont. We should call an end to this stall and take action.

I intend to consult with the managers of the bill, but believe that I should offer S. 1906 as an amendment to the pending measure.

What the Senate is proceeding to do to the judicial branch in refusing to vote on nominees and perpetuating judicial vacancies is too reminiscent of the government shutdown only a couple of years ago and the numerous times of late when the Republican congressional leadership has recessed without completing work on emergency supplemental and disaster relief legislation. As we approach the end of the session, the Republican Congress has yet to pass a budget or enact the 13 annual appropriations bills that are our responsibility. Must we wait for the administration of justice to disintegrate further before the Senate will take this crisis seriously and act on the nominees pending before it? I hope not.

I look forward to Senate debate on suggestions to impose responsibility upon itself in its treatment of judicial nominations.

The PRESIDING OFFICER. Who yields time?

Mr. LIEBERMAN addressed the Chair.

The PRESIDING OFFICER. The Senator from Connecticut.

Mr. LIEBERMAN. I thank the Chair.

Mr. President, I yield myself up to 10 minutes from the time allocated to Senator LEVIN.

The PRESIDING OFFICER. The Senator from Connecticut is recognized.

Mr. LIEBERMAN. I thank the Chair.

Mr. President, let me say at the outset that the bill before us addresses a very important problem, which is to say the need to protect the Senate's constitutional role in the appointment of Federal officers. The Constitution, as my colleagues have indicated, provides that the President's power to appoint officers of the United States is to be exercised ''by and with the Advice and Consent of the Senate. . . .''

Unfortunately, in too many cases over the course of the past several administrations, the Senate's constitutional prerogatives have too often been ignored through the executive's far-too-common practice of appointing acting officials to serve lengthy periods in positions that are supposed to be filled with individuals confirmed by the Senate. I think it is, therefore, entirely appropriate—indeed necessary—for Congress to act to remedy this situation.

I appreciate very much the leadership given by the Senator from West Virginia, the Senator from South Carolina, and the chairman of our committee, the Senator from Tennessee. I also appreciate those Senators' willingness to work with the members of the Governmental Affairs Committee, including this Senator, to accommodate some of the concerns we have had as the bill moved through committee.

The fact is, throughout that whole period of time, the effort to reform the Vacancies Act has been a truly bipartisan one, as it should be. Even though I believe there are some problems remaining with the bill, I also am confident that the process of resolving those problems has been conducted in good faith and with fairness on all sides.

I therefore regret that, along with many of my colleagues, I find myself in the situation I am today, which is to say, prepared to vote against cloture on this bill, because I believe there remain serious substantive problems with the bill, and the procedural situation we are in now with a cloture motion having been filed in an attempt to limit debate will frustrate our ability to work together to solve some of those remaining problems.

I think it is particularly unfortunate that we find ourselves in this position on this bill because I am confident that, were we not forced immediately into a cloture vote, we likely could work out the problems that remain with the bill. It remains my hope, if cloture is not obtained on the vote that will occur in a little more than 10 minutes, that we can continue to work together to achieve a unanimous consent agreement that will allow perhaps for amendments that are relevant, if not germane, according to the procedures of the Senate.

Let me briefly give an example of one of the problems that I think remains with the bill which is of concern to some. As the bill is currently drafted, only one of two individuals can serve as acting officials in the case of a vacancy: Either the first assistant to the vacant position, a term of art that generally refers to the top deputy; or someone already confirmed by the Senate for another position. Because individuals holding Senate-confirmed positions already have a lot to do, it almost always will be the first assistant who takes over as the acting.

But, by the terms of the bill, a first assistant apparently can take over only if he or she was the first assistant at the time of the vacancy. This severe limitation on the universe of individuals who may serve as acting is, in my view, a mistake that could be harmful to the functioning of the executive branch because it will have the effect of forcing many important positions to remain vacant, potentially for several months at a time. That is because

there are many times when a vacancy occurs at a time that the first assistant position is also vacant.

There may be other times when a first assistant, who was there when the vacancy occurred, may want to leave his or her job during the pendency of that vacancy. In both situations, as I read the literal terms of the bill as it is before us, it would require that during the duration of the vacancy, which could be many months long, we would be requiring that no one other than people who had already been confirmed for other positions would be eligible to serve as the acting in the vacant position. We would be effectively denying the executive branch the ability to put someone else in that position on an acting basis.

Also troubling is what can happen when a new President comes into office. If individuals in Senate-confirmed positions leave before the new President takes office, as often happens, then the only people who would be qualified to serve as acting officials as the new administration gets off the ground, because they were the first assistants at the time of the vacancy, are holdovers, often political appointees from the previous administration. That could create an awkward situation that would require a new administration to staff itself with a previous administration's political appointees.

I am confident that we could work this problem out were the bill to come to the floor under the normal processes. But, unfortunately, in the posture that it is now in, it is not so.

So I must say I again will vote against cloture, but I do remain hopeful that if cloture is not granted on this next vote, we will be able to find a way together to continue the bipartisan path that this bill has taken, until this moment when it has reached the Senate floor, and find a way to find a common ground to move forward with this bill on which a lot of work has been done, and, though it is detailed and intricate, in which the public interest finds a great expression.

I thank the Chair and yield the floor.

The PRESIDING OFFICER. Who yields time?

Mr. THOMPSON. May I inquire how much time remains?

The PRESIDING OFFICER. The Senator from Tennessee controls 4 minutes. The Senator from Michigan controls 8 minutes 23 seconds.

Mr. THOMPSON. I ask the Senator from West Virginia if he has additional comments.

I yield myself 2 minutes.

The PRESIDING OFFICER. The Senator from Tennessee.

Mr. THOMPSON. A couple quick points.

My friend from Connecticut makes good points, as usual. I point out, though, that the concern about, someone could not be a first assistant if they had not been there for so many days, that would not keep them from being the acting officer. If they were appointed to the permanent position, they would have needed to have been there for 90 days. But just to be the acting officer, anyone who serves in that position would become the acting officer without having been there any length of time.

With regard to the second concern with regard to a new administration, my understanding is there is always a holdover person who is a Senate-confirmed person who traditionally takes care of those problems—essentially the same situation we have had for the last 130 years with regard to those concerns, I believe.

I yield the Senator from West Virginia the remainder of my time, which I think is probably 2, 3 minutes.

Mr. BYRD addressed the Chair.

The PRESIDING OFFICER. The Senator from West Virginia is recognized.

Mr. BYRD. Mr. President, I again thank the distinguished chairman for his outstanding service that he has performed in the interest of the Constitution, the interest of this institution, and the interest of the liberties of the people which we are all trying to protect in this measure.

Mr. President, I believe there—we only have less than 2 minutes; is that right?

The PRESIDING OFFICER. The Senator has 2½ minutes remaining.

Mr. BYRD. How much time does the distinguished Senator from Connecticut wish to——

The PRESIDING OFFICER. The Senator has 8 minutes remaining.

Mr. BYRD. If the distinguished Senator from Connecticut will yield me a little of his time.

Mr. LIEBERMAN. I yield the Senator as much time as he wants.

Mr. BYRD. Mr. President, I am reminded of that situation which occurred in 63 B.C. Sallustius writes about. And it is referred to as the conspiracy of Catiline. After Caesar had spoken in the Roman senate, protesting against the death penalty for the conspirators, for the accomplices of Catiline, Cato the Younger was called upon by Cicero, the consul, to speak. Cato demanded that the accomplices of Catiline be put to death under the ancient laws of the republic.

From Cato's speech I quote only the following strain: ''Do not think that it was by arms that our ancestors raised the state from so small beginnings to such grandeur, but there were other things from which they derived their greatness. They were industrious at home, just rulers abroad, and into the Senate Chamber they brought untrammeled minds, not enslaved by passion.''

Now, Mr. President, I urge my colleagues in the Senate not to let their minds be trammeled with passion. Keep them untrammeled and focused on the injury that is being done to the Senate by the executive department in the flaunting and circumventing of the appointments clause, which this legislation addresses and is intended to secure for the Senate its rights and prerogatives under the Constitution.

Democrats and Republicans who reverence the Constitution and who pride themselves in having been given the honor to serve in this institution—the legislative branch—I hope will stand up for the institution and bind ourselves to the mast of the Constitution, as did Odysseus when the divine Circe bade him to stay away from the Sirens' isle.

I hope that we will keep in mind that we are making several improvements in this bill as it is written. And as the distinguished chairman of the Governmental Affairs Committee has so eloquently pointed out within the last few minutes, even without amendments this bill is a liberal advancement—liberal from the standpoint of the administration, whatever administration it might be, Democratic or Republican. It gives more time to the administration.

So if we turn down this opportunity, I hope the opportunity will come again. But if it does not, then the administration is the loser, as well as the Senate—but the Senate is the greater loser because of the constitutional requirements under the appointments clause which give the Senate a share in the appointments of individuals to important positions in the executive branch and the judicial branch.

I yield the floor.

The PRESIDING OFFICER. The Senator from Connecticut has 6 minutes remaining.

Mr. LIEBERMAN. I thank the Chair.

PRIVILEGE OF THE FLOOR

Mr. LIEBERMAN. I rise simply to make an unrelated motion. I ask unanimous consent that privileges of the floor be granted to Laureen Daly of my staff during the pendency of S. 442 and H.R. 3529.

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

Mr. LIEBERMAN. I thank the Chair.

Mr. President, I think on this side we have spoken our piece. For the reasons indicated, we hope that our colleagues will vote against cloture and then that both sides can come together to achieve common ground and pass this important piece of legislation.

I, therefore, yield back the remaining time from our side.

The PRESIDING OFFICER. All time is yielded back.

CLOTURE MOTION

The PRESIDING OFFICER. Under the previous order, pursuant to rule XXII, the Chair lays before the Senate the pending cloture motion, which the clerk will report.

The assistant legislative clerk read as follows:

CLOTURE MOTION

We the undersigned Senators, in accordance with the provision of rule XXII of the Standing Rules of the Senate, do hereby move to bring to a close debate on S. 2176, the Vacancies Act:

Trent Lott, Strom Thurmond, Charles Grassley, Thad Cochran, Wayne Allard, Ben Nighthorse Campbell, Don Nickles, Orrin G. Hatch, Pat Roberts, Tim

Hutchinson, Richard Shelby, Conrad Burns, Jim Inhofe, Connie Mack, Fred Thompson, Spencer Abraham.

CALL OF THE ROLL

The PRESIDING OFFICER. By unanimous consent, the mandatory quorum call under the rule has been waived.

VOTE

The PRESIDING OFFICER. The question is, Is it the sense of the Senate that debate on Senate bill 2176, the Federal Vacancies Reform Act of 1998, shall be brought to a close? The yeas and nays are required under the rule. The clerk will call the roll.

The assistant legislative clerk called the roll.

Mr. NICKLES. I announce that the Senator from Missouri (Mr. BOND), the Senator from New York (Mr. D'AMATO), and the Senator from Alabama (Mr. SESSIONS) are necessarily absent.

Mr. FORD. I announce that the Senator from South Carolina (Mr. HOLLINGS), the Senator from Massachusetts (Mr. KENNEDY), the Senator from Illinois (Ms. MOSELEY-BRAUN), the Senator from Nevada (Mr. REID), the Senator from New Jersey (Mr. TORRICELLI), and the Senator from Oregon (Mr. WYDEN) are necessarily absent.

I further announce that, if present and voting, the Senator from Nevada (Mr. REID) would vote ''no.''

The yeas and nays resulted—yeas 53, nays 38, as follows:

[Rollcall Vote No. 289 Leg.]

YEAS—53

Abraham	Frist	McCain
Allard	Gorton	McConnell
Ashcroft	Gramm	Murkowski
Bennett	Grams	Nickles
Brownback	Grassley	Roberts
Burns	Gregg	Roth
Byrd	Hagel	Santorum
Campbell	Hatch	Shelby
Chafee	Helms	Smith (NH)
Coats	Hutchinson	Smith (OR)
Cochran	Hutchison	Snowe
Collins	Inhofe	Specter
Coverdell	Jeffords	Stevens
Craig	Kempthorne	Thomas
DeWine	Kyl	Thompson
Domenici	Lott	Thurmond
Enzi	Lugar	Warner
Faircloth	Mack	

NAYS—38

Akaka	Durbin	Lautenberg
Baucus	Feingold	Leahy
Biden	Feinstein	Levin
Bingaman	Ford	Lieberman
Boxer	Glenn	Mikulski
Breaux	Graham	Moynihan
Bryan	Harkin	Murray
Bumpers	Inouye	Reed
Cleland	Johnson	Robb
Conrad	Kerrey	Rockefeller
Daschle	Kerry	Sarbanes
Dodd	Kohl	Wellstone
Dorgan	Landrieu	

NOT VOTING—9

Bond	Kennedy	Sessions
D'Amato	Moseley-Braun	Torricelli
Hollings	Reid	Wyden

The PRESIDING OFFICER. On this vote, the yeas are 53, the nays are 38. Three-fifths of the Senators duly chosen and sworn not having voted in the affirmative, the motion is not agreed to.

The majority leader is recognized.

UNANIMOUS-CONSENT AGREEMENTS

Mr. LOTT. Mr. President, I ask unanimous consent that at 10 a.m. on Tuesday, September 29, and notwithstanding rule XXII, the Senate proceed to the consideration of a conference report to accompany H.R. 6, the Higher Education Act, and there be 30 minutes equally divided for debate on the report.

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

Mr. LOTT. I further ask unanimous consent that following the debate on the education conference report, it be temporarily set aside and the Senate return to the consideration of the conference report to accompany H.R. 4013, the Department of Defense appropriations bill and there be 10 minutes of debate equally divided on that report.

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

Mr. LOTT. I further ask unanimous consent that following debate on the defense conference report, it be temporarily set aside and the Senate then proceed to vote on adoption of the higher education conference report, to be followed immediately by a vote on the adoption of the defense conference report.

And finally, I ask unanimous consent that the cloture vote on the motion to proceed to the Internet tax bill occur immediately following the aforementioned stacked votes.

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

Mr. LOTT. Further, I ask unanimous consent that all votes following the first vote on Tuesday morning be limited to 10 minutes in length.

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

Mr. LOTT. Finally, I ask unanimous consent that following the last vote in the stacked sequence Tuesday morning, there be a period of morning business until 12:30 p.m., with the time equally divided between Senators WELLSTONE and JEFFORDS, or their designees; further that when the Senate reconvenes at 2:15, there be an additional period for morning business until 3:15 p.m. equally divided between the two aforementioned Senators, or their designees.

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

Mr. LOTT. Mr. President, I note that the time that we have designated here for Senators JEFFORDS and WELLSTONE is so that they can go over the final details of what is included in the higher education bill. This is a very important bill, a lot of good work has been done, and I commend all the Senators involved for completing that.

I yield the floor.

MORNING BUSINESS

Mr. LOTT. Mr. President, I ask unanimous consent that there now be a period for the transaction of morning business with Senators permitted to speak for up to 10 minutes each until 7 p.m.

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

Mr. DOMENICI addressed the Chair.

The PRESIDING OFFICER. The Senator from New Mexico is recognized.

ENERGY AND WATER APPROPRIATIONS HOLD

Mr. DOMENICI. Mr. President, I note the presence of the minority leader in the Chamber. I wish to state for the Senate that I understand the Energy and Water appropriations bill has a hold on the minority side, and I wanted to say if it has to do with the Tennessee Valley Authority, I would like very much to discuss that with the Senator because there is nothing we can do about it in this bill. But there is another thing we are going to do in another bill, and we would like to share that with you, whoever has the hold. I would very much like to do that. If that is the only hold, we can't fix the bill as far as TVA, but we can take some action to try to alleviate the problem in another way before we leave.

I yield the floor.

Mr. DASCHLE. Mr. President, let me just respond to the distinguished Senator from New Mexico. I have discussed—

Mr. FORD. Mr. President, may we have order.

The PRESIDING OFFICER (Mr. ALLARD). The Senate will please come to order.

Mr. DASCHLE. I have discussed the matter with the Senator who has the hold, and I think there will be some effort made to resolve the matter either tonight or tomorrow morning, so we will proceed with every expectation we can come to some resolution soon.

Mr. DOMENICI. I thank the Senator.

Mr. DASCHLE. I yield the floor.

ACCESS TO CHINESE MARKETS

Mr. GORTON. Mr. President, it looks like the administration has just experienced a tardy but welcome revelation, Mr. President. After 6 years of coddling its rulers and selling out U.S. exporters, some in the administration are now beginning to realize that ''engagement'' has not moved China toward free trade but to greater protectionism.

The $50 billion a year and growing bilateral United States trade deficit, the largest with any trading partner in the world but Japan, wasn't enough. The continued and egregious market access barriers to U.S. agricultural products weren't enough. The defiant stance against WTO negotiators wasn't enough. And the flagrant violation of the intellectual property rights of the American software and entertainment industries wasn't enough.

But finally, China has pushed at least one member of the administration too far. The straw that broke the camel's

back was China's decision to ban joint ventures in the telecommunications industry. In Beijing last Tuesday, David Aaron, Undersecretary for International Trade at the Department of Commerce, became the first American official in nearly a decade to speak openly about China's protectionist trade policy and to threaten retaliation.

Aaron is quoted in last Wednesday's Wall Street Journal as saying of the long list of trade barriers erected against American imports in China, ''The list keeps getting longer, and nothing gets struck off it.'' He continues, ''China is taking the trade relationship for granted. They want to export to us but not buy our products.''

Yes; that is precisely what I have been arguing for 3 years. But an administration wedded to a policy of ''engagement'' with China no matter how unproductive refused to believe it until now. I cannot begin to express the sense of vindication I had when reading an article in last Wednesday's Washington Post that hinted at a new administration trade policy with China. Instead of continuing to hope that China's desire to join the community of free trading nations in the WTO would outweigh its protectionist tendencies, the administration is finally ''threatening retribution in a much more concrete arena—the United States market . . .''

All well and good, but a day late and a dollar short. While President Clinton dismissed those of us in the antiengagement camp as ignorant, antifree traders, while the administration allowed the Government of the People's Republic of China to walk all over the United States for 6 years, and while the United States trade deficit ballooned out of control, my home State of Washington suffered the consequences.

Since 1972, China has refused to allow Pacific Northwest wheat into its market. This nontariff barrier erected against our wheat is based on a bogus phytosanitary concern with the spread of a wheat disease called TCK smut. For more than 20 years, the United States has presented Chinese officials with irrefutable scientific evidence which proves conclusively that there is absolutely no risk of introducing TCK smut into China.

China's ban on Pacific Northwest wheat is in violation of international standards requiring that import barriers imposed in the name of food safety be based on sound science. But it is protectionism, not sound science, that serves as the basis for China's ban on Washington State wheat.

For the past 3 years, I and several of my colleagues from the Pacific Northwest, have written to the President and Vice President to ask for assistance in tearing down this deplorable trade barrier. Our entreaties have been totally ignored, Mr. President, and the wheat farmers in my home State of Washington have suffered at the hands of the administration's weakness.

Instead, the administration turned a blind eye to the wheat ban and hundreds of other Chinese protectionist policies, arguing all along that continuing to grant most-favored-nation trading status to China was the best and only way of improving our trade relationship with China.

In addition, our apples are barred from Chinese markets. Our insurance firms can't do business in China. Our telecommunications equipment is barred.

The Chinese are not stupid. In fact, one might argue that they are brilliant strategists, having convinced the United States to sit on its hands while China pillaged the United States market. That the President, the leader of the strongest nation in the world, rolled over and played dead in the face of Chinese threats is an embarrassment to the United States. He betrays the free people of Taiwan—who do buy our goods and services. But he will sell China what it will gladly purchase—our defense secrets. He allows our intellectual property to be stolen with impunity.

The President knows that China is the world's largest emerging market. With a billion potential consumers for United States goods and an insatiable need for infrastructure improvements and technology, the Chinese market is among the most appealing in the world. In the fact of this prize, the administration simply caved in to the demands of China's dictators.

What the administration has ignored until this week, is that the United States is China's most important market as well. In fact, the United States absorbs 30 percent of China's exports. And today, with the financial crisis having drastically decreased demand throughout Asia, the American market is even more important to China.

In its rush to expand its economy and catch up with the rest of the world, China, since the late 1980's, has embarked on a full scale effort greatly to increase its overseas exports and thus to foster an economic boom within its own borders. Without the United States market, China's economic growth would come to a screeching halt.

That is why, Mr. President, I have argued for 3 years that we should use the United States market as leverage in our trade disputes with China. But the administration refused to accept the logic of this strategy—until, that is, Secretary Aaron spoke so frankly in Beijing on Tuesday. I implore the administration, with its newfound wisdom, to take Aaron's advice and start tomorrow not just to threaten, but to impose retaliation against China unless it makes dramatic changes in its trade policy immediately.

To make such threats without following through would be disastrous. The administration must act on its words and impose trade restrictions on China immediately unless it takes drastic steps to eliminate market access barriers to United States exports.

The administration should start with the most egregious barrier of all, the ban on Pacific Northwest wheat. If, by next week, China has not succumbed to the irrefutable scientific evidence and allowed Pacific Northwest wheat into its market, the United States must take retaliatory action. If China won't let our wheat into its market, we shouldn't let China's textiles into our market. It is a simple solution, and it will work. China wants our markets. It won't risk losing them, even if the price is open markets to American goods and services.

The PRESIDING OFFICER. The Senator from Kansas.

CUT TAXES NOW

Mr. BROWNBACK. Mr. President, during the past several weeks the Senate has spent its time debating spending legislation. Now with only 10 days remaining in the second session of this 105th Congress we are going to begin considering a supplemental spending bill.

The American people are currently facing tax rates that are near all-time highs. These excessive taxes are being imposed on the American people in spite of the fact that for the first time in a generation the Federal books are balanced. The first time since 1969, since Neil Armstrong walked on the Moon, the books are balanced and we have these near all-time high tax rates.

Congress did some work in balancing the budget and restraining spending, but Americans did most of the work. And now that there is a surplus, they should be the first ones to get some relief. Currently, on average, 21 million American married couples are forced to shoulder an additional, on average, $1,400 in taxes simply because they are married. That is ridiculous. Congress now has the opportunity to correct this injustice by repealing the marriage penalty. And I want to say this very clearly: We can do so without touching the Social Security trust fund.

We need to enact profamily, progrowth tax relief and eliminate the marriage penalty. That is an important first step that we need to move forward on reducing our horrendously high taxes in America. America clearly needs strong families. The family is the building block for our country and our hope for the future, and it is unconscionable the Tax Code of the United States is being used to subsidize something against the family, to penalize those who are married rather than living together, and creating disincentives towards marriage. We need to eliminate the marriage penalty during the remaining 11 days of this session of Congress. We have the time. We have the opportunity. The House has passed an $80 billion tax package that includes elimination of a portion of the marriage penalty. The Senate needs to move forward with this now.

The American people should be the first to benefit from our budget surplus

with a reduction in their taxes this year. And we can do it without touching the Social Security trust fund. Elimination of the marriage penalty will serve this purpose. First, it will restrain the growth in the Federal Government, and more importantly will begin to keep Washington taxmongers out of people's wallets and out of their lives.

During debate on the Treasury-Postal appropriation bill, the Senate spoke overwhelmingly in favor of a complete elimination of the marriage penalty. We need as large a tax cut as is possible, and in particular, as large a cut in the marriage penalty as possible.

Finally, I would like to state my willingness to work in a bipartisan way with my colleagues across the aisle in providing the type of tax relief that I know we both want to give married couples laboring under this oppressive Tax Code.

A couple of days ago, some of my colleagues were on the floor demanding that the Chairman of the Federal Reserve Board begin to implement expansionary monetary policy by cutting interest rates. Cutting interest rates would incentivize investment and act as a stabilizing effect on many worldwide financial markets now teetering under a cloud of uncertainty.

I think that is good, that the Federal Reserve should consider moving towards a more expansionist monetary policy, but I don't think we should require the Fed to do that. I believe we should let the Federal Reserve do its job and we should concentrate on doing our job. If Congress has the will to enact progrowth fiscal policy, I suggest it begin to do so by enacting the largest tax cut possible so we can help stimulate the financial markets, help in this uncertain financial situation that we have, and continue the growth taking place.

We have a unique opportunity to substantially change our Tax Code treatment of married people. We can do so without touching the Social Security trust fund. There are other people who want to spend that money. I think we need to leave the money alone, create a real Social Security trust fund, and at the same time let's give people a little bit of their money back with a tax cut. The House has done this. Let's work together, let's push to finally be able to get some of that tax relief put in place.

Last year, we cut taxes for the first time in 16 years. We need to continue that effort to cut taxes to continue to stimulate the economy, to continue to give people back a little bit of their money. We should start with married two-wage-earner couples who are being penalized by a Tax Code that doesn't make any sense at this point.

So I urge my colleagues, let's work with the House and make this tax cut a reality. We can do it. We have spent a year talking about spending. Let's take a few days to talk about tax cuts.

THE VERY BAD DEBT BOXSCORE

Mr. HELMS. Mr. President, at the close of business Friday, September 25, 1998, the federal debt stood at $5,523,820,694,890.03 (Five trillion, five hundred twenty-three billion, eight hundred twenty million, six hundred ninety-four thousand, eight hundred ninety dollars and three cents).

One year ago, September 25, 1997, the federal debt stood at $5,387,704,000,000 (Five trillion, three hundred eighty-seven billion, seven hundred four million).

Twenty-five years ago, September 25, 1973, the federal debt stood at $459,982,000,000 (Four hundred fifty-nine billion, nine hundred eighty-two million) which reflects a debt increase of more than $5 trillion—$5,063,838,694,890.03 (Five trillion, sixty-three billion, eight hundred thirty-eight million, six hundred ninety-four thousand, eight hundred ninety dollars and three cents) during the past 25 years.

Mr. President, I yield the floor and I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

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

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

MESSAGES FROM THE PRESIDENT

Messages from the President of the United States were communicated to the Senate by Mr. Williams, one of his secretaries.

EXECUTIVE MESSAGES REFERRED

As in executive session the Presiding Officer laid before the Senate messages from the President of the United States submitting sundry nominations which were referred to the Committee on the Judiciary.

(The nominations received today are printed at the end of the Senate proceedings.)

REPORT OF THE RAILROAD RETIREMENT BOARD FOR FISCAL YEAR 1997—MESSAGE FROM THE PRESIDENT—PM 160

The PRESIDING OFFICER laid before the Senate the following message from the President of the United States, together with an accompanying report; which was referred to the Committee on Labor and Human Resources.

To the Congress of the United States:

I transmit herewith the Annual Report of the Railroad Retirement Board for Fiscal Year 1997, pursuant to the provisions of section 7(b)(6) of the Railroad Retirement Act and section 12(1) of the Railroad Unemployment Insurance Act.

WILLIAM J. CLINTON.

THE WHITE HOUSE, *September 28, 1998.*

MESSAGES FROM THE HOUSE

At 4:46 p.m., a message from the House of Representatives, delivered by Mr. Hanrahan, one of its reading clerks, announced that the House has passed the following bill, in which it requests the concurrence of the Senate:

H.R. 4579. An act to provide tax relief for individuals, families, and farming and other small businesses, to provide tax incentives for education, to extend certain expiring provisions, to amend the Social Security Act to establish the Protect Social Security Account into which the Secretary of the Treasury shall deposit budget surpluses until a reform measure is enacted to ensure the long-term solvency of the OASDI trust funds, and for other purposes.

ENROLLED BILL SIGNED

The message also announced that the Speaker has signed the following enrolled bill:

H.R. 4112. An act making appropriations for the Legislative Branch for the fiscal year ending September 30, 1999, and for other purposes.

The enrolled bill was subsequently signed by the President pro tempore (Mr. THURMOND).

At 6:27 p.m., a message from the House of Representatives, delivered by Mr. Hays, one of its reading clerks, announced that the House agrees to the report of the committee of conference on the disagreeing votes of the two Houses on the amendment of the Senate to the bill (H.R. 4060) making appropriations for energy and water development for the fiscal year ending September 30, 1999, and for other purposes.

The message also announced that the House agrees to the report of the committee of conference on the disagreeing votes of the two Houses on the amendment of the Senate to the bill (H.R. 4103) making appropriations for the Department of Defense for the fiscal year ending September 30, 1999, and for other purposes.

ENROLLED BILL PRESENTED

The Secretary of the Senate reported that on September 28, 1998 he had presented to the President of the United States, the following enrolled bill:

S. 1379. An act to amend section 552 of title 5, United States Code, and the National Security Act of 1947 to require disclosure under the Freedom of Information Act regarding certain persons, disclose Nazi war criminal records without impairing any investigation or prosecution conducted by the Department of Justice or certain intelligence matters, and for other purposes.

EXECUTIVE AND OTHER COMMUNICATIONS

The following communications were laid before the Senate, together with accompanying papers, reports, and documents, which were referred as indicated:

EC–7216. A communication from the Associate Managing Director for Performance Evaluation and Records Management, transmitting, pursuant to law, the report of a rule

entitled ''Table of Allotments, FM Broadcast Stations (Canton and Glasford, Illinois)'' (Docket 97–186) received on September 24, 1998; to the Committee on Commerce, Science, and Transportation.

EC–7217. A communication from the Chief Counsel of the Bureau of the Public Debt, Department of the Treasury, transmitting, pursuant to law, the report of a rule entitled ''Regulations Governing Book-Entry Treasury Bonds, Notes, and Bills; Determination Regarding State Statutes; Wisconsin, New Hampshire and Michigan'' (Circ. No. 2–86) received on September 24, 1998; to the Committee on Finance.

EC–7218. A communication from the Benefits Administrator of the AgAmerica Western Farm Credit Bank, transmitting, pursuant to law, the Bank's annual retirement plan report for calendar year 1997 and the Audited Retirement Plan Financial Statements for calendar year 1996 and 1997; to the Committee on Governmental Affairs.

EC–7219. A communication from the Assistant Attorney General, Office of Justice Programs, Department of Justice, transmitting, pursuant to law, the report of a rule entitled ''Bulletproof Vest Partnership Grant Act of 1998'' (RIN1121–AA48) received on September 22, 1998; to the Committee on the Judiciary.

EC–7220. A communication from the Deputy Assistant Secretary for Policy, Department of Labor, transmitting, pursuant to law, the report of a rule entitled ''Interim Rule Amending Summary Plan Description Regulation'' (RIN1210–AA55) received on September 22, 1998; to the Committee on Labor and Human Resources.

EC–7221. A communication from the Director of the Office of Regulations Management, Department of Veterans Affairs, transmitting, pursuant to law, the report of a rule entitled ''Claims Based on Ionizing Radiation (Prostate Cancer and Any Other Cancer)'' (RIN2900–AI00) receive on September 22, 1998; to the Committee on Veteran Affairs.

EC–7222. A communication from the Acting Assistant Administrator for Fisheries, National Oceanic and Atmospheric Administration, Department of Commerce, transmitting, pursuant to law, the report of a rule entitled ''Endangered and Threatened Species; Threatened Status for Johnson's Seagrass'' (I.D. 052493B) received on September 22, 1998; to the Committee on Environment and Public Works.

EC–7223. A communication from the Administrator of the Environmental Protection Agency, transmitting, pursuant to law, a report on the State of Louisiana's federally approved Coastal Wetlands Conservation Plan; to the Committee on Environment and Public Works.

EC–7224. A communication from the Chairman of the Nuclear Regulatory Commission, transmitting, pursuant to law, a report entitled ''The Price-Anderson Act—Crossing the Bridge to the Next Century: A Report to Congress''; to the Committee on Environment and Public Works.

EC–7225. A communication from the Office of Congressional Affairs, Nuclear Regulatory Commission, transmitting, pursuant to law, the report of a rule entitled ''Transfer for Disposal and Manifests; Minor Technical Conforming Amendment'' (RIN3150–AF99) received on September 21, 1998; to the Committee on Environment and Public Works.

EC–7226. A communication from the Office of Congressional Affairs, Nuclear Regulatory Commission, transmitting, pursuant to law, the report of a rule entitled ''Physical Protection for Spent Nuclear Fuel and High-Level Radioactive Waste: Technical Amendment'' (RIN3150–AG00) received on September 21, 1998; to the Committee on Environment and Public Works.

REPORTS OF COMMITTEES

The following reports of committees were submitted:

By Mr. CAMPBELL, from the Committee on Indian Affairs, with an amendment in the nature of a substitute:

H.R. 700. A bill to remove the restriction on the distribution of certain revenues from the Mineral Springs parcel to certain members of the Agua Caliente Band of Cahuilla Indians (Rept. No. 105–349).

By Mr. CHAFEE, from the Committee on Environment and Public Works, with an amendment:

S. 2351. A bill to direct the Secretary of the Interior to make corrections to a map relating to the Coastal Barrier Resources System (Rept. No. 105–350).

By Mr. CHAFEE, from the Committee on Environment and Public Works, with amendments:

S. 2469. A bill to direct the Secretary of the Interior to make technical corrections to a map relating to the Coastal Barrier Resources System (Rept. No. 105–351).

By Mr. CHAFEE, from the Committee on Environment and Public Works, with an amendment in the nature of a substitute:

S. 2470. A bill to direct the Secretary of the Interior to make technical corrections to a map relating to the Coastal Barrier Resources System (Rept. No. 105–352).

By Mr. CHAFEE, from the Committee on Environment and Public Works, with an amendment:

S. 2474. A bill to direct the Secretary of the Interior to make corrections to certain maps relating to the Coastal Barrier Resources System (Rept. No. 105–353).

S. 2505. A bill to direct the Secretary of the Interior to convey title to the Tunnison Lab Hagerman Field Station in Gooding County, Idaho, to the University of Idaho (Rept. No. 105–354).

By Mr. CHAFEE, from the Committee on Environment and Public Works, without amendment:

H.R. 8. A bill to amend the Clean Air Act to deny entry into the United States of certain foreign motor vehicles that do not comply with State laws governing motor vehicles emissions, and for other purposes (Rept. No. 105–355).

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. HARKIN:

S. 2521. A bill to amend the Inspector General Act of 1978 (5 U.S.C. App.) to provide that Offices of Inspector General shall be treated as independent agencies in the preparation of the United States Budget, and for other purposes; to the Committee on Governmental Affairs.

By Mr. DEWINE (for himself, Mr. COVERDELL, Mr. GRAHAM, Mr. FAIRCLOTH, Mr. BOND, Mr. D'AMATO, Mr. BREAUX, Mr. HELMS, Mrs. FEINSTEIN, Mr. MACK, Mr. HATCH, Mr. CRAIG, Mr. ABRAHAM, Mr. HUTCHINSON, Mr. ALLARD, Mr. FRIST, Mr. MURKOWSKI, Mrs. HUTCHISON, Ms. LANDRIEU, Mr. BROWNBACK, Mr. BURNS, Mr. BENNETT, Mr. ASHCROFT, Mr. COCHRAN, Mr. BAUCUS, Mr. SMITH of Oregon, Mr. ROBERTS, Mr. CLELAND, and Mr. GRASSLEY):

S. 2522. A bill to support enhanced drug interdiction efforts in the major transit countries and support a comprehensive supply eradication and crop substitution program in source countries; to the Committee on Foreign Relations.

By Mr. GRAMM (for himself and Mrs. HUTCHISON):

S. 2523. A bill to designate the Federal building located at 300 East 8th Street in Austin, Texas, as the ''J.J. 'Jake' Pickle Federal Building''; to the Committee on Environment and Public Works.

By Mr. HATCH:

S. 2524. A bill to codify without substantive change laws related to Patriotic and National Observances, Ceremonies, and Organizations and to improve the United States Code; to the Committee on the Judiciary.

STATEMENTS ON INTRODUCED BILLS AND JOINT RESOLUTIONS

By Mr. HARKIN:

S. 2521. A bill to amend the Inspector General Act of 1978 (5 U.S.C. App.) to provide that Offices of Inspector General shall be treated as independent agencies in the preparation of the United States Budget, and for other purposes; to the Committee on Governmental Affairs.

INSPECTOR GENERAL ACT AMENDMENTS

● Mr. HARKIN. Mr. President, I introduce a bill to establish a more independent budget process for the Inspector Generals of each federal Department.

Under our current budget process, each federal Department Secretary has the power to determine the budget of its Inspector General or IG. While our Department Secretaries generally do a fine job of overseeing their respective Departments and agencies, I feel that it is a conflict of interest for the head of an executive agency to also determine the funding levels for an office whose main function is investigating that agency. In the interest of proper checks and balances, I would hope that we could establish true independence for the IGs budgets.

The IGs are our government watchdogs. Yet, too often, their budgets have been cut back. The United States government is wrestling with streamlining its programs and revamping how it does business. But it has been the IG offices which have largely identified the waste, fraud, and abuse in the federal government and allow this body to make significant budget cuts in an effective manner. We need stronger watchdogs, not weaker.

The offices of Inspectors General has served this country well in making sure that the taxpayers' dollars are not misspent. This spring, for example, the Department of Defense's IG, Eleanor Hill, testified before the House Oversight Subcommittee. She described over $15 billion in fiscal year 1996 funds that were put to better use as a result of IG efforts. Hill pointed out that, ''At the Department of Defense, since FY 1989, IG audit reports have identified almost $16 billion in agreed upon savings. During the same period, monetary recoveries through investigations by the Defense Criminal Investigative Service, the criminal investigative arm

of my office, have totaled over $4.5 billion. Historically, our criminal investigators alone have returned at least $15 in recoveries and fines for every dollar spent on their operations.''

In her testimony, DOD Inspector General Eleanor Hill concludes with what she feels are the greatest concerns for the future of the Office of Inspector General. She points out examples of crimes on the Internet, the overload of paperwork and false claims. But the biggest problem, according to Ms. Hill, ''has been the continuing difficulties we face in coping with programmed downsizing.'' As we attempt to cut wasteful spending and streamline offices, it is the office of Inspectors General which must not be put on the chopping block.

Unfortunately, the support for the IGs has been often reduced more than for other parts of the government. For example, the Department of Energy faced an 11% cut for FY 1996, but a 21% cut in its IG budget. It is my fear that as we continue to cut budgets, the IGs will be first on the chopping blocks at a time when we need them even more to identify wasteful and outdated programs.

It should be obvious, Mr. President, that those who could be investigated by the Inspectors General should not be given the responsibility of developing and approving IG budgets. The Securities and Exchange Commission's budget is not decided by Wall Street firms; The Nuclear Regulatory Commission's budget is not decided by the nation's nuclear power companies. Congress must ensure that no department secretary can take vengeance upon an aggressive IG office.

My bill aims to ensure an effective and independent federal Inspector General system and allow each IG, in consultation with its parent Department, to decide the budget of the IG's office. This bill would provide greater autonomy for the office and prevent strong criticism of a Department, or the singling out of wasteful programs, from affecting watchdog funding.

We have seen repeatedly how a valuable resource like the Inspector General's office has been able to bring this body's attention, and the American public's attention, to some of the wasteful spending of the federal government. I urge my colleagues to support this important legislation.●

By Mr. DEWINE (for himself, Mr. COVERDELL, Mr. GRAHAM, Mr. FAIRCLOTH, Mr. BOND, Mr. D'AMATO, Mr. BREAUX, Mr. HELMS, Mrs. FEINSTEIN, Mr. MACK, Mr. HATCH, Mr. CRAIG, Mr. ABRAHAM, Mr. HUTCHINSON, Mr. ALLARD, Mr. FRIST, Mr. MURKOWSKI, Mrs. HUTCHISON, Ms. LANDRIEU, Mr. BROWNBACK, Mr. BURNS, Mr. BENNETT, Mr. ASHCROFT, Mr. COCHRAN, Mr. BAUCUS, Mr. SMITH of Oregon, Mr. ROBERTS, Mr. CLELAND, and Mr. GRASSLEY):

S. 2522. A bill to support enhanced drug interdiction efforts in the major transit countries and support a comprehensive supply eradication and crop substitution program in source countries; to the Committee on Foreign Relations.

WESTERN HEMISPHERE DRUG ELIMINATION ACT

Mr. DEWINE. Mr. President, today I am pleased to join with over 25 of my Senate colleagues to reintroduce the Western Hemisphere Drug Elimination Act. Our bipartisan legislation calls for an additional $2.6 billion investment in international counter-narcotic efforts over the next 3 years. With the additional resources provided in this legislation, we can begin to restore a comprehensive eradication, interdiction and crop substitution strategy.

I say ''restore,'' Mr. President, because we currently are not making the same kind of effort to keep drugs from entering the United States that we used to. Drugs are now easy to find, and easy to buy. As a result, the amount of drugs sold on our streets, and the number of people who use drugs, especially young people, is unprecedented.

The facts demonstrate this sobering trend. The August 1998 National Household Survey on Drug Abuse report by the Substance Abuse and Mental Health Administration list the following disturbing facts:

In 1997, 13.9 million Americans age 12-and-over cited themselves as ''current users'' of illicit drugs—a 7% increase of 1996's figure of 13 million Americans. That translates to nearly a million new users of drugs each year.

From 1992–1997, the number of children aged 12-to-17 who are using illegal drugs has more than doubled, and has increased by 27% just from 1996–1997 alone.

For kids 12-to-17, first time heroin use, which can be fatal surged an astounding 875% from 1991–1996. The overall number of past month heroin users increased 378% from 1993 to 1997.

We cannot in good conscience and with a straight face say that our drug control strategy is working. It is not. More children are using drugs. With an abundant supply, drug traffickers now are seeking to increase their sales by targeting children ages 10 through 12. This is nothing less than an assault on the future of our children, and the future of the country itself. This is nothing less than a threat to our national values, and yes, even our national security.

All of this begs the question: What are we doing wrong? Clearly, there is no one simple answer. However, one thing is clear: our overall drug strategy is imbalanced. To be effective, our national drug strategy must have a strong commitment in the following three areas: (1) demand reduction, which consists of prevention, treatment, and education programs. These are administered by all levels of government—federal, state and local—as well as non-profit and private organizations; (2) domestic law enforcement, which again, has to be provided by all three levels of government; and (3) international eradication and interdiction efforts, which are the sole responsibility of the Federal Government.

These three components are interdependent. A strong investment in each of them is necessary for each to work individually and collectively. For example, a strong effort to destroy or seize drugs at the source or outside of the United States both reduces the amount of drugs in the country, and drives up the street price. And as we all know, higher prices will reduce consumption. This in turn helps our domestic law enforcement and demand reduction efforts.

As any football fan will tell you, a winning team is one that plays well at all three phases of the game—offense, defense, and special teams. The same is true with out anti-drug strategy—all three components have to be effective if our strategy is going to be a winning effort.

While I think the current administration has shown a clear commitment to demand reduction and domestic law enforcement programs, the same cannot be said for the international eradication and interdiction components. This was not always the case.

In 1987, the $4.79 billion federal drug control budget was divided as follows: 29% for demand reduction programs; 38% for domestic law enforcement; and 33% for international eradication and interdiction efforts. This balanced approach worked. It achieved real success. Limiting drug availability through interdiction drove up the street price of drugs, reduced drug purity levels, and consequently reduced overall drug use. From 1988 to 1991, total drug use declined by 13 percent—cocaine use dropped by 35 percent. And there was a 25 percent reduction in overall drug use by adolescent Americans.

This balanced approach ended in 1993. By 1995, the $13.3 billion national drug control budget was divided as follows: 35 percent for demand reduction; 53 percent for law enforcement; and 12 percent for international and interdiction efforts. Though the overall anti-drug budget increased almost threefold from 1987 to 1995, the percentage allocated for international eradication and interdiction efforts decreased dramatically. This distribution only recently has started to change, but the imbalance is still there. In the President's proposed $17 billion drug control budget for 1999, 34 percent would be allocated for demand reduction; 52% for law enforcement; and 14% for international and interdiction efforts.

Those are the numbers, but what really matters are what these numbers get you in terms of resources. The hard truth is that our drug interdiction presence—the ship, air and man power dedicated to keeping drugs from reaching our country—has eroded dramatically. Here are just a few examples:

The Department of Defense funding for counter-narcotics decreased from $504.6 million in 1992 to $214.7 million in 1995, a 57% decrease in only three years. As a result, flight hours by Airborne Warning and Control Systems—known as AWACs planes—dropped from 38,100 hours in 1992 to 17,713 hours by 1996, a 54% reduction.

At the beginning of the decade, the U.S. Customs service operated its counter-narcotics activities around the clock. This made sense because drug trafficking truly is a 7 day/24 hour enterprise. Today, the Customs Service does not have the resources needed to maintain around-the-clock operations. At a recent hearing on our original legislation, a representative of the U.S. Customs Service testified that the Customs service has 84 boats in the Caribbean conducting drug apprehension efforts—down from 200 vessels in 1990. The Customs Service estimates that they expect to have only half of the current fleet of 84 vessels by the year 2000.

Mr. President, these are shocking statistics. And perhaps more than the budget numbers themselves, these statistics demonstrate the imbalance in our overall strategy. I have witnessed the lack of our resources and commitment in the region fisthand. This past year I traveled to the Caribbean several times to see our counter-narcotics operations there. I met with the dedicated people on the frontlines of our drug interdiction efforts. I witnessed our strategy in action, and sat down with the experts—both military and civilian—who are charged with carrying out the monitoring, detection and interdiction of drugs.

On one of my recent trips I saw that in particular, Haiti has become an attractive rest-stop on the cocaine highway. It is strategically located about halfway between the source country—Colombia—and the United States. As the poorest country in the hemisphere, it is extremely vulnerable to the kind of bribery and corruption that the drug trade needs in order to flourish.

Not surprisingly, the level of drugs moving through Haiti has dramatically increased. A U.S. government interagency assessment on cocaine movement found that the total amount of cocaine coming to the United States through Haiti jumped from 5 percent in 1996 to 19 percent by the end of 1997.

In response, we initiated a US law enforcement operation called Operation Frontier Lance, which utilized Coast Guard Cutters, speedboats, and helicopters to detect and capture drug dealers on a 24 hour per day basis. This operation was modeled after another successful interdiction effort that was first done off the coast of Puerto Rico, called Operation Frontier Shield.

Both these operations were done at two different time periods. Operation Frontier Shield utilized nearly two dozen ships and aircraft; and Operation Frontier Lance utilized more than a dozen ships and helicopters. To make Frontier Lance work required that we borrow a few ships and helicopters from operations elsewhere in the Caribbean. Because of our scare resources, we had to rob Peter to help Paul.

These operations produced amazing results. The six month operation in Puerto Rico resulted in the seizure of more than 32,900 pounds of cocaine and 120 arrests. The three month operation in Haiti and the Dominican Republic resulted in 2,990 pounds of cocaine seized and 22 arrests.

These operations demonstrate we can make a big difference if we provide the right levels of material and manpower to fight drug trafficking. One would think that these operations would serve as a model for the entire region. Instead of maintaining these operations, we ended them. This potential roadblock on the cocaine highway is no more.

Now, in Puerto Rico we only have a combined total of 6 air and sea assets doing maintenance operations.

In Haiti and the Dominican Republic, we have only 1 ship and 1 helicopter devoted for the drug operation. Keep in mind that since refugees remain a major problem in this area, these very few vessels are not dedicated solely to drug interdiction. Amazingly, no sooner than we build an effective wall against drug traffickers, we tear it down.

While in the region, I was surprised to learn that in the Eastern Pacific, off the coast of Mexico and Central America, the coast is literally clear for the drug lords to do their business. This is, without any doubt, unacceptable.

Again, we have no presence there because we lack the resources. An interdiction plan does exist for the region, which would involve the deployment of several ships and planes in the region. This operation, unfortunately, was canceled before it even got started because the resources were needed elsewhere. To date, the coastal waters in the Eastern Pacific remain an open sea expressway for drug business.

Mr. President, through my visits to the region, I have seen firsthand the dramatic decline in our eradication and interdiction capability. The results of this decline have been a decline in cocaine seizures, a decline in the price of cocaine, and an increase in drug use. This has to stop. It is a clear and imminent danger to the very heart of our society.

That is why the legislation I am introducing today is timely. We need to dedicate more resources for international efforts to help reverse this trend. Now I want to make it very clear that I strongly support our continued commitment in demand reduction and law enforcement programs! In the end, I believe that reducing demand is the only real way to permanently end illegal drug use. However, this will not happen overnight. That is why we need a comprehensive counter drug strategy that addresses all components of this problem.

There's another fundamental reason why the federal government must do more to stop drugs either at the source or in transit to the United States. If we don't, no one else will. Let me remind our colleagues that our anti-drug efforts here at home are done in cooperation with state and local governments and scores of non-profit and private organizations. However, only the federal government has the responsibility to keep drugs from crossing our borders.

It's not just an issue of responsibility—it's an issue of leadership. The United States has to demonstrate leadership on an international level if we expect to get the full cooperation of source countries, such as Colombia, Peru and Bolivia, as well as countries in the transit zone, including Mexico and the Caribbean island governments. There's little incentive for these countries to invest their limited resources, and risk the lives of their law enforcement officers to stop drug trafficking, unless we provide the leadership and resources necessary to make a serious dent in the drug trade.

Our bill is designed to provide the resources and demonstrate to our friends in the Caribbean, and in Central and South America that we intend to lead once again. With this legislation, we can once again make it difficult for drug lords to bring drugs to our nation, and make drugs far more costly to buy. It's clear drug trafficking imposes a heavy toll on law abiding citizens and communities across our country. It's time we make it a dangerous and costly business for drug traffickers themselves. A renewed investment in international and interdiction programs will make a huge difference—both in the flow and cost of illegal drugs. It worked before and we believe it can work again.

Mr. President, as I said at the beginning, my colleagues and I are reintroducing this legislation. Since we introduced our original bill in July, we have received a number of suggestions on ways to improve the legislation, including several provided in conversations I personally had with General Barry McCaffery, the Director of the Office of National Drug Control Policy—otherwise known as the Drug Czar's office. Some of these suggestions were incorporated in the House bill first introduced by Congressmen BILL MCCOLLUM of Florida and DENNIS HASTERT of Illinois. The House passed the McCollum/Hastert bill with overwhelmingly bi-partisan support. The final vote was 384 to 39! Clearly, the overwhelming, bipartisan show of support for the Western Hemisphere Drug Elimination Act is a wake up call for leadership—it's time the United States once again lead the way in a comprehensive and balanced strategy to reduce drug use. And the time for leadership is now.

Since House passage of the bill, I have reached out once again to General McCaffrey, and to my friends on the Democrat side of the aisle, on how we

can work together to pass this legislation before we adjourn. I made it clear to General McCaffrey of my commitment to work with him and the Administration to strengthen our drug interdiction efforts, and our overall anti-drug strategy. Again, I received several suggestions to improve the bill from the General, but the Administration has shown no interest in getting this bill passed this year.

The resources we would provide in our legislation should be of no surprise to General McCaffrey or anyone involved in our drug control policies. The vast majority of the items in this bill are the very items which the Drug Enforcement Administration, the Coast Guard and Customs Service have been requesting for quite some time now. Many of these items are detailed, practically item per item and dollar amount, in a United States Interdiction Coordinator report, known as USIC, which was requested by the General.

The bill we introduce today represents a good faith effort by the sponsors of this legislation to get something done this year. It includes almost all the changes made in the House-passed bill, and incorporates virtually every suggestion made to me by General McCaffrey. Of central concern to the General, as he expressed in his recent testimony before the Senate Foreign Relations Committee, was the need for greater flexibility. The bill we introduce today provides flexibility for the agencies to determine and acquire the assets best needed for their respective drug interdiction missions. It also provides more flexibility for the Administration in providing needed resources to Latin American countries.

Mr. President, thanks to the suggestions we have received, the bill we are introducing today is a better bill. It has far more bipartisan support than the first version. Again, the growing support for this legislation is not surprising. This is not a partisan issue—we need to do more to fight drugs outside our borders.

Let's be frank—in this anti-drug effort—Congress is the anti-drug funder, but the agencies represented here—the Drug Enforcement Administration, Customs, Coast Guard, State and Defense Departments, and the Drug Czar's office—they are the anti-drug fighters. The dedicated men and women at these agencies are working to keep drugs out of the hands of our kids, and all we're trying to do is to give them the additional resources they have requested to make that work result in a real reduction in drug use. This bill is just the first step in our efforts to work with the agencies represented here. I expect to do more in the future.

Finally, Mr. President, I want to make it clear that while this bill is an authorization measure, I have already started the process to request the money needed for this bill over three years. Even though we introduced the bill for the first time in late July, we have already secured $143 million through the Senate passed FY 1999 appropriation measures. Senators COVERDELL, GRAHAM of Florida, GRASSLEY, BOND, FAIRCLOTH, and myself requested these funds through the various appropriation measures.

The cosponsors of this bill also are requesting the assistance of Senators STEVENS and BYRD—the Chairman and Ranking Member of the Senate Appropriations committee—in obtaining funding as part of any emergency supplemental appropriations bill we may consider before we adjourn. Given that it will take some time to dedicate some of our larger assets, such as boats, airplanes, and helicopters, we need to start our investment as soon as possible. I understand a similar effort is underway in the House of Representatives.

Mr. President, I recognize that even as we finally are beginning to balance our budget, we still have to exercise fiscal responsibility. I believe effective drug interdiction is not only good social policy, it is sound fiscal policy as well. It is important to note that seizing or destroying a ton of cocaine in source or transit areas is more cost-effective than trying to seize the same quantity of drugs at the point of sale. But more important, are the short and long term costs if we do not act to reverse the tragic rise in drug use by our children.

Let me remind my colleagues that there are more than twice the number of children aged 12 to 17 using drugs today than there were five years ago. With more kids using drugs, we have more of the problems associated with youth drug use—violence, criminal activity and delinquency. We will have more of the same unless we take action now to restore a balanced drug control strategy. We have to have all the components of our drug strategy working effectively again.

We did it before and we succeeded.

If we pass the Western Hemisphere Drug Elimination Bill we can take the first step toward success. We can provide the resources, and most importantly, the leadership to reduce drugs at the source or in transit.

In the end, Mr. President, that's what this bill is about—it's about leadership—effective leadership. We have an opportunity with this legislation to show and exercise leadership. I hope we can seize this opportunity to stop drug trafficking, and more important, to save lives.

Mr. President, I ask unanimous consent that the bill be printed in the RECORD.

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

S. 2522

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

(a) SHORT TITLE.—This Act may be cited as the ''Western Hemisphere Drug Elimination Act''.

(b) TABLE OF CONTENTS.—The table of contents for this Act is as follows:

Sec. 1. Short title; table of contents.
Sec. 2. Findings and statement of policy.

TITLE I—ENHANCED SOURCE AND TRANSIT COUNTRY COVERAGE

Sec. 101. Expansion of radar coverage and operation in source and transit countries.
Sec. 102. Expansion of Coast Guard drug interdiction.
Sec. 103. Expansion of aircraft coverage and operation in source and transit countries.

TITLE II—ENHANCED ERADICATION AND INTERDICTION STRATEGY IN SOURCE COUNTRIES

Sec. 201. Additional eradication resources for Colombia.
Sec. 202. Additional eradication resources for Peru.
Sec. 203. Additional eradication resources for Bolivia.
Sec. 204. Miscellaneous additional eradication resources.
Sec. 205. Bureau of International Narcotics and Law Enforcement Affairs.

TITLE III—ENHANCED ALTERNATIVE CROP DEVELOPMENT SUPPORT IN SOURCE ZONE

Sec. 301. Alternative crop development support.
Sec. 302. Authorization of appropriations for Agricultural Research Service counterdrug research and development activities.
Sec. 303. Master plan for mycoherbicides to control narcotic crops.

TITLE IV—ENHANCED INTERNATIONAL LAW ENFORCEMENT TRAINING

Sec. 401. Enhanced international law enforcement academy training.
Sec. 402. Enhanced United States drug enforcement international training.
Sec. 403. Provision of nonlethal equipment to foreign law enforcement organizations for cooperative illicit narcotics control activities.

TITLE V—ENHANCED DRUG TRANSIT AND SOURCE ZONE LAW ENFORCEMENT OPERATIONS AND EQUIPMENT

Sec. 501. Increased funding for operations and equipment; report.
Sec. 502. Funding for computer software and hardware to facilitate direct communication between drug enforcement agencies.
Sec. 503. Sense of Congress regarding priority of drug interdiction and counterdrug activities.

TITLE VI—RELATIONSHIP TO OTHER LAWS

Sec. 601. Authorizations of appropriations.

TITLE VII—CRIMINAL BACKGROUND CHECKS ON PORT EMPLOYEES

Sec. 701. Background checks.

TITLE VIII—DRUG CURRENCY FORFEITURES

Sec. 801. Short title.
Sec. 802. Drug currency forfeitures.

SEC. 2. FINDINGS AND STATEMENT OF POLICY.

(a) FINDINGS.—Congress makes the following findings:

(1) Teenage drug use in the United States has doubled since 1993.

(2) The drug crisis facing the United States is a top national security threat.

(3) The spread of illicit drugs through United States borders cannot be halted without an effective drug interdiction strategy.

(4) Effective drug interdiction efforts have been shown to limit the availability of illicit

narcotics, drive up the street price, support demand reduction efforts, and decrease overall drug trafficking and use.

(5) A prerequisite for reducing youth drug use is increasing the price of drugs. To increase price substantially, at least 60 percent of drugs must be interdicted.

(6) In 1987, the national drug control budget maintained a significant balance between demand and supply reduction efforts, illustrated as follows:

(A) 29 percent of the total drug control budget expenditures for demand reduction programs.

(B) 38 percent of the total drug control budget expenditures for domestic law enforcement.

(C) 33 percent of the total drug control budget expenditures for international drug interdiction efforts.

(7) In the late 1980's and early 1990's, counternarcotic efforts were successful, specifically in protecting the borders of the United States from penetration by illegal narcotics through increased seizures by the United States Coast Guard and other agencies, including a 302 percent increase in pounds of cocaine seized between 1987 and 1991.

(8) Limiting the availability of narcotics to drug traffickers in the United States had a promising effect as illustrated by the decline of illicit drug use between 1988 and 1991, through a—

(A) 13 percent reduction in total drug use;

(B) 35 percent drop in cocaine use; and

(C) 16 percent decrease in marijuana use.

(9) In 1993, drug interdiction efforts in the transit zones were reduced due to an imbalance in the national drug control strategy. This trend has continued through 1995 as shown by the following figures:

(A) 35 percent for demand reduction programs.

(B) 53 percent for domestic law enforcement.

(C) 12 percent for international drug interdiction efforts.

(10) Supply reduction efforts became a lower priority for the Administration and the seizures by the United States Coast Guard and other agencies decreased as shown by a 68 percent decrease in the pounds of cocaine seized between 1991 and 1996.

(11) Reductions in funding for comprehensive interdiction operations like OPERATION GATEWAY and OPERATION STEELWEB, initiatives that encompassed all areas of interdiction and attempted to disrupt the operating methods of drug smugglers along the entire United States border, have created unprotected United States border areas which smugglers exploit to move their product into the United States.

(12) The result of this new imbalance in the national drug control strategy caused the drug situation in the United States to become a crisis with serious consequences including—

(A) doubling of drug-abuse-related arrests for minors between 1992 and 1996;

(B) 70 percent increase in overall drug use among children aged 12 to 17;

(C) 80 percent increase in drug use for graduating seniors since 1992;

(D) a sharp drop in the price of 1 pure gram of heroin from $1,647 in 1992 to $966 in February 1996; and

(E) a reduction in the street price of 1 gram of cocaine from $123 to $104 between 1993 and 1994.

(13) The percentage change in drug use since 1992, among graduating high school students who used drugs in the past 12 months, has substantially increased—marijuana use is up 80 percent, cocaine use is up 80 percent, and heroin use is up 100 percent.

(14) The Department of Defense has been called upon to support counter-drug efforts of Federal law enforcement agencies that are carried out in source countries and through transit zone interdiction, but in recent years Department of Defense assets critical to those counter-drug activities have been consistently diverted to missions that the Secretary of Defense and the Chairman of the Joint Chiefs of Staff consider a higher priority.

(15) The Secretary of Defense and the Chairman of the Joint Chiefs of Staff, through the Department of Defense policy referred to as the Global Military Force Policy, has established the priorities for the allocation of military assets in the following order: (1) war; (2) military operations other than war that might involve contact with hostile forces (such as peacekeeping operations and noncombatant evacuations); (3) exercises and training; and (4) operational tasking other than those involving hostilities (including counter-drug activities and humanitarian assistance).

(16) Use of Department of Defense assets is critical to the success of efforts to stem the flow of illegal drugs from source countries and through transit zones to the United States.

(17) The placement of counter-drug activities in the fourth and last priority of the Global Military Force Policy list of priorities for the allocation of military assets has resulted in a serious deficiency in assets vital to the success of source country and transit zone efforts to stop the flow of illegal drugs into the United States.

(18) At present the United States faces few, if any, threats from abroad greater than the threat posed to the Nation's youth by illegal and dangerous drugs.

(19) The conduct of counter-drug activities has the potential for contact with hostile forces.

(20) The Department of Defense counter-drug activities mission should be near the top, not among the last, of the priorities for the allocation of Department of Defense assets after the first priority for those assets for the war-fighting mission of the Department of Defense.

(b) STATEMENT OF POLICY.—It is the policy of the United States to—

(1) reduce the supply of drugs and drug use through an enhanced drug interdiction effort in the major drug transit countries, as well support a comprehensive supply country eradication and crop substitution program, because a commitment of increased resources in international drug interdiction efforts will create a balanced national drug control strategy among demand reduction, law enforcement, and international drug interdiction efforts; and

(2) develop and establish comprehensive drug interdiction and drug eradication strategies, and dedicate the required resources, to achieve the goal of reducing the flow of illegal drugs into the United States by 80 percent by as early as December 31, 2001.

TITLE I—ENHANCED SOURCE AND TRANSIT COUNTRY COVERAGE

SEC. 101. EXPANSION OF RADAR COVERAGE AND OPERATION IN SOURCE AND TRANSIT COUNTRIES.

(a) AUTHORIZATION OF APPROPRIATIONS.—Funds are authorized to be appropriated for the Department of the Treasury for fiscal years 1999, 2000, and 2001 for the enhancement of radar coverage in drug source and transit countries in the total amount of $14,300,000 which shall be available for the following purposes:

(1) For restoration of radar, and operation and maintenance of radar, in the Bahamas.

(2) For operation and maintenance of ground-based radar at Guantanamo Bay Naval Base, Cuba.

(b) REPORT.—Not later than January 31, 1999, the Secretary of Defense, in conjunction with the Director of Central Intelligence, shall submit to the Committee on National Security and the Permanent Select Committee on Intelligence of the House of Representatives and the Committee on Armed Services and the Select Committee on Intelligence of the Senate a report examining the options available to the United States for improving Relocatable Over the Horizon (ROTHR) capability to provide enhanced radar coverage of narcotics source zone countries in South America and transit zones in the Eastern Pacific. The report shall include—

(1) a discussion of the need and costs associated with the establishment of a proposed fourth ROTHR site located in the source or transit zones; and

(2) an assessment of the intelligence specific issues raised if such a ROTHR facility were to be established in conjunction with a foreign government.

SEC. 102. EXPANSION OF COAST GUARD DRUG INTERDICTION.

(a) OPERATING EXPENSES.—For operating expenses of the Coast Guard associated with expansion of drug interdiction activities around Puerto Rico, the United States Virgin Islands, and other transit zone areas of operation, there is authorized to be appropriated to the Secretary of Transportation $151,500,000 for each of fiscal years 1999, 2000, and 2001. Such amounts shall include (but are not limited to) amounts for the following:

(1) For deployment of intelligent acoustic detection buoys in the Florida Straits and Bahamas.

(2) For a nonlethal technology program to enhance countermeasures against the threat of transportation of drugs by so-called Go-Fast boats.

(b) ACQUISITION, CONSTRUCTION, AND IMPROVEMENT.—

(1) IN GENERAL.—For acquisition, construction, and improvement of facilities and equipment to be used for expansion of Coast Guard drug interdiction activities, there is authorized to be appropriated to the Secretary of Transportation for fiscal year 1999 the total amount of $630,300,000 which shall be available for the following purposes:

(A) For maritime patrol aircraft sensors.

(B) For acquisition of deployable pursuit boats.

(C) For the acquisition and construction of up to 15 United States Coast Guard 87-foot Coastal Patrol Boats.

(D) For—

(i) the reactivation of up to 3 United States Coast Guard HU–25 Falcon jets;

(ii) the procurement of up to 3 C–37A aircraft; or

(iii) the procurement of up to 3 C–20H aircraft.

(E) For acquisition of installed or deployable electronic sensors and communications systems for Coast Guard Cutters.

(F) For acquisition and construction of facilities and equipment to support regional and international law enforcement training and support in Puerto Rico, the United States Virgin Islands, and the Caribbean Basin.

(G) For acquisition or conversion of maritime patrol aircraft.

(H) For acquisition or conversion of up to 2 vessels to be used as Coast Guard Medium or High Endurance Cutters.

(I) For acquisition or conversion of up to 2 vessels to be used as Coast Guard Cutters as support, command, and control platforms for drug interdiction operations.

(J) For acquisition of up to 6 Coast Guard Medium Endurance Cutters.

(K) For acquisition of up to 6 HC–130J aircraft.

(2) CONTINUED AVAILABILITY.—Amounts appropriated under this subsection may remain available until expended.

(c) REQUIREMENT TO ACCEPT PATROL CRAFT FROM DEPARTMENT OF DEFENSE.—The Secretary of Transportation shall accept, for use by the Coast Guard for expanded drug interdiction activities, 7 PC–170 patrol craft offered by the Department of Defense.

SEC. 103. EXPANSION OF AIRCRAFT COVERAGE AND OPERATION IN SOURCE AND TRANSIT COUNTRIES.

(a) DEPARTMENT OF THE TREASURY.—Funds are authorized to be appropriated for the Department of the Treasury for fiscal years 1999, 2000, and 2001 for the enhancement of air coverage and operation for drug source and transit countries in the total amount of $886,500,000 which shall be available for the following purposes:

(1) For procurement of 10 P–3B Early Warning aircraft for the United States Customs Service to enhance overhead air coverage of drug source zone countries.

(2) For the procurement and deployment of 10 P–3B Slick airplanes for the United States Customs Service to enhance overhead air coverage of the drug source zone.

(3) In fiscal years 2000 and 2001, for operation and maintenance of 10 P–3B Early Warning aircraft for the United States Customs Service to enhance overhead air coverage of drug source zone countries.

(4) For personnel for the 10 P–3B Early Warning aircraft for the United States Customs Service to enhance overhead air coverage of drug source zone countries.

(5) In fiscal years 2000 and 2001, for operation and maintenance of 10 P–3B Slick airplanes for the United States Customs Service to enhance overhead coverage of the drug source zone.

(6) For personnel for the 10 P–3B Slick airplanes for the United States Customs Service to enhance overhead air coverage of drug source zone countries.

(7) For construction and furnishing of an additional facility for the P–3B aircraft.

(8) For operation and maintenance for overhead air coverage for source countries.

(9) For operation and maintenance for overhead coverage for the Caribbean and Eastern Pacific regions.

(10) For purchase and for operation and maintenance of 3 RU–38A observation aircraft (to be piloted by pilots under contract with the United States).

(b) REPORT.—Not later than January 31, 1999, the Secretary of Defense, in consultation with the Secretary of State and the Director of Central Intelligence, shall submit to the Committee on National Security, the Committee on International Relations, and the Permanent Select Committee on Intelligence of the House of Representatives and to the Committee on Armed Services, the Committee on Foreign Relations, and the Select Committee on Intelligence of the Senate a report examining the options available in the source and transit zones to replace Howard Air Force Base in Panama and specifying the requirements of the United States to establish an airbase or airbases for use in support of counternarcotics operations to optimize operational effectiveness in the source and transit zones. The report shall identify the following:

(1) The specific requirements necessary to support the national drug control policy of the United States.

(2) The estimated construction, operation, and maintenance costs for a replacement counterdrug airbase or airbases in the source and transit zones.

(3) Possible interagency cost sharing arrangements for a replacement airbase or airbases.

(4) Any legal or treaty-related issues regarding the replacement airbase or airbases.

(5) A summary of completed alternative site surveys for the airbase or airbases.

(c) TRANSFER OF AIRCRAFT.—The Secretary of the Navy shall transfer to the United States Customs Service—

(1) ten currently retired and previously identified heavyweight P–3B aircraft for modification into P–3 AEW&C aircraft; and

(2) ten currently retired and previously identified heavyweight P–3B aircraft for modification into P–3 Slick aircraft.

TITLE II—ENHANCED ERADICATION AND INTERDICTION STRATEGY IN SOURCE COUNTRIES

SEC. 201. ADDITIONAL ERADICATION RESOURCES FOR COLOMBIA.

(a) DEPARTMENT OF STATE.—Funds are authorized to be appropriated for the Department of State for fiscal years 1999, 2000, and 2001 for the enhancement of drug-related eradication efforts in Colombia in the total amount of $201,250,000 which shall be available for the following purposes:

(1) For each such fiscal year for sustaining support of the helicopters and fixed wing fleet of the national police of Colombia.

(2) For the purchase of DC–3 transport aircraft for the national police of Colombia.

(3) For acquisition of resources needed for prison security in Colombia.

(4) For the purchase of minigun systems for the national police of Colombia.

(5) For the purchase of 6 UH–60L Black Hawk utility helicopters for the national police of Colombia and for operation, maintenance, and training relating to such helicopters.

(6) For procurement, for upgrade of 50 UH–1H helicopters to the Huey II configuration equipped with miniguns for the use of the national police of Colombia.

(7) For the repair and rebuilding of the antinarcotics base in southern Colombia.

(8) For providing sufficient and adequate base and force security for any rebuilt facility in southern Colombia, and the other forward operating antinarcotics bases of the Colombian National Police antinarcotics unit.

(b) COUNTERNARCOTICS ASSISTANCE.—United States counternarcotics assistance may not be provided for the Government of Colombia under this Act or under any other provision of law on or after the date of enactment of this Act if the Government of Colombia negotiates or permits the establishment of any demilitarized zone in which the eradication of drug production by the security forces of Colombia, including the Colombian National Police antinarcotics unit, is prohibited.

SEC. 202. ADDITIONAL ERADICATION RESOURCES FOR PERU.

(a) DEPARTMENT OF STATE.—Funds are authorized to be appropriated for the Department of State for fiscal years 1999, 2000, and 2001 for the establishment of a third drug interdiction site in Peru to support air bridge and riverine missions for enhancement of drug-related eradication efforts in Peru, in the total amount of $3,000,000, and an additional amount of $1,000,000 for each of fiscal years 2000 and 2001 for operation and maintenance.

(b) DEPARTMENT OF DEFENSE STUDY.—The Secretary of Defense shall conduct a study of Peruvian counternarcotics air interdiction requirements and, not later than 90 days after the date of enactment of this Act, submit to Congress a report on the results of the study. The study shall include a review of the Peruvian Air Force's current and future requirements for counternarcotics air interdiction to complement the Peruvian Air Force's A–37 capability.

SEC. 203. ADDITIONAL ERADICATION RESOURCES FOR BOLIVIA.

Funds are authorized to be appropriated for the Department of State for fiscal years 1999, 2000, and 2001 for enhancement of drug-related eradication efforts in Bolivia in the total amount of $17,000,000 which shall be available for the following purposes:

(1) For support of air operations in Bolivia.

(2) For support of riverine operations in Bolivia.

(3) For support of coca eradication programs.

(4) For procurement of 2 mobile x-ray machines, with operation and maintenance support.

SEC. 204. MISCELLANEOUS ADDITIONAL ERADICATION RESOURCES.

Funds are authorized to be appropriated for the Department of State for fiscal years 1999, 2000, and 2001 for enhanced precursor chemical control projects, in the total amount of $500,000.

SEC. 205. BUREAU OF INTERNATIONAL NARCOTICS AND LAW ENFORCEMENT AFFAIRS.

(a) SENSE OF CONGRESS RELATING TO PROFESSIONAL QUALIFICATIONS OF OFFICIALS RESPONSIBLE FOR INTERNATIONAL NARCOTICS CONTROL.—It is the sense of Congress that any individual serving in the position of assistant secretary in any department or agency of the Federal Government who has primary responsibility for international narcotics control and law enforcement, and the principal deputy of any such assistant secretary, shall have substantial professional qualifications in the fields of—

(1) management; and

(2) Federal law enforcement or intelligence.

(b) FOREIGN MILITARY SALES.—

(1) IN GENERAL.—Notwithstanding any other provision of law, upon the receipt by the Department of State of a formal letter of request for any foreign military sales counternarcotics-related assistance from the head of any police, military, or other appropriate security agency official, the principle agency responsible for the implementation and processing of the counternarcotics foreign military sales request shall be the Department of Defense.

(2) ROLE OF STATE DEPARTMENT.—The Department of State shall continue to have a consultative role with the Department of Defense in the processing of the request described in paragraph (1), after receipt of the letter of request, for all counternarcotics-related foreign military sales assistance.

(c) SENSE OF CONGRESS RELATING TO DEFICIENCIES IN INTERNATIONAL NARCOTICS ASSISTANCE ACTIVITIES.—It is the sense of Congress that the responsiveness and effectiveness of international narcotics assistance activities under the Department of State have been severely hampered due, in part, to the lack of law enforcement expertise by responsible personnel in the Department of State.

TITLE III—ENHANCED ALTERNATIVE CROP DEVELOPMENT SUPPORT IN SOURCE ZONE

SEC. 301. ALTERNATIVE CROP DEVELOPMENT SUPPORT.

Funds are authorized to be appropriated for the United States Agency for International Development for fiscal years 1999, 2000, and 2001 for alternative development programs in the total amount of $180,000,000 which shall be available as follows:

(1) In the Guaviare, Putumayo, and Caqueta regions in Colombia.

(2) In the Ucayali, Apurimac, and Huallaga Valley regions in Peru.

(3) In the Chapare and Yungas regions in Bolivia.

SEC. 302. AUTHORIZATION OF APPROPRIATIONS FOR AGRICULTURAL RESEARCH SERVICE COUNTERDRUG RESEARCH AND DEVELOPMENT ACTIVITIES.

(a) IN GENERAL.—There is authorized to be appropriated to the Secretary of Agriculture for each of fiscal years 1999, 2000, and 2001, $23,000,000 to support the counternarcotics research efforts of the Agricultural Research Service of the Department of Agriculture. Of that amount, funds are authorized as follows:

(1) $5,000,000 shall be used for crop eradication technologies.

(2) $2,000,000 shall be used for narcotics plant identification, chemistry, and biotechnology.

(3) $1,000,000 shall be used for worldwide crop identification, detection tagging, and production estimation technology.

(4) $5,000,000 shall be used for improving the disease resistance, yield, and economic competitiveness of commercial crops that can be promoted as alternatives to the production of narcotics plants.

(5) $10,000,000 to contract with entities meeting the criteria described in subsection (b) for the product development, environmental testing, registration, production, aerial distribution system development, product effectiveness monitoring, and modification of multiple mycoherbicides to control narcotic crops (including coca, poppy, and cannabis) in the United States and internationally.

(b) CRITERIA FOR ELIGIBLE ENTITIES.—An entity under this subsection is an entity which possesses—

(1) experience in diseases of narcotic crops;

(2) intellectual property involving seed-borne dispersal formulations;

(3) the availability of state-of-the-art containment or quarantine facilities;

(4) country-specific mycoherbicide formulations;

(5) specialized fungicide resistant formulations; or

(6) special security arrangements.

SEC. 303. MASTER PLAN FOR MYCOHERBICIDES TO CONTROL NARCOTIC CROPS.

(a) IN GENERAL.—The Director of the Office of National Drug Control Policy shall develop a 10-year master plan for the use of mycoherbicides to control narcotic crops (including coca, poppy, and cannabis) in the United States and internationally.

(b) COORDINATION.—The Director shall develop the plan in coordination with—

(1) the Department of Agriculture;

(2) the Drug Enforcement Administration of the Department of Justice;

(3) the Department of Defense;

(4) the Environmental Protection Agency;

(5) the Bureau for International Narcotics and Law Enforcement Activities of the Department of State;

(6) the United States Information Agency; and

(7) other appropriate agencies.

(c) REPORT.—Not later than March 1, 1999, the Director of the Office of National Drug Control Policy shall submit to Congress a report describing the activities undertaken to carry out this section.

TITLE IV—ENHANCED INTERNATIONAL LAW ENFORCEMENT TRAINING

SEC. 401. ENHANCED INTERNATIONAL LAW ENFORCEMENT ACADEMY TRAINING.

(a) ENHANCED INTERNATIONAL LAW ENFORCEMENT ACADEMY TRAINING.—Funds are authorized to be appropriated for the Department of Justice for fiscal years 1999, 2000, and 2001 for the establishment and operation of international law enforcement academies to carry out law enforcement training activities in the total amount of $13,400,000 which shall be available for the following purposes:

(1) For the establishment and operation of an academy which shall serve Latin America and the Caribbean.

(2) For the establishment and operation of an academy in Bangkok, Thailand, which shall serve Asia.

(3) For the establishment and operation of an academy in South Africa which shall serve Africa.

(b) MARITIME LAW ENFORCEMENT TRAINING CENTER.—Funds are authorized to be appropriated for the Department of Transportation and the Department of the Treasury for fiscal years 1999, 2000, and 2001 for the joint establishment, operation, and maintenance in San Juan, Puerto Rico, of a center for training law enforcement personnel of countries located in the Latin American and Caribbean regions in matters relating to maritime law enforcement, including customs-related ports management matters, as follows:

(1) For each such fiscal year for funding by the Department of Transportation, $1,500,000.

(2) For each such fiscal year for funding by the Department of the Treasury, $1,500,000.

(c) UNITED STATES COAST GUARD INTERNATIONAL MARITIME TRAINING VESSEL.—Funds are authorized to be appropriated for the Department of Transportation for fiscal years 1999, 2000, and 2001 for the establishment, operation, and maintenance of maritime training vessels in the total amount of $15,000,000 which shall be available for the following purposes:

(1) For a vessel for international maritime training, which shall visit participating Latin American and Caribbean nations on a rotating schedule in order to provide law enforcement training and to perform maintenance on participating national assets.

(2) For support of the United States Coast Guard Balsam Class Buoy Tender training vessel.

SEC. 402. ENHANCED UNITED STATES DRUG ENFORCEMENT INTERNATIONAL TRAINING.

(a) MEXICO.—Funds are authorized to be appropriated for the Department of Justice for fiscal years 1999, 2000, and 2001 for substantial exchanges for Mexican judges, prosecutors, and police, in the total amount of $2,000,000 for each such fiscal year.

(b) BRAZIL.—Funds are authorized to be appropriated for the Department of Justice for fiscal years 1999, 2000, and 2001 for enhanced support for the Brazilian Federal Police Training Center, in the total amount of $1,000,000 for each such fiscal year.

(c) PANAMA.—

(1) IN GENERAL.—Funds are authorized to be appropriated for the Department of Transportation for fiscal years 1999, 2000, and 2001 for operation and maintenance, for locating and operating Coast Guard assets so as to strengthen the capability of the Coast Guard of Panama to patrol the Atlantic and Pacific coasts of Panama for drug enforcement and interdiction activities, in the total amount of $1,000,000 for each such fiscal year.

(2) ELIGIBILITY TO RECEIVE TRAINING.—Notwithstanding any other provision of law, members of the national police of Panama shall be eligible to receive training through the International Military Education Training program.

(d) VENEZUELA.—There are authorized to be appropriated for the Department of Justice for each of fiscal years 1999, 2000, and 2001, $1,000,000 for operation and maintenance, for support for the Venezuelan Judicial Technical Police Counterdrug Intelligence Center.

(e) ECUADOR.—Funds are authorized to be appropriated for the Department of Transportation and the Department of the Treasury for each of fiscal years 1999, 2000, and 2001 for the buildup of local coast guard and port control in Guayaquil and Esmeraldas, Ecuador, as follows:

(1) For each such fiscal year for the Department of Transportation, $500,000.

(2) For each such fiscal year for the Department of the Treasury, $500,000.

(f) HAITI AND THE DOMINICAN REPUBLIC.—Funds are authorized to be appropriated for the Department of the Treasury for each of fiscal years 1999, 2000, and 2001, $500,000 for the buildup of local coast guard and port control in Haiti and the Dominican Republic.

(g) CENTRAL AMERICA.—There are authorized to be appropriated for the Department of the Treasury for each of fiscal years 1999, 2000, and 2001, $12,000,000 for the buildup of local coast guard and port control in Belize, Costa Rica, El Salvador, Guatemala, Honduras, and Nicaragua.

SEC. 403. PROVISION OF NONLETHAL EQUIPMENT TO FOREIGN LAW ENFORCEMENT ORGANIZATIONS FOR COOPERATIVE ILLICIT NARCOTICS CONTROL ACTIVITIES.

(a) IN GENERAL.—The Administrator of the Drug Enforcement Administration, in consultation with the Secretary of State, may transfer or lease each year nonlethal equipment, of which each piece of equipment may be valued at not more than $100,000, to foreign law enforcement organizations for the purpose of establishing and carrying out cooperative illicit narcotics control activities.

(b) ADDITIONAL REQUIREMENT.—The Administrator shall provide for the maintenance and repair of any equipment transferred or leased under subsection (a).

(c) SENSE OF CONGRESS.—It is the sense of Congress that—

(1) all United States law enforcement personnel serving in Mexico should be accredited the same status under the Vienna Convention on Diplomatic Immunity as other diplomatic personnel serving at United States posts in Mexico; and

(2) all Mexican narcotics law enforcement personnel serving in the United States should be accorded the same diplomatic status as Drug Enforcement Administration personnel serving in Mexico.

TITLE V—ENHANCED DRUG TRANSIT AND SOURCE ZONE LAW ENFORCEMENT OPERATIONS AND EQUIPMENT

SEC. 501. INCREASED FUNDING FOR OPERATIONS AND EQUIPMENT; REPORT.

(a) DRUG ENFORCEMENT ADMINISTRATION.—Funds are authorized to be appropriated for the Drug Enforcement Administration for fiscal years 1999, 2000, and 2001 for enhancement of counternarcotic operations in drug transit and source countries in the total amount of $58,900,000 which shall be available for the following purposes:

(1) For support of the Merlin program.

(2) For support of the intercept program.

(3) For support of the Narcotics Enforcement Data Retrieval System.

(4) For support of the Caribbean Initiative.

(5) For the hire of special agents, administrative and investigative support personnel, and intelligence analysts for overseas assignments in foreign posts.

(b) DEPARTMENT OF STATE.—Funds are authorized to be appropriated for the Department of State for fiscal year 1999, 2000, and 2001 for the deployment of commercial unclassified intelligence and imaging data and a Passive Coherent Location System for counternarcotics and interdiction purposes in the Western Hemisphere, the total amount of $20,000,000.

(c) DEPARTMENT OF THE TREASURY.—Funds are authorized to be appropriated for the United States Customs Service for fiscal years 1999, 2000, and 2001 for enhancement of counternarcotic operations in drug transit and source countries in the total amount of

$71,500,000 which shall be available for the following purposes:

(1) For refurbishment of up to 30 interceptor and Blue Water Platform vessels in the Caribbean maritime fleet.

(2) For purchase of up to 9 new interceptor vessels in the Caribbean maritime fleet.

(3) For the hire and training of up to 25 special agents for maritime operations in the Caribbean.

(4) For purchase of up to 60 automotive vehicles for ground use in South Florida.

(5) For each such fiscal year for operation and maintenance support for up to 10 United States Customs Service Citations Aircraft to be dedicated for the source and transit zone.

(6) For purchase of non-intrusive inspection systems consistent with the United States Customs Service 5-year technology plan, including truck x-rays and gamma-imaging for drug interdiction purposes at high-threat seaports and land border ports of entry.

(d) DEPARTMENT OF DEFENSE REPORT.—Not later than January 31, 1999, the Secretary of Defense, in consultation with the Director of the Office of National Drug Control Policy, shall submit to the Committee on National Security and the Permanent Select Committee on Intelligence of the House of Representatives and the Committee on Armed Services and the Select Committee on Intelligence of the Senate a report examining and proposing recommendations regarding any organizational changes to optimize counterdrug activities, including alternative cost-sharing arrangements regarding the following facilities:

(1) The Joint Inter-Agency Task Force, East, Key West, Florida.

(2) The Joint Inter-Agency Task Force, West, Alameda, California.

(3) The Joint Inter-Agency Task Force, South, Panama City, Panama.

(4) The Joint Task Force 6, El Paso, Texas.

SEC. 502. FUNDING FOR COMPUTER SOFTWARE AND HARDWARE TO FACILITATE DIRECT COMMUNICATION BETWEEN DRUG ENFORCEMENT AGENCIES.

(a) AUTHORIZATION.—Funds are authorized to be appropriated for the development and purchase of computer software and hardware to facilitate direct communication between agencies that perform work relating to the interdiction of drugs at United States borders, including the United States Customs Service, the Border Patrol, the Federal Bureau of Investigation, the Drug Enforcement Agency, and the Immigration and Naturalization Service, in the total amount of $50,000,000.

(b) AVAILABILITY.—Funds authorized pursuant to the authorization of appropriations in subsection (a) shall remain available until expended.

SEC. 503. SENSE OF CONGRESS REGARDING PRIORITY OF DRUG INTERDICTION AND COUNTERDRUG ACTIVITIES.

It is the sense of Congress that the Secretary of Defense should revise the Global Military Force Policy of the Department of Defense in order—

(1) to treat the international drug interdiction and counter-drug activities of the Department as a military operation other than war, thereby elevating the priority given such activities under the Policy to the next priority below the priority given to war under the Policy and to the same priority as is given to peacekeeping operations under the Policy; and

(2) to allocate the assets of the Department to drug interdiction and counter-drug activities in accordance with the priority given those activities.

TITLE VI—RELATIONSHIP TO OTHER LAWS

SEC. 601. AUTHORIZATIONS OF APPROPRIATIONS.

The funds authorized to be appropriated for any department or agency of the Federal Government for fiscal years 1999, 2000, or 2001 by this Act are in addition to funds authorized to be appropriated for that department or agency for fiscal year 1999, 2000, or 2001 by any other provision of law.

TITLE VII—CRIMINAL BACKGROUND CHECKS ON PORT EMPLOYEES

SEC. 701. BACKGROUND CHECKS.

(a) BACKGROUND CHECKS.—Upon the request of any State, county, port authority, or other local jurisdiction of a State, the Attorney General shall grant to such State, county, port authority, or other local jurisdiction access to information collected by the Attorney General pursuant to section 534 of title 28, United States Code, for the purpose of allowing such State, county, port authority, or other local jurisdiction to conduct criminal background checks on employees, or applicants for employment, at any port under the jurisdiction of such State, county, port authority, or other local jurisdiction.

(b) PORT DEFINED.—In this section, the term ''port'' means any place at which vessels may resort to load or unload cargo.

TITLE VIII—DRUG CURRENCY FORFEITURES

SEC. 801. SHORT TITLE.

This title may be cited as the ''Drug Currency Forfeitures Act''.

SEC. 802. DRUG CURRENCY FORFEITURES.

(a) IN GENERAL.—Section 511 of the Controlled Substances Act (21 U.S.C. 881) is amended by inserting after subsection (j) the following:

''(k) REBUTTABLE PRESUMPTION.—

''(1) DEFINITIONS.—In this subsection—

''(A) the term 'drug trafficking offense' means—

''(i) with respect to an action under subsection (a)(6), any illegal exchange involving a controlled substance or other violation for which forfeiture is authorized under that subsection; and

''(ii) with respect to an action under section 981(a)(1)(B) of title 18, United States Code, any offense against a foreign nation involving the manufacture, importation, sale, or distribution of a controlled substance for which forfeiture is authorized under that section; and

''(B) the term 'shell corporation' means any corporation that does not conduct any ongoing and significant commercial or manufacturing business or any other form of commercial operation.

''(2) PRESUMPTION.—In any action with respect to the forfeiture of property described in subsection (a)(6) of this section, or section 981(a)(1)(B) of title 18, United States Code, there is a rebuttable presumption that property is subject to forfeiture, if the Government offers a reasonable basis to believe, based on any circumstance described in subparagraph (A), (B), (C), or (D) of paragraph (3), that there is a substantial connection between the property and a drug trafficking offense.

''(3) CIRCUMSTANCES.—The circumstances described in this paragraph are that—

''(A) the property at issue is currency in excess of $10,000 that was, at the time of seizure, being transported through an airport, on a highway, or at a port-of-entry, and—

''(i) the property was packaged or concealed in a highly unusual manner;

''(ii) the person transporting the property (or any portion thereof) provided false information to any law enforcement officer or inspector who lawfully stopped the person for investigative purposes or for purposes of a United States border inspection;

''(iii) the property was found in close proximity to a measurable quantity of any controlled substance; or

''(iv) the property was the subject of a positive alert by a properly trained dog;

''(B) the property at issue was acquired during a period of time when the person who acquired the property was engaged in a drug trafficking offense or within a reasonable time after such period, and there is no likely source for such property other than that offense;

''(C)(i) the property at issue was, or was intended to be, transported, transmitted, or transferred to or from a major drug-transit country, a major illicit drug producing country, or a major money laundering country, as determined pursuant to section 481(e) or 490(h) of the Foreign Assistance Act of 1961 (22 U.S.C. 2291(e) and 2291j(h)), as applicable; and

''(ii) the transaction giving rise to the forfeiture—

''(I) occurred in part in a foreign country whose bank secrecy laws render the United States unable to obtain records relating to the transaction by judicial process, treaty, or executive agreement; or

''(II) was conducted by, to, or through a shell corporation that was not engaged in any legitimate business activity in the United States; or

''(D) any person involved in the transaction giving rise to the forfeiture action—

''(i) has been convicted in any Federal, State, or foreign jurisdiction of a drug trafficking offense or a felony involving money laundering; or

''(ii) is a fugitive from prosecution for any offense described in clause (i).

''(4) OTHER PRESUMPTIONS.—The establishment of the presumption in this subsection shall not preclude the development of other judicially created presumptions, or the establishment of probable cause based on criteria other than those set forth in this subsection.''.

(b) MONEY LAUNDERING FORFEITURES.—Section 981 of title 18, United States Code, is amended by adding at the end the following:

''(k) REBUTTABLE PRESUMPTION.—In any action with respect to the forfeiture of property described in subsection (a)(1)(A), there is a rebuttable presumption that the property is the proceeds of an offense involving the felonious manufacture, importation, receiving, concealment, buying, selling, or otherwise dealing in a controlled substance (as defined in section 102 of the Controlled Substances Act), and thus constitutes the proceeds of specified unlawful activity (as defined in section 1956(c)), if any circumstance set forth in subparagraph (A), (B), (C), or (D) section 511(k)(3) of the Controlled Substances Act (21 U.S.C. 881(k)(3)) is present.''.

Mr. COVERDELL. Mr. President, I am pleased today to join my colleagues from both sides of the aisle in reintroducing the Western Hemisphere Drug Elimination Act of 1998. This legislation authorizes a $3 billion, three year initiative to enhance international drug eradication, interdiction and crop substitution efforts.

The other body has already adopted a companion version of this bill in a 384–39 vote. That level of support reflects, I believe, a growing recognition by members of Congress that our current approach to the drug war is not working. While treatment and education and other demand reduction activities are vital to an overall drug strategy,

you do not win a war by only treating the wounded. A balanced strategy is essential and we have in recent years neglected the interdiction and international components of our counterdrug efforts.

The result has been a flood of drugs into our streets and schools and neighborhoods and disturbing increases in drug use.

On August 21, 1998, the National Household Survey on Drug Abuse, conducted by the Substance Abuse & Mental Health Administration, was released. That report indicates that in 1997, 13.9 million Americans 12-and-over cited themselves as ''current users'' of illicit drugs—a 7 percent increase from 1996. Current illicit drug use among our nation's youth continues to increase at an alarming rate. From 1992–1997, youth aged 12-to-17 using illegal drugs has more than doubled (120 percent)—with a 27 percent increase from 1996–1997 alone.

On September 1, 1998, the Back to School 1998: CASA Teen Survey, conducted by the National Center on Addiction & Substance Abuse at Columbia University, was released. A majority (51 percent) of high school students say the drug problem is getting worse. For the fourth straight year, both middle and high school students say that drugs are their biggest concern. More than three-quarters of high school teens report that drugs are used, sold and kept at their schools—an increase from 72 percent in 1996 to 78 percent in 1998.

This newly drafted version of the Western Hemisphere Drug Elimination Act reflects testimony heard at the joint hearing of the Senate Foreign Relations Committee and the Senate Caucus on International Narcotics Control held on September 15. General Barry McCaffrey, Director of the Office of National Drug Control Policy, as well as officials from the Departments of State and Defense, the Drug Enforcement Administration, the U.S. Customs Service and the United States Coast Guard testified. The committees also heard from experts of the General Accounting Office and the Institute for Defense Analysis.

General McCaffrey in particular asked for greater flexibility in the provisions of the bill and we have granted that request. Our legislation still authorizes new aircraft, cutters, and ''go-fast'' boats for the Coast Guard and Customs Service. But we give these agencies the flexibility to prioritize from a menu of option and determine for themselves which are the greatest needs.

The bill supports increased eradication and interdiction efforts in Bolivia, Colombia, Peru, and Mexico, as well as assistance for alternative crop development support in the Andean region. But again, we have tailored its provisions to give the State Department needed flexibility in determining priorities and adjusting to changing conditions.

The bill also provides for development of international law enforcement training and improvements in drug transit and source zone law enforcement operations and equipment.

Mr. President, the Western Hemisphere Drug Elimination Act of 1998 is a bipartisan effort to restore a balanced drug strategy. I urge all Senators to support it.

Mr. D'AMATO. Mr. President, I am pleased to join with my colleagues as original co-sponsor of the revised Western Hemisphere Drug Elimination Act of 1998. This bill reflects a balanced approach in curbing the flow of narcotics over our borders; to stop the drugs before they arrive in the United States.

Illegal drug use by our children and youth is taking an enormous toll on families and communities all over the country. A study released by the National Institute on Drug Abuse found that cocaine and marijuana use among high school seniors has increased 80% since 1992. Even more alarming is that heroin use among twelfth graders doubled.

The effects of drugs are astounding. It is estimated that drug-related illness, death and crime cost the United States approximately $67 billion a year. That is $1,000 for every man, woman and child in America. The resources we spend to combat drugs could have been used for so many other valuable social and economic development programs. That is why, after decades of trying to combat the scourge of drugs, we must finally put a stop to it.

New York State is no stranger to the plight created by illegal drugs. Last year, almost 40% of the heroin seized at our international borders was seized in the New York metropolitan area. This disproportionate amount of drugs destined for New York communities underscores my intention to do what is necessary to end the flow of drugs into our country.

An effective counter-narcotics control strategy should be balanced and coordinated—including interdiction, prevention and law enforcement. But a disturbing trend has emerged. Since 1987, the percentage of the national drug control budget earmarked for interdiction and international efforts has decreased from 33% to just 12%. That is a trend we intend to reverse with this bill.

This is an opportunity to make a commitment to substantially reducing drug availability in the United States. In this spirit, the sponsors of this bill have consulted with the Office of National Drug Control Policy to improve on certain aspects of this legislation. But one thing won't change. This bill will provide the necessary resources, $2.6 billion over three years, to increase our interdiction efforts. We can all agree on one thing—we have to stop the drugs before they reach our communities. And it's important to mention that the House of Representatives overwhelmingly approved a similar bill.

The Western Hemisphere Drug Elimination Act of 1998 reaches that goal by providing a comprehensive eradication, interdiction and crop substitution strategy. This initiative will make supply reduction a priority again—guaranteeing valuable equipment for our law enforcement including speed boats at least as fast as those belonging to the drug lords. Our radars and early warning aircraft will be improved so that they will detect the small and elusive drug planes that smuggle tons of narcotics destined for out streets. This initiative will restore balance to the drug control strategy and make significant inroads towards keeping drugs from reaching our neighborhoods, and more importantly, our children.

This initiative recognizes that drug availability can be decreased by operating against every level of the drug process—from the growing fields to the clandestine laboratories to the trafficking. By continuing to work with reputable law enforcement in narcotic source and transit countries, we may be able to eradicate drugs at their origin.

The importance of this legislation cannot be underestimated. Everyday, our men and women of law enforcement, at the federal, state and local levels, make great sacrifices as they face the heavy burden of fighting the drug war. They protect the citizens of this country and we should respond by providing them with all the tools they need to get the job done. These people have committed themselves to eliminating illegal drugs from our streets. Now we must demonstrate to them that we will support them in their struggle—a struggle they carry on to protect us.

I commend the sponsors of this bill for working toward an agreement on this bill and I urge my colleagues to support its enactment.

Mr. BREAUX. Mr. President, I rise today in support of S. 2341, the Western Hemisphere Drug Elimination Act, introduced by Senator DEWINE, myself and twenty-nine of our distinguished colleagues.

Research shows that increased Federal, State and local efforts are needed to enforce the already existing laws, as well as to pass pro-active legislation to deal with ever changing trends in substance abuse. Unfortunately, there is compelling evidence that over the past decade the changing trends indicate that drug use has increased, particularly among young people. My colleagues and I believe that the growth in drug use has some connection to the decline in resources dedicated to drug interdiction efforts outside our borders over this period. While previous budgets have appropriately devoted resources to demand and domestic law enforcement programs, evidence also shows that there must be a returned focus on interdiction and eradication programs. I have continued to support a continued federal commitment to demand reduction and law enforcement

programs since ultimately these activities drive the drug trade in the United States. However, we can not reverse the disturbing increases in drug use unless we also dedicate more funds to drug interdiction and restore a more balanced drug control strategy.

Mr. President, I believe that this $2.6 billion over 3 years initiative to enhance international eradication, interdiction and crop substitution efforts targets the threat to the United States caused by drug lords. Furthermore, by addressing the very highlights of the bill and appropriating the necessary monies, drug lords and drug traffickers will be more clearly targeted. While this bill is very detailed, let me mention a few of the highlights:

It would improve our aircraft, maritime and radar coverage of both drug-source and drug-transit countries;

It would enhance drug-eradication and interdiction efforts in source countries;

It would enhance the development of alternative crops in drug-source countries; It would support international law enforcement training;

It would enhance law enforcement interdiction operations.

Mr. President, all too often, the drug smugglers have the upper hand with state-of-the-art boats and aircraft. I might add the United States specifically lacks adequate surface assets and is using aircraft with 1990 technology. I believe that this bill will help turn the tide in the war on drugs by equipping the Coast Guard, Customs, DEA, DOD and other law enforcement agencies with the latest in proven technology.

Mr. President, I want my colleagues to take note of the fact that an identical bill H.R.4300 has already been passed in the House of Representatives by a vote of 384–39. I urge my colleagues to support the Western Hemisphere Drug Elimination Act and make it far more difficult for drug lords to bring drugs to our nation. I believe that increasing funds for eradication and interdiction efforts will make a difference.

By Mr. HATCH:

S. 2524. A bill to cofidy without substantive change laws related to Patriotic and National Observances, Ceremonies, and Organizations and to improve the United States Code; to the Committee on the Judiciary.

U.S. CODE REVISIONS

Mr. HATCH. Mr. President, I rise to introduce today a bill to amend title 36 of the U.S. Code, to codify certain laws related to patriotic and national organizations that were enacted after the cut-off date for the title 36 codification recently enacted by Public Law 105–225. The bill makes technical corrections in title 36 and repeals obsolete and unnecessary provisions.

ADDITIONAL COSPONSORS

S. 614

At the request of Mr. BREAUX, the name of the Senator from Michigan (Mr. ABRAHAM) was added as a cosponsor of S. 614, a bill to amend the Internal Revenue Code of 1986 to provide flexibility in the use of unused volume cap for tax-exempt bonds, to provide a $20,000,000 limit on small issue bonds, and for other purposes.

S. 1021

At the request of Mr. HAGEL, the name of the Senator from Virginia (Mr. ROBB) was added as a cosponsor of S. 1021, a bill to amend title 5, United States Code, to provide that consideration may not be denied to preference eligibles applying for certain positions in the competitive service, and for other purposes.

S. 1464

At the request of Mr. HATCH, the name of the Senator from Colorado (Mr. ALLARD) was added as a cosponsor of S. 1464, a bill to amend the Internal Revenue Code of 1986 to permanently extend the research credit, and for other purposes.

S. 1707

At the request of Ms. MIKULSKI, the name of the Senator from Michigan (Mr. LEVIN) was added as a cosponsor of S. 1707, a bill to amend the Federal Food, Drug, and Cosmetic Act to provide for improved safety of imported foods.

S. 1868

At the request of Mr. NICKLES, the name of the Senator from Minnesota (Mr. GRAMS) was added as a cosponsor of S. 1868, a bill to express United States foreign policy with respect to, and to strengthen United States advocacy on behalf of, individuals persecuted for their faith worldwide; to authorize United States actions in response to religious persecution worldwide; to establish an Ambassador at Large on International Religious Freedom within the Department of State, a Commission on International Religious Persecution, and a Special Adviser on International Religious Freedom within the National Security Council; and for other purposes.

S. 2046

At the request of Mr. ASHCROFT, the name of the Senator from Ohio (Mr. DEWINE) was added as a cosponsor of S. 2046, a bill to ensure that Federal, State and local governments consider all nongovernmental organizations on an equal basis when choosing such organizations to provide assistance under certain government programs, without impairing the religious character of any of the organizations, and without diminishing the religious freedom of beneficiaries of assistance funded under such programs, and for other purposes.

S. 2176

At the request of Mr. LEAHY, the name of the Senator from California (Mrs. BOXER) was added as a cosponsor of S. 2176, a bill to amend sections 3345 through 3349 of title 5, United States Code (commonly referred to as the ''Vacancies Act''), to clarify statutory requirements relating to vacancies in and appointments to certain Federal offices, and for other purposes.

S. 2196

At the request of Mr. GORTON, the name of the Senator from North Dakota (Mr. DORGAN) was added as a cosponsor of S. 2196, a bill to amend the Public Health Service Act to provide for establishment at the National Heart, Lung, and Blood Institute of a program regarding lifesaving interventions for individuals who experience cardiac arrest, and for other purposes.

S. 2217

At the request of Mr. FRIST, the names of the Senator from Pennsylvania (Mr. SANTORUM) and the Senator from Maryland (Mr. SARBANES) were added as cosponsors of S. 2217, a bill to provide for continuation of the Federal research investment in a fiscally sustainable way, and for other purposes.

S. 2233

At the request of Mr. CONRAD, the names of the Senator from Utah (Mr. BENNETT), the Senator from Pennsylvania (Mr. SANTORUM), and the Senator from Montana (Mr. BURNS) were added as cosponsors of S. 2233, a bill to amend section 29 of the Internal Revenue Code of 1986 to extend the placed in service date for biomass and coal facilities.

S. 2263

At the request of Mr. GORTON, the name of the Senator from New Jersey (Mr. TORRICELLI) was added as a cosponsor of S. 2263, a bill to amend the Public Health Service Act to provide for the expansion, intensification, and coordination of the activities of the National Institutes of Health with respect to research on autism.

S. 2296

At the request of Mr. MACK, the name of the Senator from North Carolina (Mr. HELMS) was added as a cosponsor of S. 2296, a bill to amend the Internal Revenue Code of 1986 to repeal the limitation on the amount of receipts attributable to military property which may be treated as exempt foreign trade income.

S. 2358

At the request of Mr. ROCKEFELLER, the name of the Senator from Virginia (Mr. ROBB) was added as a cosponsor of S. 2358, a bill to provide for the establishment of a service-connection for illnesses associated with service in the Persian Gulf War, to extend and enhance certain health care authorities relating to such service, and for other purposes.

S. 2364

At the request of Mr. CHAFEE, the names of the Senator from West Virginia (Mr. ROCKEFELLER), the Senator from Louisiana (Ms. LANDRIEU), and the Senator from Pennsylvania (Mr. SPECTER) were added as cosponsors of S. 2364, a bill to reauthorize and make reforms to programs authorized by the Public Works and Economic Development Act of 1965.

S. 2392

At the request of Mr. BENNETT, the name of the Senator from Massachusetts (Mr. KERRY) was added as a cosponsor of S. 2392, a bill to encourage the disclosure and exchange of information about computer processing problems and related matters in connection with the transition to the Year 2000.

At the request of Mr. BINGAMAN, his name was added as a cosponsor of S. 2392, supra.

At the request of Mr. LEAHY, the name of the Senator from West Virginia (Mr. ROCKEFELLER) was added as a cosponsor of S. 2392, supra.

SENATE JOINT RESOLUTION 56

At the request of Mr. GRASSLEY, the names of the Senator from South Carolina (Mr. THURMOND) and the Senator from Utah (Mr. BENNETT) were added as cosponsors of Senate Joint Resolution 56, a joint resolution expressing the sense of Congress in support of the existing Federal legal process for determining the safety and efficacy of drugs, including marijuana and other Schedule I drugs, for medicinal use.

SENATE CONCURRENT RESOLUTION 83

At the request of Mr. WARNER, the names of the Senator from Vermont (Mr. JEFFORDS), the Senator from Maine (Ms. COLLINS), the Senator from Oklahoma (Mr. NICKLES), the Senator from Pennsylvania (Mr. SPECTER), the Senator from Alaska (Mr. STEVENS), the Senator from Oklahoma (Mr. INHOFE), the Senator from Kentucky (Mr. MCCONNELL), and the Senator from New Mexico (Mr. DOMENICI) were added as cosponsors of Senate Concurrent Resolution 83, a concurrent resolution remembering the life of George Washington and his contributions to the Nation.

SENATE RESOLUTION 257

At the request of Mr. MURKOWSKI, the names of the Senator from Virginia (Mr. WARNER), the Senator from Missouri (Mr. ASHCROFT), the Senator from Idaho (Mr. CRAIG), the Senator from Connecticut (Mr. LIEBERMAN), the Senator from Montana (Mr. BAUCUS), the Senator from Utah (Mr. BENNETT), the Senator from Maryland (Ms. MIKULSKI), and the Senator from Kansas (Mr. BROWNBACK) were added as cosponsors of Senate Resolution 257, a resolution expressing the sense of the Senate that October 15, 1998, should be designated as ''National Inhalant Abuse Awareness Day.''

SENATE RESOLUTION 274

At the request of Mr. FORD, the name of the Senator from South Carolina (Mr. HOLLINGS) was added as a cosponsor of Senate Resolution 274, a resolution to express the sense of the Senate that the Louisville Festival of Faiths should be commended and should serve as model for similar festivals in other communities throughout the United States.

SENATE RESOLUTION 278

At the request of Mr. HATCH, the name of the Senator from Massachusetts (Mr. KENNEDY) was added as a cosponsor of Senate Resolution 278, a resolution designating the 30th day of April of 1999, as ''Dia de los Ninos: Celebrating Young Americans,'' and for other purposes.

AMENDMENTS SUBMITTED

INTERNET TAX FREEDOM ACT

ABRAHAM AMENDMENT NO. 3665

(Ordered to lie on the table.)

Mr. ABRAHAM submitted an amendment intended to be proposed by him to the bill (S. 442) to establish national policy against State and local government interference with interstate commerce on the Internet or interactive computer services, and to exercise Congressional jurisdiction over interstate commerce by establishing a moratorium on the imposition of exaction that would interfere with the free flow of commerce via the Internet, and for other purposes, as follows:

At the appropriate place, insert the following:

TITLE II—GOVERNMENT PAPERWORK ELIMINATION ACT

SEC. 201. SHORT TITLE.

This title may be cited as the ''Government Paperwork Elimination Act''.

SEC. 202. STUDIES ON USE OF ELECTRONIC SIGNATURES TO ENHANCE ELECTRONIC COMMERCE.

The Secretary shall conduct an ongoing study of the enhancement of electronic commerce and the impact on individual privacy due to the use of electronic signatures pursuant to this title, and shall report findings to the Commerce Committee of the House and to the Commerce, Science, and Transportation Committee of the Senate not later than 18 months after the date of enactment of this title.

SEC. 203. ELECTRONIC AVAILABILITY OF FORMS.

(a) NEW FORMS, QUESTIONNAIRES AND SURVEYS.—The head of an agency or operating unit shall provide for the availability to the affected public in electronic form for downloading or printing through the Internet or other suitable medium of any agency form, questionnaire, or survey created after the date of enactment of this title that is to be submitted to the agency by more than 1,000 non-government persons or entities per year, except where the head of the agency or operating unit determines by a finding that providing for such availability would be impracticable or otherwise unreasonable.

(b) ALL FORMS, QUESTIONNAIRES, AND SURVEYS.—As soon as practicable, but not later than 18 months after the date of enactment of this title, each Federal agency shall make all of its forms, questionnaires, and surveys that are expected to be submitted to such agency by more than 1,000 non-government persons or entities per year available to the affected public for downloading or printing through the Internet or other suitable electronic medium. This requirement shall not apply where the head of an agency or operating unit determines that providing such availability for particular form, questionnaire or survey documents would be impracticable or otherwise unreasonable.

(c) APPLICABILITY OF SECTION.—The requirements of this section shall not apply to surveys that are both distributed and collected one-time only or that are provided directly to all respondents by the agency.

(d) AVAILABILITY.—Forms subject to this section shall be available for electronic submission (with an electronic signature when necessary) under the provisions of section 208, and shall be available for electronic storage by employers as described in section 207.

(e) PAPER FORMS TO BE AVAILABLE.—Each agency and operating unit shall continue to make forms, questionnaires, and surveys available in paper form.

SEC. 204. PAYMENTS.

In conjunction with the process required by section 208—

(1) where they deem such action appropriate and practicable, and subject to standards or guidance of the Department of the Treasury concerning Federal payments or collections, agencies shall seek to develop or otherwise provide means whereby persons submitting documents electronically are accorded the option of making any payments associated therewith by electronic means.

(2) payments associated with forms, applications, or similar documents submitted electronically, other than amounts relating to additional costs associated with the electronic submission such as charges imposed by merchants in connection with credit card transactions, shall be no greater than the payments associated with the corresponding printed version of such documents.

SEC. 205. USE OF ELECTRONIC SIGNATURES BY FEDERAL AGENCIES.

(a) AGENCY EMPLOYEES TO RECEIVE ELECTRONIC SIGNATURES.—The head of each agency shall issue guidelines for determining how and which employees in each respective agency shall be permitted to use electronic signatures within the scope of their employment.

(b) AVAILABILITY OF ELECTRONIC NOTICE.—An agency may provide a person entitled to receive written notice of a particular matter with the opportunity to receive electronic notice instead.

(c) PROCEDURES FOR ACCEPTANCE OF ELECTRONIC SIGNATURES.—The Director, in consultation with the Secretary, shall coordinate agency actions to comply with the provisions of this title and shall develop guidelines concerning agency use and acceptance of electronic signatures, and such use and acceptance shall be supported by the issuance of such guidelines as may be necessary or appropriate by the Secretary.

(1) The procedures shall be compatible with standards and technology for electronic signatures as may be generally used in commerce and industry and by State governments, based upon consultation with appropriate private sector and State government standard setting bodies.

(2) Such procedures shall not inappropriately favor one industry or technology.

(3) Under the procedures referred to in subsection (a), an electronic signature shall be as reliable as is appropriate for the purpose, and efforts shall be made to keep the information submitted intact.

(4) Successful submission of an electronic form shall be electronically acknowledged.

(5) In accordance with all other sections of the title, to the extent feasible and appropriate, and described in a written finding, an agency, when it expects to receive electronically 50,000 or more submittals of a particular form, shall take all steps necessary to ensure that multiple formats of electronic signatures are made available for submitting such forms.

SEC. 206. ENFORCEABILITY AND LEGAL EFFECT OF ELECTRONIC RECORDS.

Electronic records submitted or maintained in accordance with agency procedures

and guidelines established pursuant to the title, or electronic signatures or other forms of electronic authentication used in accordance with such procedures and guidelines, shall not be denied legal effect, validity or enforceability because they are in electronic form.

SEC. 207. EMPLOYER ELECTRONIC STORAGE OF FORMS.

If an employer is required by any Federal law or regulation to collect or store, or to file with a Federal agency forms containing information pertaining to employees, such employer may, after 18 months after enactment of this title, store such forms electronically unless the relevant agency determines by regulation that storage of a particular form in an electronic format is inconsistent with the efficient secure or proper administration of an agency program. Such forms shall also be accepted in electronic form by agencies as provided by section 208.

SEC. 208. IMPLEMENTATION BY AGENCIES.

(a) IMPLEMENTATION.—Consistent with the Privacy Act of 1974 (5 U.S.C. 552a) and after consultation with the Attorney General, and subject to applicable laws and regulations pertaining to the Department of the Treasury concerning Federal payments and collections and the National Archives and Records Administration concerning the proper maintenance and preservation of agency records, Federal agencies shall, not later than 18 months after the enactment of this title, establish and implement policies and procedures under which they will use and authorize the use of electronic technologies in the transmittal of forms, applications, and similar documents or records, and where appropriate, for the creation and transmission of such documents or records and their storage for their required retention period.

(b) ESTABLISHMENT OF A TIMELINE FOR IMPLEMENTATION.—Within 18 months after the date of enactment of this title, Federal agencies shall establish timelines for the implementation of the requirements of subsection (a).

(c) GENERAL ACCOUNTING OFFICE REPORT.—The Comptroller General shall report to the Senate Committee on Commerce, Science, and Transportation and the House of Representatives Committee on Commerce 21 months after the date of enactment of this title on the proposed implementation policies and timelines described in subsections (a) and (b).

(d) IMPLEMENTATION DEADLINE.—Except where an agency makes a written finding that electronic filing of a form is either technically infeasible, economically unreasonable, or may compromise national security, all Federal forms must be made available for electronic submission within 60 months after the date of enactment of this title.

SEC. 209. SENSE OF THE CONGRESS.

Because there is no meaningful difference between contracts executed in the electronic world and contracts executed in the analog world, it is the sense of the Congress that such contracts should be treated similarly under Federal law. It is further the sense of the Congress that such contracts should be treated similarly under State law.

SEC. 210. APPLICATION WITH OTHER LAWS.

Nothing in this title shall apply to the Department of the Treasury or the Internal Revenue Service, to the extent that—

(1) it involves the administration of the internal revenue laws; and

(2) it conflicts with any provision of the Internal Revenue Service Restructuring and Reform Act of 1998 or the Internal Revenue Code of 1986.

SEC. 211. DISCLOSURE OF INFORMATION.

Except as provided by law, information collected in the provision of electronic signature services for communications with an agency, as provided by this Act, shall only be used or disclosed by persons who obtain, collect, or maintain such information as a business or government practice, for the purpose of facilitating such communications, or with the prior affirmative consent of the person about whom the information pertains.

SEC. 212. DEFINITIONS.

For purposes of this title:

(1) SECRETARY.—The term ''Secretary'' means the Secretary of Commerce.

(2) AGENCY.—The term ''agency'' means executive agency, as that term is defined in section 105 of title 5, United States Code.

(3) ELECTRONIC SIGNATURE.—The term ''electronic signature'' means a method of signing an electronic message that—

(A) identifies a particular person as the source of such electronic message; and

(B) indicates such person's approval of the information contained in such electronic message.

(4) DIRECTOR.—The term ''Director'' means the Director of the Office of Management and Budget.

(5) FORM, QUESTIONNAIRE, OR SURVEY.—The terms ''form'', ''questionnaire'', and ''survey'' include documents produced by an agency to facilitate interaction between an agency and non-government persons.

FEDERAL VACANCIES REFORM ACT OF 1998

THOMPSON AMENDMENT NO. 3666

(Ordered to lie on the table.)

Mr. THOMPSON submitted an amendment intended to be proposed by him to amendment No. 3656 submitted by Mr. GLENN to the bill (S. 2176) to amend sections 3345 through 3349 of title 5, United States Code (commonly referred to as the ''Vacancies Act'') to clarify statutory requirements relating to vacancies in and appointments to certain Federal offices, and for other purposes; as follows:

In the matter proposed to be inserted strike ''General Schedule.'' and insert ''General Schedule; and

''(C) is not a limited term appointee, limited emergency appointee, or noncareer appointee (as such terms are defined under section 3132(a), (5), (6), and (7)), or an appointee to a position of a confidential or policy-determining character under schedule C of part 213 of title 5, Code of Federal Regulations.''.

DURBIN AMENDMENTS NOS. 3667–3668

(Ordered to lie on the table.)

Mr. DURBIN submitted two amendments intended to be proposed by him to the bill, S. 2176, supra; as follows:

AMENDMENT NO. 3667

At the appropriate place, add the following:

''§ 3349d. Nominations reported to Senate

''Any nomination submitted to the Senate that is pending before a committee of the Senate for more than 150 calendar days, shall on the day following such 150th calendar day be discharged from such committee, placed on the Senate executive calendar, and be deemed as reported favorably by such committee.''.

AMENDMENT NO. 3668

At the appropriate place, add the following:

''§ 3349d. Consideration of nomination in Senate

''(a) Any nomination remaining on the Senate executive calendar for 150 calendar days shall be considered for a vote by the Senate in executive session within the next 5 calendar days following such 150th day in which the Senate is in session.

''(b) The Senate may waive subsection (a) by unanimous consent.''.

YEAR 2000 INFORMATION AND READINESS DISCLOSURE ACT

HATCH (AND OTHERS) AMENDMENT NO. 3669

Mr. ROBERTS (for Mr. HATCH for himself, Mr. LEAHY, and Mr. KYL) proposed an amendment to the bill (S. 2392) to encourage the disclosure and exchange of information about computer processing problems and related matters in connection with the transition to the Year 2000; as follows:

Strike all after the enacting clause and insert the following:

SECTION 1. SHORT TITLE.

This Act may be cited as the ''Year 2000 Information and Readiness Disclosure Act''.

SEC. 2. FINDINGS AND PURPOSES.

(a) FINDINGS.—Congress finds the following:

(1)(A) At least thousands but possibly millions of information technology computer systems, software programs, and semiconductors are not capable of recognizing certain dates in 1999 and after December 31, 1999, and will read dates in the year 2000 and thereafter as if those dates represent the year 1900 or thereafter or will fail to process those dates.

(B) The problem described in subparagraph (A) and resulting failures could incapacitate systems that are essential to the functioning of markets, commerce, consumer products, utilities, government, and safety and defense systems, in the United States and throughout the world.

(C) Reprogramming or replacing affected systems before the problem incapacitates essential systems is a matter of national and global interest.

(2) The prompt, candid, and thorough disclosure and exchange of information related to year 2000 readiness of entities, products, and services—

(A) would greatly enhance the ability of public and private entities to improve their year 2000 readiness; and

(B) is therefore a matter of national importance and a vital factor in minimizing any potential year 2000 related disruption to the Nation's economic well-being and security.

(3) Concern about the potential for legal liability associated with the disclosure and exchange of year 2000 readiness information is impeding the disclosure and exchange of such information.

(4) The capability to freely disseminate and exchange information relating to year 2000 readiness, solutions, test practices and test results, with the public and other entities without undue concern about litigation is critical to the ability of public and private entities to address year 2000 needs in a timely manner.

(5) The national interest will be served by uniform legal standards in connection with the disclosure and exchange of year 2000 readiness information that will promote disclosures and exchanges of such information in a timely fashion.

(b) PURPOSES.—Based upon the powers contained in article I, section 8, clause 3 of the

Constitution of the United States, the purposes of this Act are—

(1) to promote the free disclosure and exchange of information related to year 2000 readiness;

(2) to assist consumers, small businesses, and local governments in effectively and rapidly responding to year 2000 problems; and

(3) to lessen burdens on interstate commerce by establishing certain uniform legal principles in connection with the disclosure and exchange of information related to year 2000 readiness.

SEC. 3. DEFINITIONS.

In this Act:

(1) ANTITRUST LAWS.—The term ''antitrust laws''—

(A) has the meaning given to it in subsection (a) of the first section of the Clayton Act (15 U.S.C. 12(a)), except that such term includes section 5 of the Federal Trade Commission Act (15 U.S.C. 45) to the extent such section 5 applies to unfair methods of competition; and

(B) includes any State law similar to the laws referred to in subparagraph (A).

(2) CONSUMER.—The term ''consumer'' means an individual who acquires a consumer product for purposes other than resale.

(3) CONSUMER PRODUCT.—The term ''consumer product'' means any personal property or service which is normally used for personal, family, or household purposes.

(4) COVERED ACTION.—The term ''covered action'' means civil action of any kind, whether arising under Federal or State law, except for an action brought by a Federal, State, or other public entity, agency, or authority acting in a regulatory, supervisory, or enforcement capacity.

(5) MAKER.—The term ''maker'' means each person or entity, including the United States or a State or political subdivision thereof, that—

(A) issues or publishes any year 2000 statement;

(B) develops or prepares any year 2000 statement; or

(C) assists in, contributes to, or reviews, reports or comments on during, or approves, or otherwise takes part in the preparing, developing, issuing, approving, or publishing of any year 2000 statement.

(6) REPUBLICATION.—The term ''republication'' means any repetition, in whole or in part, of a year 2000 statement originally made by another.

(7) YEAR 2000 INTERNET WEBSITE.—The term ''year 2000 Internet website'' means an Internet website or other similar electronically accessible service, clearly designated on the website or service by the person or entity creating or controlling the content of the website or service as an area where year 2000 statements concerning that person or entity are posted or otherwise made accessible to the general public.

(8) YEAR 2000 PROCESSING.—The term ''year 2000 processing'' means the processing (including calculating, comparing, sequencing, displaying, or storing), transmitting, or receiving of date data from, into, and between the 20th and 21st centuries, and during the years 1999 and 2000, and leap year calculations.

(9) YEAR 2000 READINESS DISCLOSURE.—The term ''year 2000 readiness disclosure'' means any written year 2000 statement—

(A) clearly identified on its face as a year 2000 readiness disclosure;

(B) inscribed on a tangible medium or stored in an electronic or other medium and retrievable in perceivable form; and

(C) issued or published by or with the approval of a person or entity with respect to year 2000 processing of that person or entity or of products or services offered by that person or entity.

(10) YEAR 2000 REMEDIATION PRODUCT OR SERVICE.—The term ''year 2000 remediation product or service'' means a software program or service licensed, sold, or rendered by a person or entity and specifically designed to detect or correct year 2000 processing problems with respect to systems, products, or services manufactured or rendered by another person or entity.

(11) YEAR 2000 STATEMENT.—

(A) IN GENERAL.—The term ''year 2000 statement'' means any communication or other conveyance of information by a party to another or to the public, in any form or medium—

(i) concerning an assessment, projection, or estimate concerning year 2000 processing capabilities of an entity, product, service, or set of products and services;

(ii) concerning plans, objectives, or timetables for implementing or verifying the year 2000 processing capabilities of an entity, product, service, or set of products and services;

(iii) concerning test plans, test dates, test results, or operational problems or solutions related to year 2000 processing by—

(I) products; or

(II) services that incorporate or utilize products; or

(iv) reviewing, commenting on, or otherwise directly or indirectly relating to year 2000 processing capabilities.

(B) NOT INCLUDED.—For the purposes of any action brought under the securities laws, as that term is defined in section 3(a)(47) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)(47)), the term year 2000 statement does not include statements contained in any documents or materials filed with the Securities and Exchange Commission, or with Federal banking regulators, pursuant to section 12(i) of the Securities Exchange Act of 1934 (15 U.S.C. 781(i)), or disclosures or writing that when made accompanied the solicitation of an offer or sale of securities.

SEC. 4. PROTECTION FOR YEAR 2000 STATEMENTS.

(a) EVIDENCE EXCLUSION.—No year 2000 readiness disclosure, in whole or in part, shall be admissible against the maker of that disclosure to prove the accuracy or truth of any year 2000 statement set forth in that disclosure, in any covered action brought by another party except that—

(1) a year 2000 readiness disclosure may be admissible to serve as the basis for a claim for anticipatory breach, or repudiation of a contract, or a similar claim against the maker, to the extent provided by applicable law; and

(2) the court in any covered action shall have discretion to limit application of this subsection in any case in which the court determines that the maker's use of the year 2000 readiness disclosure amounts to bad faith or fraud, or is otherwise beyond what is reasonable to achieve the purposes of this Act.

(b) FALSE, MISLEADING AND INACCURATE YEAR 2000 STATEMENTS.—Except as provided in subsection (c), in any covered action, to the extent that such action is based on an allegedly false, inaccurate, or misleading year 2000 statement, the maker of that year 2000 statement shall not be liable under Federal or State law with respect to that year 2000 statement unless the claimant establishes, in addition to all other requisite elements of the applicable action, by clear and convincing evidence, that—

(1) the year 2000 statement was material; and

(2)(A) to the extent the year 2000 statement was not a republication, that the maker made the year 2000 statement—

(i) with actual knowledge that the year 2000 statement was false, inaccurate, or misleading;

(ii) with intent to deceive or mislead; or

(iii) with a reckless disregard as to the accuracy of the year 2000 statement; or

(B) to the extent the year 2000 statement was a republication that the maker of the republication made the year 2000 statement—

(i) with actual knowledge that the year 2000 statement was false, inaccurate, or misleading;

(ii) with intent to deceive or mislead; or

(iii) without notice in that year 2000 statement that—

(I) the maker has not verified the contents of the republication; or

(II) the maker is not the source of the republication and the republication is based on information supplied by another person or entity identified in that year 2000 statement or republication.

(c) DEFAMATION OR SIMILAR CLAIMS.—In a covered action arising under any Federal or State law of defamation, trade disparagement, or a similar claim, to the extent such action is based on an allegedly false, inaccurate, or misleading year 2000 statement, the maker of that year 2000 statement shall not be liable with respect to that year 2000 statement, unless the claimant establishes by clear and convincing evidence, in addition to all other requisite elements of the applicable action, that the year 2000 statement was made with knowledge that the year 2000 statement was false or made with reckless disregard as to its truth or falsity.

(d) YEAR 2000 INTERNET WEBSITE.—

(1) IN GENERAL.—Except as provided in paragraph (2), in any covered action, other than a covered action involving personal injury or serious physical damage to property, in which the adequacy of notice about year 2000 processing is at issue, the posting, in a commercially reasonable manner and for a commercially reasonable duration, of a notice by the entity charged with giving such notice on the year 2000 Internet website of that entity shall be deemed an adequate mechanism for providing that notice.

(2) EXCEPTION.—Paragraph (1) shall not apply if the court finds that the use of the mechanism of notice—

(A) is contrary to express prior representations regarding the mechanism of notice made by the party giving notice;

(B) is materially inconsistent with the regular course of dealing between the parties; or

(C) occurs where there have been no prior representations regarding the mechanism of notice, no regular course of dealing exists between the parties, and actual notice is clearly the most commercially reasonable means of providing notice.

(3) CONSTRUCTION.—Nothing in this subsection shall—

(A) alter or amend any Federal or State statute or regulation requiring that notice about year 2000 processing be provided using a different mechanism;

(B) create a duty to provide notice about year 2000 processing;

(C) preclude or suggest the use of any other medium for notice about year 2000 processing or require the use of an Internet website; or

(D) mandate the content or timing of any notices about year 2000 processing.

(e) LIMITATION ON EFFECT OF YEAR 2000 STATEMENTS.—

(1) IN GENERAL.—In any covered action, a year 2000 statement shall not be interpreted or construed as an amendment to or alteration of a contract or warranty, whether entered into by or approved for a public or private entity.

(2) NOT APPLICABLE.—

(A) IN GENERAL.—This subsection shall not apply—

(i) to the extent the party whose year 2000 statement is alleged to have amended or altered a contract or warranty has otherwise agreed in writing to so alter or amend the contract or warranty;

(ii) to a year 2000 statement made in conjunction with the formation of the contract or warranty; or

(iii) if the contract or warranty specifically provides for its amendment or alteration through the making of a year 2000 statement.

(B) RULE OF CONSTRUCTION.—Nothing in this subsection shall affect applicable Federal or State law in effect as of the date of enactment of this Act with respect to determining the extent to which a year 2000 statement affects a contract or warranty.

(f) SPECIAL DATA GATHERING.—

(1) IN GENERAL.—A Federal entity, agency, or authority may expressly designate a request for the voluntary provision of information relating to year 2000 processing, including year 2000 statements, as a special year 2000 data gathering request made pursuant to this subsection.

(2) SPECIFICS.—A special year 2000 data gathering request made under this subsection shall specify a Federal entity, agency, or authority, or, with its consent, another public or private entity, agency, or authority, to gather responses to the request.

(3) PROTECTIONS.—Except with the express consent or permission of the provider of information described in paragraph (1), any year 2000 statements or other such other information provided by a party in response to a special year 2000 data gathering request made under this subsection—

(A) shall be exempt from disclosure under subsection (b)(4) of section 552 of title 5, United States Code, commonly known as the ''Freedom of Information Act'';

(B) shall not be disclosed to any third party; and

(C) may not be used by any Federal entity, agency, or authority or by any third party, directly or indirectly, in any civil action arising under any Federal or State law.

(4) EXCEPTIONS.—

(A) INFORMATION OBTAINED ELSEWHERE.—Nothing in this subsection shall preclude a Federal entity, agency, or authority, or any third party, from separately obtaining the information submitted in response to a request under this subsection through the use of independent legal authorities, and using such separately obtained information in any action.

(B) VOLUNTARY DISCLOSURE.—A restriction on use or disclosure of information under this subsection shall not apply to any information disclosed to the public with the express consent of the party responding to a special year 2000 data gathering request or disclosed by such party separately from a response to a special year 2000 data gathering request.

SEC. 5. TEMPORARY ANTITRUST EXEMPTION.

(a) EXEMPTION.—Except as provided in subsection (b), the antitrust laws shall not apply to conduct engaged in, including making and implementing an agreement, solely for the purpose of and limited to—

(1) facilitating responses intended to correct or avoid a failure of year 2000 processing in a computer system, in a component of a computer system, in a computer program or software, or services utilizing any such system, component, program, or hardware; or

(2) communicating or disclosing information to help correct or avoid the effects of year 2000 processing failure

(b) APPLICABILITY.—Subsection (a) shall apply only to conduct that occurs, or an agreement that is made and implemented, after the date of enactment of this Act and before July 14, 2001.

(c) EXCEPTION TO EXEMPTION.—Subsection (a) shall not apply with respect to conduct that involves or results in an agreement to boycott any person, to allocate a market or fix prices or output.

(d) RULE OF CONSTRUCTION.—The exemption granted by this section shall be construed narrowly.

SEC. 6. EXCLUSIONS.

(a) EFFECT ON INFORMATION DISCLOSURE.—This Act does not affect, abrogate, amend, or alter the authority of a Federal or State entity, agency, or authority to enforce a requirement to provide or disclose, or not to provide or disclose, information under a Federal or State statute or regulation or to enforce such statute or regulation.

(b) CONTRACTS AND OTHER CLAIMS.—

(1) IN GENERAL.—Except as may be otherwise provided in subsections (a) and (e) of section 4, this Act does not affect, abrogate, amend, or alter any right established by contract or tariff between any person or entity, whether entered into by a public or private person or entity, under any Federal or State law.

(2) OTHER CLAIMS.—

(A) IN GENERAL.—In any covered action brought by a consumer, this Act does not apply to a year 2000 statement expressly made in a solicitation, including an advertisement or offer to sell, to that consumer by a seller, manufacturer, or provider of a consumer product.

(B) SPECIFIC NOTICE REQUIRED.—In any covered action, this Act shall not apply to a year 2000 statement, concerning a year 2000 remediation product or service, expressly made in an offer to sell or in a solicitation (including an advertisement) by a seller, manufacturer, or provider, of that product or service unless, during the course of the offer or solicitation, the party making the offer or solicitation provides the following notice in accordance with section 4(d):

''Statements made to you in the course of this sale are subject to the Year 2000 Information and Readiness Disclosure Act (___ U.S.C. ___). In the case of a dispute, this Act may reduce your legal rights regarding the use of any such statements, unless otherwise specified by your contract or tariff.''.

(3) RULE OF CONSTRUCTION.—Nothing in this Act shall be construed to preclude any claims that are not based exclusively on year 2000 statements.

(c) DUTY OR STANDARD OF CARE.—

(1) IN GENERAL.—This Act shall not impose upon the maker of any year 2000 statement any more stringent obligation, duty, or standard of care than is otherwise applicable under any other Federal law or State law.

(2) ADDITIONAL DISCLOSURE.—This Act does not preclude any party from making or providing any additional disclosure, disclaimer, or similar provisions in connection with any year 2000 readiness disclosure or year 2000 statement.

(3) DUTY OF CARE.—This Act shall not be deemed to alter any standard or duty of care owed by a fiduciary, as defined or determined by applicable Federal or State law.

(d) INTELLECTUAL PROPERTY RIGHTS.—This Act does not affect, abrogate, amend, or alter any right in a patent, copyright, semiconductor mask work, trade secret, trade name, trademark, or service mark, under any Federal or State law.

(e) INJUNCTIVE RELIEF.—Nothing in this Act shall be deemed to preclude a claimant from seeking injunctive relief with respect to a year 2000 statement.

SEC. 7. APPLICABILITY.

(a) EFFECTIVE DATE.—

(1) IN GENERAL.—Except as otherwise provided in this section, this Act shall become effective on the date of enactment of this Act.

(2) APPLICATION TO LAWSUITS PENDING.—This Act shall not affect or apply to any lawsuit pending on July 14, 1998.

(3) APPLICATION TO STATEMENTS AND DISCLOSURES.—Except as provided in subsection (b)—

(A) this Act shall apply to any year 2000 statement made beginning on July 14, 1998 and ending on July 14, 2001; and

(B) this Act shall apply to any year 2000 readiness disclosure made beginning on the date of enactment of this Act and ending on July 14, 2001.

(b) PREVIOUSLY MADE READINESS DISCLOSURE.—

(1) IN GENERAL.—For the purposes of section 4(a), a person or entity that issued or published a year 2000 statement after January 1, 1996, and before the date of enactment of this Act, may designate that year 2000 statement as a year 2000 readiness disclosure if—

(A) the year 2000 statement complied with the requirements of section 3(9) when made, other than being clearly designated on its face as a disclosure; and

(B) within 45 days after the date of enactment of this Act, the person or entity seeking the designation—

(i) provides individual notice that meets the requirements of paragraph (2) to all recipients of the applicable year 2000 statement; or

(ii) prominently posts notice that meets the requirements of paragraph (2) on its year 2000 Internet website, commencing prior to the end of the 45-day period under this subparagraph and extending for a minimum of 45 consecutive days and also by using the same method of notification used to originally provide the applicable year 2000 statement.

(2) REQUIREMENTS.—A notice under paragraph (1)(B) shall—

(A) state that the year 2000 statement that is the subject of the notice is being designated a year 2000 readiness disclosure; and

(B) include a copy of the year 2000 statement with a legend labeling the statement as a ''Year 2000 Readiness Disclosure''.

(c) EXCEPTION.—No designation of a year 2000 statement as a year 2000 readiness disclosure under subsection (b) shall apply with respect to any person or entity that—

(1) proves, by clear and convincing evidence, that it relied on the year 2000 statement prior to the receipt of notice described above and it would be prejudiced by the retroactive designation of the year 2000 statement as a year 2000 readiness disclosure; and

(2) provides to the person or entity seeking the designation a written notice objecting to the designation within 45 days after receipt of individual notice under subsection (b)(1)(B)(i), or within 180 days after the date of enactment of this Act, in the case of notice provided under subsection (b)(1)(B)(ii).

SEC. 8. NATIONAL INFORMATION CLEARINGHOUSE AND WEBSITE.

(a) NATIONAL WEBSITE.—

(1) IN GENERAL.—The Administrator of General Services shall create and maintain until July 14, 2002, a national year 2000 website, and promote its availability, designed to assist consumers, small business, and local governments in obtaining information from other governmental websites, hotlines, or information clearinghouses about year 2000 Processing of computers, systems, products and services, including websites maintained by independent agencies and other departments.

(2) CONSULTATION.—In creating the national year 2000 website, the Administrator of General Services shall consult with—

(A) the Director of the Office of Management and Budget;

(B) the Administrator of the Small Business Administration;

(C) the Consumer Product Safety Commission;

(D) officials of State and local governments;

(E) the Director of the National Institute of Standards and Technology;

(F) representatives of consumer and industry groups; and

(G) representatives of other entities, as determined appropriate.

(b) REPORT.—The Administrator of General Services shall submit a report to the Committees on the Judiciary of the Senate and the House of Representatives and the Committee on Governmental Affairs of the Senate and the Committee on Government Reform and Oversight of the House of Representatives not later than 60 days after the date of enactment of this Act regarding planning to comply with the requirements of this section.

THOMPSON AMENDMENT NO. 3670

Mr. ROBERTS (for Mr. THOMPSON) proposed an amendment to amendment No. 3669 proposed by Mr. HATCH to the bill, S. 2392, supra; as follows:

Redesignate section 8 as section 9 and insert the following after section 8:

SEC. 8. YEAR 2000 COUNCIL WORKING GROUPS.

(1) WORKING GROUPS.—The President's Year 2000 Council) referred to in this section as the ''Council'') may establish and terminate working groups composed of Federal employees who will engage outside organizations in discussions to address the year 2000 problems identified in section 2(a)(1) to share information related to year 2000 readiness, and otherwise to serve the purposes of this Act.

(2) LIST OF GROUPS.—The Council shall maintain and make available to the public a printed and electronic list of the working groups, the members of each working group, and a point of contact, together with an address, telephone number, and electronic mail address for the point of contact, for each working group created under this section.

(3) BALANCE.—The Council shall seek to achieve a balance of participation and representation among the working groups.

(4) ATTENDANCE.—The Council shall maintain and make available to the public a printed and electronic list of working group members who attend each meeting of a working group as well as any other individuals or organizations participating in each meeting.

(5) MEETINGS.—Each meeting of a working group shall be announced in advance in accordance with procedures established by the Council. The Council shall encourage working groups to hold meetings open to the public to the extent feasible and consistent with the activities of the Council and the purposes of this Act.

(b) FACA.—The Federal Advisory Committee Act (5 U.S.C. App.) shall not apply to the working groups established under this section.

(c) PRIVATE RIGHT OF ACTION.—This section creates no private right of action to sue for enforcement of the provisions of this section.

(d) EXPIRATION.—The authority conferred by this section shall expire on December 31, 2000.

NOTICES OF HEARINGS

COMMITTEE ON INDIAN AFFAIRS

Mr. CAMPBELL. Mr. President, I would like to announce that the Senate Committee on Indian Affairs will meet during the session of the Senate on Wednesday, September 30, 1998, at 9:15 a.m. to conduct a markup, on S. 1870, to amend the Indian Gaming Regulatory Act; H.R. 1805, Auburn Indian Restoration Act; and S. 2097, to encourage and facilitate the resolution of conflicts involving Indian tribes. To be followed immediately by a hearing on S. 2010, to provide for business development and trade promotion for Native Americans. The hearing will be held in room 485 of the Russell Senate Office Building.

COMMITTEE ON ENERGY AND NATURAL RESOURCES

Mr. CRAIG. Mr. President, I would like to announce for the public that S. 2513, a bill to transfer administrative jurisdiction over certain Federal land located within or adjacent to Rogue River National Forest and to clarify the authority of the Bureau of Land Management to sell and exchange other Federal land in Oregon; S. 2413, a bill to provide for the development of a management plan for the Woodland Lake Park tract in Apache-Sitgreaves National Forest in the State of Arizona reflecting the current use of the tract as a public park; and S. 2402, a bill to direct the Secretary of Agriculture to convey certain lands in San Juan County, New Mexico, to San Juan College has been added to the agenda of the Subcommittee on Forests and Public Land Management hearing on the Forest Service cabin fees which is scheduled for Thursday, October 1 at 2:30 p.m. in SD–366 of the Dirksen Senate Office Building.

For further information, please call Amie Brown or Bill Lange at (202) 224–6170.

AUTHORITY FOR COMMITTEES TO MEET

COMMITTEE ON RULES AND ADMINISTRATION

Mr. THOMPSON. Mr. President, I ask unanimous consent that the Committee on Rules and Administration be authorized to meet during the session of the Senate on Monday, September 28, 1998, at 5:30 p.m. to mark up S. 2288, the Wendell H. Ford Government Publications Reform Act of 1998.

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

SUBCOMMITTEE ON ADMINISTRATIVE OVERSIGHT AND THE COURTS

Mr. THOMPSON. Mr. President, I ask unanimous consent that the Subcommittee on Administrative Oversight and the Courts, of the Senate Judiciary Committee, be authorized to meet during the session of the Senate on Monday, September 28, 1998, at 1 p.m. to hold a hearing in room 226, Senate Dirksen Building, on: ''Administrative Oversight of Financial Control Failures at the Department of Defense.''

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

ADDITIONAL STATEMENTS.

DEDICATION OF A WORLD WAR II MEMORIAL HONORING THE POW/MIAS OF WHITE COUNTY, TENNESSEE

● Mr. FRIST. Mr. President, on Sunday, September 20th, I traveled to Sparta, TN, to deliver remarks at the dedication of a memorial honoring the brave Americans from White County, Tennessee who were prisoners of war or missing in action during World War II. I ask that my remarks be printed in the RECORD.

DEDICATION OF A WORLD WAR II MEMORIAL HONORING THE POW/MIAS OF WHITE COUNTY, TENNESSEE

It is an honor and a special privilege for me to participate in the dedication of this memorial to the World War II POWs and MIAs of White County. To each and every one of them—those who died, and those we are blessed to still have with us—we owe an unending debt of love, respect, and gratitude for the sacrifice they made, the pain they suffered, and the trauma they endured to ensure that the flame of freedom would never be extinguished.

Their wounds, and the wounds of their families, are ones that do not close easily with the passage of time. Rather, they abide as long as even one missing American remains unaccounted for. And so, we must not only remember, but re-dedicate ourselves to the accounting of every last American serviceman from Korea, and Viet Nam and, yes, even World War II, for America can never move forward by leaving even one missing son behind.

Many of you here today were their comrades-in-arms—in Italy and France; in Germany and Japan. You fought the same battles. You flew the same missions. You sacrificed for the same noble cause. All of you were different. You came from different states and different backgrounds, but you shared one thing in common: you loved America; you were willing to die for freedom.

And so, to you also, we offer our love, our thanks, and our promise that we will never forget not only those who died and those who returned, but those who fate is still unknown.

And we promise to remember something more: We promise to remember that peace is a fragile thing; that strength is the only way to avoid war; and that freedom is always just one generation away from extinction.

If we remember those things, no future American generation will be required, as you were, to place themselves in harm's way to secure for their posterity the benefits and blessings of freedom.

Before I close, I'd like to mention one last thing, and that's my thanks to the American Legion who has stood steadfast and determined in the fight to account for every American from every war who is still a prisoner or missing in action.

I thank them for that, and all the other sponsors of today's ceremony. May this marker we dedicate today, forever guard the memory of those who are gone; salute the courage of those who returned, and stand like a beacon of hope for every American whose homecoming we still await.

God bless you, and God bless the United States of America.●

THE MAMMOGRAPHY QUALITY STANDARDS REAUTHORIZATION ACT

● Ms. MIKULSKI. Mr. President, I rise today to celebrate the Senate passage of the Mammography Quality Standards Reauthorization Act (MQSA). It is timely and appropriate that the Senate took action on this important legislation in time for Breast Cancer Awareness Month in October and on the eve of the march against cancer right here in Washington. The bill that the Senate passed reauthorizes the original legislation which passed in 1992 with bipartisan support.

What MQSA does is require that all facilities that provide mammograms meet key safety and quality-assurance standards in the area of personnel, equipment, and operating procedures. Before the law passed, tests were misread, women were misdiagnosed, and people died as a result of sloppy work. Since 1992, MQSA has been successful in raising the quality of mammography services that women receive.

What are these national, uniform quality standards for mammography? Well, facilities are required to use equipment designed specifically for mammography. Only radiological technologists can perform mammography. Only qualified doctors can interpret the results of mammography. Facilities must establish a quality assurance and control program to ensure reliability, clarity and accurate interpretation of mammograms. Facilities must be inspected annually by qualified inspectors. Finally, facilities must be accredited by an accrediting body approved by the Secretary of Health and Human Services.

This current reauthorization makes some improvements to the current law. It ensures that women will receive direct written notification of their mammogram results. MQSA already requires written notification of mammography results to self-referred women. Now this provision will apply to all women. Women won't assume that ''no news is good news'' when this isn't always the case. They will know what their results are, so that they can get any follow up care they need. The Agency for Health Care Policy Research has cited studies that show that direct communication with patients, which is in addition to written communication to health care providers, dramatically increases compliance with follow up recommendations. Women are entitled to know the results of their exams. This new provision will ensure that women are informed and active participants in their health care decisions.

This legislation also allows the Secretary of Health and Human Services to establish a demonstration program for less than annual inspections for facilities that have excellent track records. This program will not be implemented before April 1, 2001, which is almost two years after the final regulations implementing MQSA go into effect. The facilities that participate in this program will continue to be inspected to ensure that they continue to comply with MQSA standards. A strong inspection program under MQSA is extremely important to assure the public that quality standards are being met. In a 1997 GAO report which evaluated the MQSA inspection program, GAO praised the program. I am very interested in the results of this demonstration. This demonstration program will provide us with an important opportunity to see if less than annual inspections are just as effective in making high-quality facilities comply with MQSA. It should allow the FDA to focus more of its attention on ensuring compliance with MQSA standards by facilities where problems have been identified in the past. The best way to protect the public health is for the FDA to focus its resources on the problem facilities.

This bill also contains a few minor changes to the law to ensure that: patients and referring physicians be advised of any mammography facility deficiency; women are guaranteed the right to obtain an original of their mammogram; physicians who review facility images on behalf of accreditation bodies are highly qualified and subject to high ethical standards; and both state and local government agencies are permitted to have inspection authority.

I like MQSA because it has saved lives. The front line against breast cancer is mammography. We know that early detection saves lives. But a mammogram is worse than useless if it produces a poor-quality image or is misinterpreted. The first rule of all medical treatment is: Above all things, do no harm. And a bad mammogram can do real harm by leading a woman and her doctor to believe that nothing is wrong when something is. The result can be unnecessary suffering or even a death that could have been prevented. That is why this legislation is so important. And that is why I am so pleased that this law is being reauthorized, so that we don't go back to the old days when women's lives were in jeopardy.

I want to make sure that women's health needs are met comprehensively. It is expected that 178,700 new cases of breast cancer will be diagnosed and about 43,900 women will die from the disease in 1998. This makes breast cancer the most common cancer among women. And only lung cancer causes more deaths in women.

We must aggressively pursue prevention in our war on breast cancer. I pledge to fight for new attitudes and to find new ways to end the needless pain and death that too many American women face. This bill is an important step in that direction.

As the 105th Congress comes to a close, we can look back on some great bipartisan victories and other great bipartisan frustrations. But one area Republicans and Democrats have always worked together on is women's health. I am proud of this bill's broad bipartisan support. I want to take this opportunity to thank all 56 cosponsors of my MQSA bill here in the Senate for their support. I also want to recognize Congresswoman NANCY JOHNSON and Delegate ELEANOR HOLMES NORTON as the original sponsors of the House MQSA bill. I applaud the Democrats and Republicans of the House Commerce Committee, especially Congressmen BLILEY, DINGELL, BILIRAKIS, and BROWN for their leadership on MQSA. A special thanks also goes to Senator JEFFORDS for working with me to make reauthorization of MQSA a reality. As Dean of the Democratic Women, I want to also thank the Dean of the Republican Women, KAY BAILEY HUTCHINSON, for always reaching out to work together on the issues that matter most to American women and their families. MQSA is a shining example of what the U.S. Congress can accomplish when both Republicans and Democrats work together for the good of the American people.●

MR. OKTOBERFEST

● Mr. INHOFE. Mr. President, while I was the mayor of Tulsa, we started an Oktoberfest to benefit the ''River Parks'' which is an area around the Arkansas River for jogging, cycling or walking. Tulsa Oktoberfest is known as one of the best in world and a large reason for that is due to Josef Peter Hardt, whom I dubbed ''Mr. Oktoberfest.''

Born in Oberhausen (Rhineland) Germany, Josef emigrated to Ithaca, New York in 1951 and moved to Tulsa in 1955. His professional career was in broadcasting, retiring as the manager of commercial productions of Channel 2 in 1993. His civic career consisted of work in the Theater Tulsa, television and film production, one founders of Tulsa's Oktoberfest, an active member of the German American Society Arts Association and German American Society Building Corporation in Tulsa.

Because of his active involvement in the German American Society, he was awarded the Bundesverdienstkreuz (Distinguished Service Cross) by the Counsel General for the Federal Republic of Germany, on the tenth anniversary of the German American Society of Tulsa. During that occasion, the Honorable Peter Maier-Oswald noted that ''Joe Hardt has always worked for his old country and his new country to promote relations between the two.''

Our first Oktoberfest consisted of a small tent on the banks of the Arkansas River in 1979 and now draws over 200,000 people over a four day period. Since the beginning, Josef, has held various jobs but perhaps the one for which he will be remembered most is that of MC. As this is the last year of his active involvement in Tulsa's Oktoberfest, I wanted to take this opportunity to commemorate his leadership and faithful service to his community.

We will miss seeing and hearing him as the MC, but he will always be Mr. Oktoberfest in my book.●

TRIBUTE TO JOSEPH R. HAROLD

● Mr. KERRY. Mr. President, I rise today to pay tribute to a special individual, one whom the people of Massachusetts are proud to call one of our own.

On Sunday, September 27th, 1998, elected officials, friends, family and the communities of Quincy and Dorchester will join to recognize the contributions of Mr. Joseph Harold by celebrating the designation of the Joseph R. Harold, Sr. MBTA Old Colony Rail Bridge. This important structure will bridge these two communities in much the same way Joseph Harold did in his life.

Service to community and nation can define one's life, and such is the case with Mr. Harold. After graduating from Boston English High School, he served in the U.S. Infantry under General George Patton. His service with that historic leader earned him a Bronze Star for bravery in an assault on the Siegfried Line, a Battlefield Commission to Second Lieutenant, and three Battle Stars.

His commitment to those that served in the military would remain throughout his life, demonstrated by his 43 year service as the State Adjutant for the Disabled American Veterans. For those decades, Mr. Harold was a principled advocate for any man or woman who had served, logging thousands of hours on behalf of countless individuals. The depth of his conviction will allow his impact on national veterans issues to reach far into the future.

Mr. Harold's death in 1994 was an unfortunate loss for the state of Massachusetts, but his career of advocacy and compassion serves as an inspiration to all citizens. This is demonstrated by the fund established in his honor at the Quincy Historical Society in June of 1997. This fund will collect, preserve and display military items of historical significance for the city, and that is a fitting tribute to a man who did so much for the communities he loved.

I am proud to join with his sons, former State Senator Paul Harold and William Harold, his seven grandchildren, and the communities of Dorchester and Quincy in honoring Joseph Harold.●

TRIBUTE TO SUMMIT DESIGN AND MANUFACTURING

● Mr. BURNS. Mr. President, I rise today to pay tribute to one of Montana's newest and brightest stars. Summit Design and Manufacturing, a Montana-based company located in Helena, Montana, recently took a giant leap on the stepping stones of success.

It is both an honor and a great pleasure to announce that Summit Design and Manufacturing was recently awarded the ''Outstanding Team Player Award'' by Lockheed Martin for work they have performed on the F–22 fighter aircraft. This award is given to only 5 Lockheed Martin suppliers selected from a pool of around 4,500 suppliers program wide. Even more impressive is that Summit's selection is the first time this type of supplier has received such an award.

Since their start-up in June 1997, Summit has grown from four employees to 15 and now boasts deliveries for the F–22 program at approximately $2 million is sales for the past 12 months. In less than a year, this company has become one of Montana's technological advantages over the rest of the nation.

Besides performing design and manufacturing work on the F–22 in Montana, other involvement with Lockheed Martin has included producing parts and tools for the X–33 Spacecraft, Joint Strike Fighter and the C–130J aircraft programs.

I often say that folks in Montana are very special people and I commend Tom Hottman and Summit Design and Manufacturing for their perseverance and commitment in today's small business society.●

MINIMUM WAGE

● Mr. ABRAHAM. Mr. President, I rise today to clarify my position on the minimum wage vote that took place last week. In 1996, I voted to increase the minimum wage by a total of 90 cents. I did this with the understanding that the minimum wage has not been increased since 1989. As many are aware, the last increment of the 1996 increase went into effect on September 1, 1997. Senator KENNEDY is now proposing to increase the minimum wage by another dollar one year after the last increase took effect. Mr. President, I believe this is simply too soon because the current U.S. economic situation is unstable. Given the wild fluctuations in financial markets, continued economic stagnation in Asia, and job losses in our manufacturing sector, imposing additional costs on the private sector—particularly the small business sector—is very risky at this time.

I also have concerns about the effect that increasing the minimum wage has on low-skilled workers. Studies that examine the effect of the 1996 wage increase only heighten my concern. For instance, a recent review of data from the Bureau of Labor Statistics concludes that the October 1, 1996, 50-cent minimum wage hike led to 128,000 lost jobs among teen workers and up to 380,000 lost jobs overall. According to a study done by the Employment Policies Institute, the employment rate of teenagers declined by 0.14 percent after the increase. The decline in employment for black teenage males was even worse—1.0 percent.

Minimum wage jobs provide workers with valuable on-the-job training. A full 60 percent of today's workforce cites a minimum wage job as their first work experience. As we begin to move people from welfare to work, it will become increasingly important that they have positions available to them to gain this experience. Mr. President, I do not believe that this is the time to put the availability of low-skilled jobs at risk.

Finally, Mr. President, this amendment was offered to the Consumer Bankruptcy Reform Act. I believe this legislation contained important reforms that needed to be passed this year. The Consumer Bankruptcy Reform Act of 1998 received bipartisan support and passed out of the Judiciary Committee by a 16–2 vote. I was concerned that adding this amendment would stop the underlying bill from passing this Congress.

For all of the above mentioned reason, I chose to vote to table the minimum wage increase amendment at this time.●

RECOGNIZING CINDY GEORGER

● Mr. CRAIG. Mr. President, I rise to speak about an outstanding individual from the State of Idaho who is deserving of not only our praise, but our wholehearted respect. In the turmoil of daily life, it is easy to get so caught up in our own affairs that we forget those less fortunate around us. Cindy Georger is not one of those people. She has unselfishly dedicated her time and energy to one of the most important battles raging in our nation today—the fight against illiteracy. Although this struggle continues even during our high-tech entry into the 21st Century, small battles are being won every day by people like Cindy.

Mrs. Georger, a Boise resident, has volunteered at ''Learning Lab, Inc.'' since 1994. This is a non-profit organization providing literacy programs in three sectors: Adult Basic Skills, English as a Second Language, and Family Literacy. She has assisted with children ages 3 to 5 who have at least one functionally illiterate parent.

In volunteering with these children, Mrs. Georger is serving two equally important purposes. She is both tutoring children—undoubtedly one of the noblest of causes—and inspiring the parents of those children. By helping the parents, she is not only promoting literacy, but also family values, by encouraging them to take the time to sit down and read with their children. What a gift to give to a child—what a gift to give to a family.

In a nation facing an unparalleled struggle to maintain family values, and plagued with reports of the American family as increasingly apathetic, it is easy to get disheartened, but through people like Cindy Georger it is possible to look to the future with hope—hope for a time when people care about others, when family returns to the top of everyone's agenda, and when every American knows how to read.

I would like to thank Cindy Georger for her time, dedication, and efforts to

promote and teach literacy. Her services, and the services of volunteers like Cindy throughout Idaho and the nation, are the instruments through which the battle of illiteracy can and will be won.●

EXECUTIVE SESSION

EXECUTIVE CALENDAR

Mr. ROBERTS. I ask unanimous consent that the Senate immediately proceed to executive session to consider the following nominations on the Executive Calendar: Calendar Nos. 726, 728, 730, 731, 732, 788, 789, 790, 796, and No. 853. I further ask unanimous consent that the nominations be confirmed, the motions to reconsider be laid upon the table, any statements relating to the nominations appear at this point in the RECORD, and the President be immediately notified of the Senate's action.

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

The nominations considered and confirmed en bloc are as follows:

DEPARTMENT OF STATE

Steven Robert Mann, of Pennsylvania, a Career Member of the Senior Foreign Service, Class of Counselor, to be Ambassador Extraordinary and Plenipotentiary of the United States of America to the Republic of Turkmenistan.

Elizabeth Davenport McKune, of Virginia, a Career Member of the Senior Foreign Service, Class of Counselor, to be Ambassador Extraordinary and Plenipotentiary of the United States of America to the State of Qatar.

Melissa Foelsch Wells, of Connecticut, a Career Member of the Senior Foreign Service, Class of Career Minister, to be Ambassador Extraordinary and Plenipotentiary of the United States of America to the Republic of Estonia.

Richard E. Hecklinger, of Virginia, a Career Member of the Senior Foreign Service, Class of Minister-Counselor, to be Ambassador Extraordinary and Plenipotentiary of the United States of America to the Kingdom of Thailand.

Theodore H. Kattouf, of Maryland, a Career Member of the Senior Foreign Service, Class of Minister-Counselor, to be Ambassador Extraordinary and Plenipotentiary of the United States of America to the United Arab Emirates.

THE JUDICIARY

Carl J. Barbier, of Louisiana, to be United States District Judge for the Eastern District of Louisiana.

Gerald Bruce Lee, of Virginia, to be United States District Judge for the Eastern District of Virginia.

Patricia A. Seitz, of Florida, to be United States District Judge for the Southern District of Florida.

William B. Traxler, Jr., of South Carolina, to be United States Circuit Judge for the Fourth Circuit.

FEDERAL EMERGENCY MANAGEMENT AGENCY

Robert M. Walker, of Tennessee, to be Deputy Director of the Federal Emergency Management Agency.

MONTREAL PROTOCOL NO. 4—TREATY DOCUMENT NO. 95–2(B)

Mr. ROBERTS. Mr. President, I ask unanimous consent that the Senate proceed to consider the following treaty on today's Executive Calendar, No. 22. I further ask unanimous consent that the treaty be considered as having passed through its various parliamentary stages up to and including the presentation of the resolution of ratification; all committee provisos, reservations, understandings, declarations, be considered agreed to; that any statements be inserted in the CONGRESSIONAL RECORD as if read; and I further ask consent that when the resolution of ratification is voted upon, the motion to reconsider be laid upon the table, the President be notified of the Senate's action, and, following the disposition of the treaty, the Senate return to legislative session.

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

Mr. ROBERTS. I ask for a division vote on the resolution of the ratification.

The PRESIDING OFFICER. A division is requested. Senators in favor of the ratification will rise and stand until counted.

All those opposed to ratification, please rise and stand until counted.

On a divisions, two-thirds of the Senators present and having voted in the affirmative, the resolution of ratification is agreed to.

The resolution of ratification is as follows:

Resolved, (two-thirds of the Senators present concurring therein), That the Senate advise and consent to the ratification of the Montreal Protocol No. 4 to Amend the Convention for the Unification of Certain Rules Relating to International Carriage by Air, signed at Warsaw on October 12, 1929, as amended by the Protocol done at The Hague on September 8, 1955 (hereinafter Montreal Protocol No. 4) (Executive B, 95th Congress, 1st Session), subject to the declaration of subsection (a), and the provisos of subsection (b).

(a) DECLARATION.—The Senate's advice and consent is subject to the following declaration:

(1) TREATY INTERPRETATION.—The Senate affirms the applicability to all treaties of the constitutionally based principles of treaty interpretation set forth in Condition (1) of the resolution of ratification of the INF Treaty, approved by the Senate on May 27, 1988, and Condition (8) of the resolution of ratification of the Document Agreed Among the States Parties of the Treaty on Conventional Armed Forces in Europe, approved by the Senate on May 14, 1997.

(b) PROVISOS.—The resolution of ratification is subject to the following provisos:

(1) SUPREMACY OF THE CONSTITUTION.—Nothing in the Treaty requires or authorizes legislation or other action by the United States of America that is prohibited by the Constitution of the United States as interpreted by the United States.

(2) RETURN OF PROTOCOL NO. 3 TO THE PRESIDENT.—Upon submission of this resolution of ratification to the President of the United States, the Secretary of the Senate is directed to return to the President of the United States the Additional Protocol No. 3 to Amend the Convention for the Unification of Certain Rules relating to International Carriage by Air, signed at Warsaw on October 12, 1929, as amended by the Protocols done at The Hague, on September 28, 1955, and at Guatemala City, March 8, 1971 (Executive B, 95th Congress).

Mr. BIDEN. Mr. President, I am pleased to support Montreal Protocol No. 4, which will simplify the rules for cargo and baggage liability in international air traffic. It is important for the Senate to act now, because Protocol No. 4 has already entered into force. Consequently, U.S. carriers and cargo companies are unable to take advantage of these simplified rules, at a significant economic cost. U.S. industry estimates that Protocol No. 4 will save them $1 billion annually.

The treaty has been pending in the Senate for over 20 years. It failed to gain support not because it is controversial, but because it has been the victim of misfortune—having been paired, in its submission to the Senate, with Montreal Protocol No. 3, a treaty placing unreasonably low limits on personal liability in international air traffic. I oppose Protocol No. 3, because I believe strongly that limits on personal liability contained in the treaty are an anachronism. Such limits may have been warranted when the underlying Warsaw Convention was drafted in 1929, a time when the airline industry was in its infancy. Now, however, when international air carriers are large corporations with significant financial resources—and thus fully capable of purchasing adequate insurance—there is no justification for such limits.

For the past two decades, the aviation industry and the Executive Branch unsuccessfully sought ratification of Protocol No. 3 and No. 4. Only once did the Protocols reach the full Senate floor. In 1983, the Senate voted 50–42 to approve them, far short of the two-thirds necessary for advice and consent to ratification.

Recognizing that Protocol No. 3 cannot be approved by the Senate, the industry and the Executive have effectively abandoned the effort, and have requested the Senate to proceed with consideration of Protocol No. 4. The resolution of ratification of Protocol No. 4 will bring a formal end to the misguided effort to approve No. 3: the resolution directs the Secretary of the Senate to return Protocol No. 3 to the President.

More importantly, the industry, acting through its association, the International Air Transport Association, has taken steps to waive these personal liability limits. Consequently, most of the leading air carriers have agreed in their contracts with passengers to waive all personal liability limits, and agreed to strict liability up to 100,000 Special Drawing Rights, or about $130,000.

These are positive developments, and I commend the airlines for taking these steps. Although not all carriers have waived the liability limits, all of the major U.S. carriers have, as have many of the leading foreign carriers which fly to the United States. I urge the Department of Transportation to make every effort to ensure that all carriers involved in international air traffic which fly within or to or from

the United States do so as soon as possible.

I hope that these measures, which are based on contract, not on any domestic law or international treaty, will eventually be codified in a new international instrument—an instrument that would firmly establish international norms and provide certainty for carriers and passengers alike. Negotiations toward that end are ongoing under the auspices of the International Civil Aviation Organization (ICAO).

One sticking point in these negotiations has been the question of a ''fifth jurisdiction.'' Under the current Warsaw Convention, a suit may be brought in any one of four places: the place of incorporation of the carrier, the carrier's principal place of business, the place where the ticket was sold, and the place of the ultimate destination of the passenger. Notably missing from this list is the place where the passenger lives, or, in legal terms, his ''domicile.'' As a practical matter, most Americans will be able to sue in U.S. court under the existing four jurisdictions; but there will be cases in which a passenger buys a ticket overseas on a foreign carrier—which would probably preclude that passenger from bringing a suit in a U.S. court.

The Clinton Administration is pressing for inclusion of the fifth jurisdiction in any new international instrument. I commend the Administration for taking this position. Including a fifth jurisdiction should be considered an essential element of any new international agreement on passenger liability.

At this point, I would like to call the attention of my colleagues and the Executive Branch to a speech delivered earlier this year by Lee Kreindler regarding these negotiations. Mr. Kreindler, an aviation attorney with over four decades of experience, has provided a helpful guide to the current legal situation in this area and to the ICAO negotiations.

I ask unanimous consent that they be printed in the RECORD at the conclusion of my remarks.

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

(See Exhibit 1.)

Mr. BIDEN. Mr. President, Montreal Protocol No. 4 is a useful step in modernizing the rules of cargo and baggage in international air traffic. I urge my colleagues to support it.

EXHIBIT 1

CLOUDS ON THE LIABILITY HORIZON AND WHAT WE CAN DO ABOUT THEM

(By Lee S. Kreindler)

I am honored to appear on this symposium, the second straight year in which I have been on your program. After all, as a plaintiff's laywer, I have spent much of the last forty five years bringing legal actions against IATA's members, the international airlines. More important than that, perhaps, I have spent most of that time being highly critical of IATA's role in promoting the Warsaw Convention and its progeny, and in defending and preserving a limit of liability that to me, and all of my clients, has been abhorrent.

Now I find myself applauding your monumental efforts, and, particularly the monumental efforts of your distinguished general counsel, Lorne Clark, to put an end to limits of liability in personal injury and death cases. I find that, after all these years, we are in synchronization, pulling together to create a system that will protect the interests of your member carriers' customers, the flying public, and their families, and at the same time preserve the interests of your airline members. To me this is an uplifting and energizing experience.

I want IATA's efforts to establish a fair and enforceable system of liability in international air law, as well as my own efforts, to succeed. I have nothing but praise for IATA's courage in leading its member airlines to waive the liability limits of the Warsaw Convention. The IATA Agreement was long and hard in coming, but it was a remarkable achievement given the political and economic realities of the world. You deserve enormous credit for bringing it about. I say that, as your long time adversary, without condition or qualification. You have done a wonderful job, for which the flying public owes you thanks.

I think it would be a great mistake, however, to revel in the glory of accomplishment, and ignore problems and threats which could very well bring this brave new dream crashing down. And so my concern now, as a friend, is that the new system, because of its inherent weaknesses, may fail. Indeed, I see clouds on the horizon, and I want to address them with you while there is still time to deal with them, so that, together, we can build a strong and lasting structure that can and will withstand the storms that are sure to come.

Problems With the IATA–ATA Agreements and the Resulting System—A Foundation Based on Contract

The basic law in international airline liability is still provided by the Warsaw Convention, which was effectively modified in 1966, with respect to transportation involving the United States, to increase the passenger injury and death limitation to $75,000. Onto this convention there have now been engrafted three agreements, the IATA Intercarrier Agreement (IIA), the Agreement on Measures to Implement the IATA Intercarrier Agreement (MIA), and the ATA Intercarrier Agreement, also known as Provisions Implementing the IATA Intercarrier Agreement (IPA), applicable, at least, to those carriers which have signed the agreements.

Each of the three agreements, IIA, MIA, and IPA is a private contractual agreement sponsored by either IATA or ATA and signed by individual airlines. Some of these agreements, by some of the signatory airlines, have been incorporated in tariffs, which have been filed with the U.S. Department of Transportation. This does not, however, turn them into ''law.'' They are still private contracts which, by virtue of the tariffs, are incorporated in the airline's conditions of contract.

In the first of these agreements, IIA, the signatory airlines agreed to ''take action'' to waive the limitation of liability on recoverable compensatory damages, which, since the Montreal Agreement of 1966 has effectively been $75,000 per passenger on a substantial part of international airline travel, including all transportation involving the United States.

In the MIA the signatory carriers agree to implement the IIA by incorporating various provisions in their contracts of carriage and tariffs where necessary. Under the most important provision the carrier agrees that it will not invoke the limitation of liability in Article 22 (1) of the Convention as to any claim of recoverable compensatory damages under Article 17. In order words, each carrier waives the Warsaw limit.

The second provision each carrier agrees to in MIA is to not avail itself of any defense under Article 20 (1) of the Convention with respect to claims up to 100,000 SDRs. Article 20 (1), sometimes called the exculpatory clause, provides that the carrier can exculpate itself from liability completely if it can show it took all necessary measures to avoid the damage. Thus, in agreeing to waive this defense up to 100,000 SDRs each carrier has subjected itself to absolute or strict liability up to that amount. In not making this waiver above 100,000 SDRs the carrier has accepted the burden of proving the taking of all necessary measures. Proving that is a virtual impossibility in all cases except terrorist cases, other situations entirely caused by a third party, and possibly clear air turbulence cases.

Thus while this provision may not have substantial practical significance the principle of the carrier having the burden of proof regarding its absence of fault has become a precedent which may affect the formulation of a new convention or protocol.

Rights of Recourse, Including Indemnity and Contribution

The MIA goes on to provide that the signatory airline ''reserves all defenses available under the Convention to any such claim.'' And it adds that ''With respect to third parties, the carrier also reserves all rights of recourse . . . including rights of contribution and indemnity.''

It may be well and good for the signatory airlines to reserve all rights of recourse against a manufacturer, for example, in a contract between itself and other airline, but there is real doubt that this can have any legal and binding effect without the consent of such third party and possibly without the consent of the passenger himself. The fact that this reservation of rights is a creature of private contract, rather than law or legal judgments, is, in my opinion, a fatal flaw in the system in terms of legal enforceability.

An impleaded third party, such as a manufacturer, or its insurer, will be free to claim that the airline, or its insurer, which made a payment pursuant to IIA, was a ''volunteer'', and was a collateral source whose payment may not be created to damages owed the passenger or his estate by the manufacturer.

It is my understanding that George Tompkins and Lorne Clark have requested the manufacturers to provide a statement of policy that they will not assert a ''volunteer'' defense in the event that an airline settles a claim in excess of the applicable limit of liability in any suit for contribution or indemnity, and it is my further understanding that the request is being favorably considered.

However, in my opinion, the problem can't definitively be cured by consent of the third party defendant. Under this system the airline can offer to pay unlimited damages, and it may try to insist that a passenger or passenger's family execute a general release, releasing third parties, but the passenger does not have to accept that. The passenger can sue the airline under the IIA and MIA, as a third party beneficiary, and can maintain a wholly independent action against a negligent manufacturer or air traffic control facility. In other words there is the theoretical possibility here of double recoveries. The passenger can recover on his case against the airline, which is based on the IIA and MIA contracts and then take the position, on his case against the manufacturer, or other third party, that the airline was collateral source for which the manufacturer may not get a credit. For the recourse provisions of

IIA, MIA, and IPA to be meaningful the payment of damages by the airline would have to be the result of *law* and not private contract.

This problem of recourse runs through all three of these agreements, and, in my opinion, can be solved only by a new convention or protocol, establishing a legal basis for the payment of unlimited damages by an airline.

That is not the only problem presented by IIA agreements.

Domicile, ''Subject To Applicable Law''

IIA states as an objective ''that recoverable compensatory damages may be determined and awarded by reference to the law of the domicile of the passenger.''

When one examines the MIA, however, it provides that at the option of the carrier it may include a provision in its conditions of carriage and tariffs that, ''subject to applicable law'', recoverable compensatory damages . . . may be determined by reference to the law of the domicile or permanent residence of the passenger.''

In the IPA there is no option provision. It simply states that ''subject to applicable law, recoverable compensatory damages * * * may be determined by reference to the law of the domicile or permanent residence of the passenger.''

Thus the intent of the drafters, as shown by the language of the three agreements, would appear to have been to apply the law of the passenger's domicile or permanent residence. In actual fact, however, there was no such uniform agreement to apply the law of domicile, and the language can best be explained by the political, or negotiating constraints if any agreement at all was to be achieved.

Briefly stated, the United States carriers, with the prodding of the U.S. Department of Transportation, insisted on language applying the law of domicile. To European carriers, however, their law did not apply law of domicile. Generally there courts would apply the law of the place of the accident or the law of the forum. Thus in the face of the language in IIA, pointing to law of domicile, they insisted on language making it clear that would only be at the option of the airline.

The U.S. carriers, on the other hand, all signed the IPA, and thereby accepted law of the passenger's domicile on cases against them.

The agreements may not do that, however, because the language, ''subject to applicable law'' may dictate some other law!

Let's assume, for example, a case brought under the IPA in which the deceased passenger was domiciled in Pennsylvania, which has relatively liberal death damages law. Let's say the airplane crashed into the high seas. When the case is brought in the United States will the Death on the High Seas Act be applied, or the law of Pennsylvania?

In the first instance the decision will be up to the airline, or, more likely, the airline's insurer. Let's suppose the airline, faithful to the text of the IIA agreements, makes an offer under Pennsylvania law standards. But let's assume the passenger, or the lawyer for the estate of the passenger, rejects the offer as being insufficient. The matter would then go to court. In court the passenger (or the estate's) lawyer, asserts that the law of Pennsylvania will govern damages, pointing to the IIA Agreements.

What position does the airline take in court? And what position will the court take? After all the Death on the High Seas Act is a United States statute.

As for the carrier, one might hope it would feel morally bound to accept the law of the domicile of the passenger, but history suggests that economics will determine its position, or, more precisely, its insurer's position.

Let's take a similar case under the IPA, where the airplane has crashed over land, as in the Pan Am 103 Lockerbie bombing. Let's assume the action is started in Florida, as, indeed, a significant number of Lockerbie cases were. In those Lockerbie cases the court, stating that it was applying Florida choice of law rules, applied the law of the place of the accident, Scotland.

What will the situation be under the Intercarrier Agreements including the IPA? Will the carrier, and the court, enforce the law of the passenger's domicile, or will they apply the law of the place of accident?

Again, history suggests that the parties are likely to be motivated by economics.

In short, the words, ''subject to applicable law'' are likely to introduce conflict and uncertainty in many cases brought under the IPA. I would respectfully suggest that those words be removed from the IPA Agreement, and that it simply provide that the law of the passenger's domicile will be applied.

Successive Carriage

Another problem arises by virtue of Article 30 (1) and (2) of the Warsaw Convention which deal with the liability of successive carriers. Article 30 (2) states: ''(2) . . . the passenger or his representative can take action only against the carrier who performed the transportation during which the accident or delay occurred. . . .''

It may turn out, of course, that all carriers sign and adhere to the Intercarrier Agreement, and they will, therefore, all be subject to it. But, given the nature of the world, it is probable that some, or even many, will not sign on. If the second, or third, successive carrier is the one on which the accident happens, it may choose not to waive the limit, despite the claim by the plaintiff that the successive carrier is bound by the original contract of carriage. Then where are we?

I understand that carriers now signing the IIA Agreements are limiting their waivers of the limit to accidents occurring on their own part of the carriage, so passengers may still be subject to the limit in other cases.

But the injured passenger, or his family if he has been killed, will, nevertheless, argue that the carrier which issued the ticket must be liable for damages without limitation, and that he or his estate is an authorized third party beneficiary. An action will be brought against that carrier for unlimited damages. The Warsaw Convention, which was supposed to have simplified liability rules will be the very cause of the dispute in these cases.

If, indeed, waivers of the limit do not apply to successive carriers, then the IATA agreements will be something of a cruel hoax in successive carriage situations and may well inspire intense adverse passenger group reactions.

The 5th Jurisdiction

Article 28 of the Warsaw Convention permits suit to be brought in any one of four places; the place of incorporation of the carrier, its principal place of business, the place where the contract of carriage was made (i.e. where the ticket was sold), and, finally, the place of ultimate destination of the passenger. Notably absent is the place of the passenger's domicile. In most cases the place of the passenger's domicile will coincide with one of the places suit can be brought anyway, so there is no problem. But there are occasional cases where an American, for example, will buy a ticket while on a trip, away from home. American damages standards are considerably higher than those of other countries, generally, and in that rare case the American passenger, or his family, will be denied the higher American standards.

It is generally recognized that the place of domicile is the place which has the greatest interest in the question of damages, and the denial of domicile law is very troubling to parties and governments alike.

The United States Government, and particularly the Department of Transportation and Department of State, have taken the position that any new regime of law, in international airline transportation, must provide for suits in ''the 5th Jurisdiction'', i.e., the place of the passenger's domicile. Non American carriers have resisted the proposal, for reasons that baffle me. It seems to me that from the airline's standpoint the point is not worth fighting about, if the carriers can get an otherwise favorable system. There are simply not enough such cases to provide a real stumbling block.

The IATA intercarrier agreements do not and cannot solve the problem, and they cannot because of the Warsaw Convention's proscription against changing jurisdictional rules (See Article 32). The United States has gone along with the intercarrier agreements because of the predominant interest in getting the airlines to abandon the limits, notwithstanding their failure to adopt the 5th jurisdiction, but the point remains one of contention for any new convention or protocol.

Fault or No Fault?

Finally, important lawyers in the United States DOT seem to be locked into an anti-fault mode of thinking on any new system, whether it be based on the intercarrier agreements or a new convention or protocol. This probably goes back to attitudes developed in 1966 at the time of the Montreal Agreement, when State Department lawyers obtained from the airlines and IATA an agreement to accept absolute liability up to a limit of $75,000 as a tradeoff for perpetuation of the Warsaw Convention and its limited liability regime. The DOT has viewed absolute, no-fault, liability as being in the passenger interest. Most passenger groups, however, as well as lawyer groups which customarily represent passengers, view the fault system as a fundamental necessity which is critically important from the safety perspective for the protection of passengers as well as society in general. They point to numerous contributions to airline safety made by tort cases and their examination into both negligence and accident causation.

The contribution of the tort system to aviation safety is well recognized, also, by aviation insurers and their lawyers. Sean Gates, a London solicitor and senior partner of Beaumont and Son, one of the leading firms representing aviation underwriters, has expressed himself as strongly opposed to absolute liability for international airlines, both because he is opposed to abandonment of the fault system, and because he doesn't see why airlines alone in our society should be held to be guarantors of safety. Anthony Mednuik, one of the world's leading underwriters, and presently Managing Director of the British Aviation Insurance Group, has similarly expressed himself as strongly opposed to abandoning the fault system. He did so most recently at a large meeting in Amelia Island, Florida, in October, of the Aircraft Builders Council, which consists of both aviation manufacturers and underwriters, and again at an aviation insurance and law symposium in London in November, sponsored by Lloyds of London Press. And George N. Tompkins, Jr. one of the top airline defense lawyers in the United States has recommended the following language to the ICAO Secretariat Study Group, of which he is a member: ''No limit of liability on the recoverable damages mentioned in A above if the passenger/claimant proves negligence or

fault on the part of the carrier. This would not impose an undue burden on the passenger/claimant and would serve to preserve the ''Warsaw Convention'' as a fault based system.''

This difference of opinion on the fault system is not a factor affecting the intercarrier agreements since they are already in place and they have been based on strict liability up to 100,000 SDRs and presumptive liability above that amount if the carrier fails to show its complete absence of fault, but it will be a significant factor in the effort to achieve a new convention or protocol.

Thus we have a situation where the IATA agreements, however noble their purpose and laudable their execution, provide an insufficient basis for a satisfactory future regime in international air law, and where there is considerable doubt that, on a political level, the problems and differences of fault/no fault, limitations of venue, rights of recourse, and successive carriage, can be overcome, so as to create a reasonable new convention or protocol. The prospect exists that there will be no satisfactory new convention or protocol, and that the intercarrier agreements will fail to provide a workable system. It is uncertain where such an outcome would lead, but one virtual certainty would be complete abandonment of the Warsaw Convention, and the airlines would not be happy about that.

So, where do we go from here?

The Need to Work Together

Everyone involved, from IATA and airlines, to the United States Government and other governments, to passengers' groups and plaintiffs' lawyers, has something to lose from a failure to come up with a satisfactory new liability regime. The obvious answer to the problem is the formulation of a new and widely acceptable convention or protocol which will have the force of law to handle not only airline liability, but rights of recourse, successive carriage, choice of law and adequate venue.

The Need for Ratifiability

At the excellent Lloyds of London Press Aviation Insurance and Law Symposium in November, in London, Don Horn, Associate General Counsel for International Affairs of the United States Department of Transportation, pointed out the truism that the first requirement for any new convention (or protocol) is that it must be ratifiable.

I respectfully suggest that that is a good place to start in our consideration of the new convention or protocol. Whatever we come up with must be ratifiable. It must be ratifiable by the United States, and it must be approval by the international airlines.

Excellent preparatory work has been done by the ICAO Study Group and the ICAO Legal Committee. The pattern of a splendid convention or protocol is now clear, and available. In general it has been set forth by the Study Group. It will provide for a two tier liability system, with absolute liability up to the threshold number of 100,000 Special Drawing Rights, and negligence liability above that. It must provide for the addition of the ''fifth jurisdiction.'' In other words, passenger's domicile must be added to the other available venues, place of incorporation of the carrier, place of its principal place of business, and place where the ticket was bought.

For those international airlines and insurers who are reluctant to accept the fifth jurisdiction I would point out three things. First, there is an element of compromise inherent in the United States Government acceptance of the two tier concept on fault. The position of the U.S. has been to favor absolute liability across the board. This is not in the airline interest, and in my humble opinion, not in the public interest, but that, as I understand it, has been its position. Acceptance of the two tier system by the United States will have another laudable effect. It will insure support of the new convention or protocol in the United States on the part of passengers', consumers, and lawyers' groups who believe that the fault system is one of society's basic protections. Were the United States to hold out for absolute liability across the board, and were that part of the new Convention or protocol I would expect intense opposition to the new convention or protocol in the United States.

The second point is that in terms of cost to airlines or insurers the fifth jurisdiction is deminimus. There are, simply, very few cases where an American domiciliary buys a ticket in another country and cannot sue in the United States under one of the four presently permissible jurisdictions. I have been practicing aviation law for forty five years, and I have probably handled as many airline cases as any other lawyer in the world, and I can only remember one case involving an American passenger where I was unable to sue in the United States because of Article 28.

Finally, the overall benefit to airlines, and all others, of having a viable new convention or protocol would be enormous. It would be foolish to jeopardize its chances because of opposition to the fifth jurisdiction.

Burden of Proof on the Second Tier

As indicated above, the new convention proposed by the Legal Committee of ICAO prescribes a two tier system of liability. There is absolute liability for damage up to 100,000 SDRs and negligence liability above that. In an exercise of indecision, however, the drafters set forth three alternative provisions on who shoulders the burden of proving negligence. The concept of placing the burden on the defendant airline of showing its freedom from fault grows from Article 20 of the Convention which provides that to exculpate itself the airline must show that it took all necessary measures to avoid the damage. Generally speaking, however, it is the plaintiff who has the burden of proving negligence.

The concept of providing three alternative suggestions is not sound and will lead to confusion and uncertainty. Obviously, it is to the plaintiff's advantage to place the burden on the defendant, but I don't consider it a make or break matter. Again, it is more important to get the broad outlines of the convention established than to fight about each of its terms.

Convention or Protocol?

Similary, the question of whether this should be a brand new convention or a protocol to the Warsaw Convention is less important than the substance of the new instrument. People I respect, including Lorne Clark and George Tompkins, who know far more than I do about the politics of enacting a new convention, tell me that it will be much easier to enact a protocol, so, for that reason alone I favor it.

I would urge a note of caution, however. The Warsaw Convention has a very bad history and reputation with many people, including me and my clients. For many of them it has ruined their lives. I would eliminate all extolatory language praising the Warsaw Convention, such as the introductory language in the ICAO Legal Committee draft, regardless whether it is new convention or protocol.

Simpler and Shorter is better

I would suggest that all references to cargo be removed. It is not necessary to include it in the new instrument. In fact, it may be completely resolved by the ratification of Montreal Protocol 4. The simpler and shorter the new instrument is, the better.

LEGISLATIVE SESSION

The PRESIDING OFFICER. Under the previous order, the Senate will resume legislative session.

YEAR 2000 INFORMATION AND READINESS DISCLOSURE ACT

Mr. ROBERTS. Mr. President, I ask unanimous consent that the Senate now proceed to consideration of Calendar No. 584, S. 2392.

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

A bill (S. 2392) to encourage the disclosure and exchange of information about computer processing problems, solutions, test practices and test results, and related matters in connection with the transition to the Year 2000.

The PRESIDING OFFICER. Is there objection to the immediate consideration of the bill?

There being no objection, the Senate proceeded to consider the bill, which had been reported from the Committee on the Judiciary, with an amendment to strike all after the enacting clause and inserting in lieu thereof the following:

SECTION 1. SHORT TITLE.

This Act may be cited as the ''Year 2000 Information and Readiness Disclosure Act''.

SEC. 2. FINDINGS AND PURPOSES.

(a) FINDINGS.—Congress finds the following:

(1)(A) At least thousands but possibly millions of information technology computer systems, software programs, and semiconductors are not capable of recognizing certain dates in 1999 and after December 31, 1999, and will read dates in the year 2000 and thereafter as if those dates represent the year 1900 or thereafter or will fail to process those dates.

(B) The problem described in subparagraph (A) and resulting failures could incapacitate systems that are essential to the functioning of markets, commerce, consumer products, utilities, government, and safety and defense systems, in the United States and throughout the world.

(C) Reprogramming or replacing affected systems before the problem incapacitates essential systems is a matter of national and global interest.

(2) The prompt, candid, and thorough disclosure and exchange of information related to year 2000 readiness of entities, products, and services—

(A) would greatly enhance the ability of public and private entities to improve their year 2000 readiness; and

(B) is therefore a matter of national importance and a vital factor in minimizing any potential year 2000 related disruption to the Nation's economic well-being and security.

(3) Concern about the potential for legal liability associated with the disclosure and exchange of year 2000 readiness information is impeding the disclosure and exchange of such information.

(4) The capability to freely disseminate and exchange information relating to year 2000 readiness, solutions, test practices and test results, with the public and other entities without undue concern about litigation is critical to the ability of public and private entities to address year 2000 needs in a timely manner.

(5) The national interest will be served by uniform legal standards in connection with the disclosure and exchange of year 2000 readiness information that will promote disclosures and exchanges of such information in a timely fashion.

(b) PURPOSES.—Based upon the powers contained in article I, section 8, clause 3 of the Constitution of the United States, the purposes of this Act are—

(1) to promote the free disclosure and exchange of information related to year 2000 readiness;

(2) to assist consumers, small businesses, and local governments in effectively and rapidly responding to year 2000 problems; and

(3) to lessen burdens on interstate commerce by establishing certain uniform legal principles in connection with the disclosure and exchange of information related to year 2000 readiness.

SEC. 3. DEFINITIONS.

In this Act:

(1) ANTITRUST LAWS.—The term ''antitrust laws''—

(A) has the meaning given to it in subsection (a) of the first section of the Clayton Act (15 U.S.C. 12(a)), except that such term includes section 5 of the Federal Trade Commission Act (15 U.S.C. 45) to the extent such section 5 applies to unfair methods of competition; and

(B) includes any State law similar to the laws referred to in subparagraph (A).

(2) CONSUMER.—The term ''consumer'' means an individual who acquires a consumer product other than for purposes of resale.

(3) CONSUMER PRODUCT.—The term ''consumer product'' means any personal property or service which is normally used for personal, family, or household purposes.

(4) COVERED ACTION.—The term ''covered action'' means any civil action of any kind, whether arising under Federal or State law, except for any civil action arising under Federal or State law brought by a Federal, State, or other public entity, agency, or authority acting in a regulatory, supervisory, or enforcement capacity.

(5) MAKER.—The term ''maker'' means each person or entity, including a State or political subdivision thereof, that issues or publishes any year 2000 statement, or develops or prepares, or assists in, contributes to, or reviews, reports or comments on during, or approves, or otherwise takes part in the preparing, developing, issuing, approving, or publishing any year 2000 statement.

(6) REPUBLICATION.—The term ''republication'' means any repetition, in whole or in part, of a year 2000 statement originally made by another.

(7) YEAR 2000 INTERNET WEBSITE.—The term ''year 2000 Internet website'' means an Internet website or other similar electronically accessible service, clearly designated on the website or service by the person or entity creating or controlling the content of the website or service as an area where year 2000 statements concerning that person or entity are posted or otherwise made accessible to the general public.

(8) YEAR 2000 PROCESSING.—The term ''year 2000 processing'' means the processing (including calculating, comparing, sequencing, displaying, or storing), transmitting, or receiving of date data from, into, and between the 20th and 21st centuries, and during the years 1999 and 2000, and leap year calculations.

(9) YEAR 2000 READINESS DISCLOSURE.—The term ''year 2000 readiness disclosure'' means any written year 2000 statement, clearly identified on its face as a year 2000 readiness disclosure inscribed on a tangible medium or stored in an electronic or other medium and retrievable in perceivable form and issued or published by or with the approval of an entity with respect to year 2000 processing of that entity or of products or services offered by that entity.

(10) YEAR 2000 STATEMENT.—

(A) IN GENERAL.—The term ''year 2000 statement'' means any communication or other conveyance of information by a party to another or to the public, in any form or medium—

(i) concerning an assessment, projection, or estimate concerning year 2000 processing capabilities of any entity, product, or service, or a set of products and services;

(ii) concerning plans, objectives, or timetables for implementing or verifying the year 2000 processing capabilities of an entity, a product, or service, or a set of products or services;

(iii) concerning test plans, test dates, test results, or operational problems or solutions related to year 2000 processing by—

(I) products; or

(II) services that incorporate or utilize products; or

(iv) reviewing, commenting on, or otherwise directly or indirectly relating to year 2000 processing capabilities.

(B) NOT INCLUDED.—The term does not include for the purposes of any action brought under the securities laws, as that term is defined in section 3(a)(47) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)(47)), any document or material filed with the Securities and Exchange Commission, or with Federal banking regulators, pursuant to section 12(i) of the Securities Exchange Act of 1934 (15 U.S.C. 781(i)), or any disclosure or writing that when made accompanied the solicitation of an offer or sale of securities.

SEC. 4. PROTECTION FOR YEAR 2000 STATEMENTS.

(a) EVIDENCE EXCLUSION.—No year 2000 readiness disclosure, in whole or in part, shall be admissible against the maker of the disclosure to prove the accuracy or truth of any year 2000 statement set forth in that disclosure, in any covered action brought by another party except that—

(1) a disclosure may serve as the basis for a claim for anticipatory breach or repudiation or a similar claim against the maker, to the extent provided by applicable law; and

(2) the court in any covered action shall have discretion to limit application of this subsection in any case in which the court determines that the maker's use of that disclosure amounts to bad faith, or fraud, or is otherwise is beyond what is reasonable to achieve the purposes of this Act.

(b) FALSE, MISLEADING AND INACCURATE YEAR 2000 STATEMENTS.—Except as otherwise provided in subsection (c), in any covered action, to the extent that such action is based on an allegedly false, inaccurate, or misleading year 2000 statement, the maker of that year 2000 statement shall not be liable under Federal or State law with respect to that year 2000 statement unless the claimant establishes, in addition to all other requisite elements of the applicable action, by clear and convincing evidence, that—

(1) the year 2000 statement was material; and

(2)(A) to the extent the year 2000 statement was not a republication of a year 2000 statement originally made by a third party, that the maker made the year 2000 statement—

(i) with actual knowledge that the year 2000 statement was false, inaccurate, or misleading;

(ii) with intent to deceive or mislead; or

(iii) with a reckless disregard as to the accuracy of the year 2000 statement; or

(B) to the extent the year 2000 statement was a republication of a year 2000 statement originally made by a third party, that the maker of the republication made the year 2000 statement—

(i) with actual knowledge that the year 2000 statement was false, inaccurate, or misleading;

(ii) with intent to deceive or mislead; or

(iii) without notice in that year 2000 statement that—

(I) the maker has not verified the contents of the republication; or

(II) the maker is not the source of the republished year 2000 statement, the republished statement is based on information supplied by another person or entity, and the notice or republished statement identifies the source of the republished statement.

(c) DEFAMATION OR SIMILAR CLAIMS.—In a covered action arising under any Federal or State law of defamation, trade disparagement, or a similar claim, to the extent such action is based on an allegedly false, inaccurate, or misleading year 2000 statement, the maker of that year 2000 statement shall not be liable with respect to that year 2000 statement, unless the claimant establishes by clear and convincing evidence, in addition to all other requisite elements of the applicable action, that the year 2000 statement was made with knowledge that the year 2000 statement was false or made with reckless disregard as to its truth or falsity.

(d) YEAR 2000 INTERNET WEBSITE.—

(1) IN GENERAL.—Except as provided in paragraph (2), in any covered action, other than a covered action involving personal injury or serious physical damage to property, in which the adequacy of notice about year 2000 processing is at issue, the posting, in a commercially reasonable manner and for a commercially reasonable duration, of a notice by the entity charged with giving such notice on the year 2000 Internet website of that entity shall be deemed to be an adequate mechanism for providing that notice.

(2) EXCEPTION.—Under paragraph (1) the notice shall not be adequate if the trier of fact finds that the use of the mechanism of notice—

(A) is contrary to express prior representations made by the party giving notice;

(B) is materially inconsistent with the regular course of dealing between the parties; or

(C) occurs where there have been no prior representations regarding the mechanism of notice and no regular course of dealing exists between the parties and where actual notice is clearly the most commercially reasonable means of providing notice.

(3) CONSTRUCTION.—Nothing in this subsection shall—

(A) alter or amend any Federal or State statute or regulation requiring that notice about year 2000 processing be provided using a different mechanism;

(B) create a duty to provide notice about year 2000 processing;

(C) preclude or suggest the use of any other medium for notice about year 2000 processing or require the use of an Internet website; or

(D) mandate the content or timing of any notices about year 2000 processing.

(e) LIMITATION ON EFFECT OF YEAR 2000 STATEMENTS.—

(1) IN GENERAL.—In any covered action, a year 2000 statement shall not be interpreted or construed as an amendment to or alteration of a contract or warranty, whether entered into by or approved for a public or private entity.

(2) NOT APPLICABLE.—

(A) IN GENERAL.—This subsection shall not apply—

(i) to the extent the party whose year 2000 statement is alleged to have amended or altered a contract or warranty has otherwise agreed in writing to so alter or amend the contract or warranty;

(ii) to a year 2000 statement made in conjunction with the formation of the contract or warranty; or

(iii) if the contract or warranty specifically provides for its amendment or alteration through the making of a year 2000 statement.

(B) RULE OF CONSTRUCTION.—Nothing in this subsection is intended to affect applicable Federal or State law in effect as of the date of enactment of this Act with respect to determining the extent to which a year 2000 statement within the scope of clause (i), (ii), or (iii) of subparagraph (A) affects a contract or warranty.

(f) SPECIAL DATA GATHERING.—

(1) IN GENERAL.—A Federal entity, agency, or authority may expressly designate a request for the voluntary provision of information relating to year 2000 processing, including year 2000 statements, as a special year 2000 data gathering request made pursuant to this subsection.

(2) SPECIFICS.—A special year 2000 data gathering request made under this subsection shall specify a Federal entity, agency, or authority,

or with the consent of the designee, another public or private entity, agency or authority, to gather responses to the request.

(3) PROTECTIONS.—Except with the express consent or permission of the provider of information described in paragraph (1), any year 2000 statements or other such other information provided by a party in response to a special year 2000 data gathering request made under this subsection—

(A) shall be exempt from disclosure under subsection (b)(4) of section 552 of title 5, United States Code, commonly known as the ''Freedom of Information Act'' ;

(B) shall be prohibited from disclosure to any third party; and

(C) may not be used by any Federal entity, agency, or authority or by any third party, directly or indirectly, in any civil action arising under any Federal or State law.

(4) EXCEPTIONS.—

(A) INFORMATION OBTAINED ELSEWHERE.—Nothing in this subsection shall preclude a Federal entity, agency, or authority or any third party from separately obtaining the information submitted in response to a request under this subsection through the use of independent legal authorities, and using such separately obtained information in any action.

(B) VOLUNTARY DISCLOSURE.—A restriction on use or disclosure of information under this subsection shall not apply to any information disclosed to the public with the express consent of the party responding to the request or disclosed by such party separately from a response to a special year 2000 data gathering request.

SEC. 5. TEMPORARY ANTITRUST EXEMPTION.

(a) EXEMPTION.—Except as provided in subsection (b), the antitrust laws shall not apply to conduct engaged in, including making and implementing an agreement, solely for the purpose of—

(1) facilitating responses intended to correct or avoid a failure of year 2000 processing in a computer system, in a component of a computer system, in a computer program or software, or services utilizing any such system, component, program, or hardware; or

(2) communicating or disclosing information to help correct or avoid the effects of year 2000 processing failure.

(b) APPLICABILITY.—Subsection (a) shall apply only to conduct that occurs, or an agreement that is made and implemented, after the date of enactment of this Act and before July 14, 2001.

(c) EXCEPTION TO EXEMPTION.—Subsection (a) shall not apply with respect to conduct that involves or results in an agreement to boycott any person, to allocate a market or fix prices or output.

(d) RULE OF CONSTRUCTION.—The exemption granted by this section shall be construed narrowly.

SEC. 6. EXCLUSIONS.

(a) EFFECT ON INFORMATION DISCLOSURE.—This Act does not affect, abrogate, amend, or alter the authority of a Federal or State entity, agency, or authority to enforce a requirement to provide or disclose, or not to provide or disclose, information under a Federal or State statute or regulation or to enforce such statute or regulation.

(b) CONTRACTS AND OTHER CLAIMS.—

(1) IN GENERAL.—Except as may be otherwise provided in subsections (a) and (e) of section 4, this Act does not affect, abrogate, amend, or alter any right established by contract or tariff between any person or entity, whether entered into by a public or private person entity, under any Federal or State law.

(2) OTHER CLAIMS.—In any covered action brought by a consumer, this Act does not apply to a year 2000 statement expressly made in a solicitation, including an advertisement or offer to sell, to that consumer by a seller, manufacturer, or provider of a consumer product.

(3) RULE OF CONSTRUCTION.—Nothing in this Act shall be construed to preclude any claims that are not based exclusively on year 2000 statements.

(c) DUTY OR STANDARD OF CARE.—

(1) IN GENERAL.—This Act shall not impose upon the maker of any year 2000 statement any more stringent obligation, duty, or standard of care than is otherwise applicable under any other Federal law or State law.

(2) ADDITIONAL DISCLOSURE.—This Act does not preclude any party from making or providing any additional disclosure, disclaimer, or similar provisions in connection with any year 2000 readiness disclosure or year 2000 statement.

(3) DUTY OF CARE.—This Act shall not be deemed to alter any standard or duty of care owed by a fiduciary, as defined or determined by applicable Federal or State law.

(d) INTELLECTUAL PROPERTY RIGHTS.—This Act does not affect, abrogate, amend, or alter any right in a patent, copyright, semiconductor mask work, trade secret, trade name, trademark, or service mark, under any Federal or State law.

(e) INJUNCTIVE RELIEF.—Nothing in this Act shall be deemed to preclude a claimant from seeking temporary or permanent injunctive relief with respect to a year 2000 statement.

SEC. 7. APPLICABILITY.

(a) EFFECTIVE DATE.—

(1) IN GENERAL.—Except as otherwise provided in this section, this Act shall become effective on the date of enactment of this Act.

(2) APPLICATION TO LAWSUITS PENDING.—This Act shall not affect or apply to any lawsuit pending on July 14, 1998.

(3) APPLICATION TO STATEMENTS AND DISCLOSURES.—Except as provided in subsection (b)—

(A) this Act shall apply to any year 2000 statement made on or after July 14, 1998 through July 14, 2001; and

(B) this Act shall apply to any year 2000 readiness disclosure made after the date of enactment of this Act through July 14, 2001.

(b) PREVIOUSLY MADE READINESS DISCLOSURE.—

(1) IN GENERAL.—For the purposes of section 4(a), a person or entity that issued or published a year 2000 statement after January 1, 1996, and before the date of enactment of this Act, may designate that year 2000 statement as a year 2000 readiness disclosure if—

(A) the year 2000 statement complied with the requirements of section 4(b) when made, other than being clearly designated on its face as a disclosure;

(B) within 45 days after the date of enactment of this Act, the person or entity seeking the designation provides notice—

(i) by individual notice that meets the requirements of paragraph (2) to all recipients of the applicable year 2000 statement; and

(ii) a prominent posting notice that meets the requirements of paragraph (2) on its year 2000 Internet website, commencing prior to the end of the 45-day period under this subparagraph and extending for a minimum of 45 consecutive days and also by using the same method of notification used to originally provide the applicable year 2000 statement.

(2) REQUIREMENTS.—A notice under paragraph (1)(B) shall—

(A) state that the year 2000 statement that is the subject of the notice is being designated a year 2000 readiness disclosure; and

(B) include a copy of the year 2000 statement with a legend labeling the statement as a ''Year 2000 Readiness Disclosure''.

(c) EXCEPTION.—No designation of a year 2000 statement as a disclosure under subsection (b) shall apply with respect to any person or entity that—

(1) proves, by clear and convincing evidence, that it relied on the year 2000 statement prior to the receipt of notice described above and it would be prejudiced by the retroactive designation of the year 2000 statement as a disclosure; and

(2) provides to the person or entity seeking the designation a written notice objecting to the designation within 45 days after receipt of individual notice under subsection (b)(2)(B)(i), or within 180 days after the date of enactment of this Act, in the case of notice provided under subsection (b)(2)(B)(ii).

SEC. 8. NATIONAL INFORMATION CLEARINGHOUSE AND WEBSITE.

(a) NATIONAL WEBSITE.—

(1) IN GENERAL.—The Administrator of General Services shall create and maintain a national year 2000 website, and promote its availability, designed to assist consumers, small business, and local governments in obtaining information from other governmental websites, hotlines, or information clearinghouses about year 2000 Processing of computers, systems, products and services, including websites maintained by independent agencies and other departments.

(2) CONSULTATION.—In creating the national year 2000 website, the Administrator of General Services shall consult with—

(A) the Director of the Office of Management and Budget;

(B) the Administrator of the Small Business Administration;

(C) the Consumer Product Safety Commission;

(D) officials of State and local governments;

(E) the Director of the National Institute of Standards and Technology;

(F) representatives of consumer and industry groups; and

(G) representatives of other entities, as determined appropriate.

(b) REPORT.—The Administrator of General Services shall submit a preliminary report to the Committees on the Judiciary of the Senate and the House of Representatives and the Committee on Governmental Affairs of the Senate and the Committee on Government Reform and Oversight of the House of Representatives not later than 60 days after the date of enactment of this Act regarding planning to comply with the requirements of this section.

Amend the title so as to read: ''To encourage the disclosure and exchange of information about computer processing problems, solutions, test practices and test results, and related matters in connection with the transition to the year 2000.''.

AMENDMENT NO. 3669

(Purpose: To provide a substitute)

Mr. ROBERTS. Senators HATCH, LEAHY, and KYL have a substitute amendment at the desk, and I ask for its consideration.

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

The Senator from Kansas [Mr. ROBERTS] for Mr. HATCH, for himself, Mr. LEAHY, and Mr. KYL, proposes an amendment numbered 3669.

Mr. ROBERTS. Mr. President, I ask unanimous consent reading of the amendment be dispensed with.

(The text of the amendment is printed in today's RECORD under ''Amendments Submitted.'')

AMENDMENT NO. 3670 TO AMENDMENT NO. 3669

(Purpose: To provide for the establishment of working groups as a part of the President's Year 2000 Council)

Mr. ROBERTS. Senator THOMPSON has an amendment at the desk and I now ask for its consideration.

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

The Senator from Kansas [Mr. ROBERTS], for Mr. THOMPSON, proposes an amendment numbered 3670 to amendment No. 3669.

Mr. ROBERTS. Mr. President, I ask unanimous consent the reading of the amendment be dispensed with.

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

The amendment is as follows:

Redesignate section 8 as section 9 and insert the following after section 8:

SEC. 8. YEAR 2000 COUNCIL WORKING GROUPS.

(a) IN GENERAL.—

(1) WORKING GROUPS.—The President's Year 2000 Council (referred to in this section as the ''Council'') may establish and terminate working groups composed of Federal employees who will engage outside organizations in discussions to address the year 2000 problems identified in section 2(a)(1) to share information related to year 2000 readiness, and otherwise to serve the purposes of this Act.

(2) LIST OF GROUPS.—The Council shall maintain and make available to the public a printed and electronic list of the working groups, the members of each working group, and a point of contact, together with an address, telephone number, and electronic mail address for the point of contact, for each working group created under this section.

(3) BALANCE.—The Council shall seek to achieve a balance of participation and representation among the working groups.

(4) ATTENDANCE.—The Council shall maintain and make available to the public a printed and electronic list of working group members who attend each meeting of a working group as well as any other individuals or organizations participating in each meeting.

(5) MEETINGS.—Each meeting of a working group shall be announced in advance in accordance with procedures established by the Council. The Council shall encourage working groups to hold meetings open to the public to the extent feasible and consistent with the activities of the Council and the purposes of this Act.

(b) FACA.—The Federal Advisory Committee Act (5 U.S.C. App.) shall not apply to the working groups established under this section.

(c) PRIVATE RIGHT OF ACTION.—This section creates no private right of action to due for enforcement of the provisions of this section.

(d) EXPIRATION.—The authority conferred by this section shall expire on December 31, 2000.

Mr. THOMPSON. Mr. President, this country will face an unprecedented problem on January 1, 2000, when many computer systems, in the form of software, hardware and embedded chips, will interpret the year as 1900 rather than 2000, potentially resulting in extensive failures of critical operations. The fix to this problem is not a technological challenge, but a management challenge due to its massive nature and the limited time we have to fix it. With less then 465 days until the new millennium, this problem will affect every level of government, every size of business, and literally every person in this great nation.

Although the Year 2000 Information and Readiness Disclosure Act does not represent the silver bullet to remedy this problem, I rise today to voice my support for this legislation. This bill will encourage both public and private sector entities to disclose year 2000 related information, in the form of product readiness, proposed solutions and testing processes, thereby increasing the ability of governments and businesses to update their own systems and avoid potentially catastrophic failures.

Mr. President, I had a number of concerns with this legislation in its original form. First of all, this legislation preempts state and local liability law. Typically, neither I nor many of my colleagues would support such preemption of state authority; however, this problem warrants drastic action. In fact, state and local government associations have expressed their support for this bill.

Second, this legislation reduces the standard of care required in providing accurate information as currently defined in state and local statutes. Due to the critical nature of this problem, I can support this provision for cases where businesses are sharing information with the intent to identify a common solution and prevent a potentially catastrophic failure. However, in its original form, this bill would have extended this protection to sellers of year 2000 remediation products and services whose statements may be motivated solely by financial interests.

Mr. President, to address these concerns I introduced an amendment in the Judiciary Committee which failed to pass. However, I worked with the Committee and other interested parties to develop language that achieved all the goals and intentions of my original amendment. This language has been adopted in section 6(b), and all interested parties agree we have strengthened the bill. My language will mitigate against false and inaccurate year 2000 solicitations while promoting the open sharing of information needed to solve the year 2000 problem. Further, it will expressly prevent vendors which sell year 2000 remediation products from taking advantage of unknowing customers by making the protections of the bill unavailable to any seller of these products who does not inform in writing any entity, including businesses, governments, and non-profit organizations, that its legal rights under state law are reduced by this bill. By imposing a higher duty of care in these instances, failures will be prevented.

Since my concerns have been addressed, I support immediate passage of this bill.

Mr. ROBERTS. Mr. President, I ask unanimous consent that the amendment be agreed to, the substitute amendment be agreed to, the bill be read the third time and passed, as amended, the motion to reconsider be laid upon the table, the amendment to the title be agreed to, and the title, as amended, be agreed to, and that any statements relating to the bill appear at this point in the RECORD.

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

The amendments (Nos. 3669 and 3670) were agreed to.

The bill (S. 2392), as amended, was considered read the third time and passed, as follows:

S. 2392

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 ''Year 2000 Information and Readiness Disclosure Act''.

SEC. 2. FINDINGS AND PURPOSES.

(a) FINDINGS.—Congress finds the following:

(1)(A) At least thousands but possibly millions of information technology computer systems, software programs, and semiconductors are not capable of recognizing certain dates in 1999 and after December 31, 1999, and will read dates in the year 2000 and thereafter as if those dates represent the year 1900 or thereafter or will fail to process those dates.

(B) The problem described in subparagraph (A) and resulting failures could incapacitate systems that are essential to the functioning of markets, commerce, consumer products, utilities, government, and safety and defense systems, in the United States and throughout the world.

(C) Reprogramming or replacing affected systems before the problem incapacitates essential systems is a matter of national and global interest.

(2) The prompt, candid, and thorough disclosure and exchange of information related to year 2000 readiness of entities, products, and services—

(A) would greatly enhance the ability of public and private entities to improve their year 2000 readiness; and

(B) is therefore a matter of national importance and a vital factor in minimizing any potential year 2000 related disruption to the Nation's economic well-being and security.

(3) Concern about the potential for legal liability associated with the disclosure and exchange of year 2000 readiness information is impeding the disclosure and exchange of such information.

(4) The capability to freely disseminate and exchange information relating to year 2000 readiness, solutions, test practices and test results, with the public and other entities without undue concern about litigation is critical to the ability of public and private entities to address year 2000 needs in a timely manner.

(5) The national interest will be served by uniform legal standards in connection with the disclosure and exchange of year 2000 readiness information that will promote disclosures and exchanges of such information in a timely fashion.

(b) PURPOSES.—Based upon the powers contained in article I, section 8, clause 3 of the Constitution of the United States, the purposes of this Act are—

(1) to promote the free disclosure and exchange of information related to year 2000 readiness;

(2) to assist consumers, small businesses, and local governments in effectively and rapidly responding to year 2000 problems; and

(3) to lessen burdens on interstate commerce by establishing certain uniform legal principles in connection with the disclosure and exchange of information related to year 2000 readiness.

SEC. 3. DEFINITIONS.

In this Act:

(1) ANTITRUST LAWS.—The term ''antitrust laws''—

(A) has the meaning given to it in subsection (a) of the first section of the Clayton Act (15 U.S.C. 12(a)), except that such term includes section 5 of the Federal Trade Commission Act (15 U.S.C. 45) to the extent such section 5 applies to unfair methods of competition; and

(B) includes any State law similar to the laws referred to in subparagraph (A).

(2) CONSUMER.—The term ''consumer'' means an individual who acquires a consumer product for purposes other than resale.

(3) CONSUMER PRODUCT.—The term ''consumer product'' means any personal property or service which is normally used for personal, family, or household purposes.

(4) COVERED ACTION.—The term ''covered action'' means civil action of any kind, whether arising under Federal or State law, except for an action brought by a Federal, State, or other public entity, agency, or authority acting in a regulatory, supervisory, or enforcement capacity.

(5) MAKER.—The term ''maker'' means each person or entity, including the United States or a State or political subdivision thereof, that—

(A) issues or publishes any year 2000 statement;

(B) develops or prepares any year 2000 statement; or

(C) assists in, contributes to, or reviews, reports or comments on during, or approves, or otherwise takes part in the preparing, developing, issuing, approving, or publishing of any year 2000 statement.

(6) REPUBLICATION.—The term ''republication'' means any repetition, in whole or in part, of a year 2000 statement originally made by another.

(7) YEAR 2000 INTERNET WEBSITE.—The term ''year 2000 Internet website'' means an Internet website or other similar electronically accessible service, clearly designated on the website or service by the person or entity creating or controlling the content of the website or service as an area where year 2000 statements concerning that person or entity are posted or otherwise made accessible to the general public.

(8) YEAR 2000 PROCESSING.—The term ''year 2000 processing'' means the processing (including calculating, comparing, sequencing, displaying, or storing), transmitting, or receiving of date data from, into, and between the 20th and 21st centuries, and during the years 1999 and 2000, and leap year calculations.

(9) YEAR 2000 READINESS DISCLOSURE.—The term ''year 2000 readiness disclosure'' means any written year 2000 statement—

(A) clearly identified on its face as a year 2000 readiness disclosure;

(B) inscribed on a tangible medium or stored in an electronic or other medium and retrievable in perceivable form; and

(C) issued or published by or with the approval of a person or entity with respect to year 2000 processing of that person or entity or of products or services offered by that person or entity.

(10) YEAR 2000 REMEDIATION PRODUCT OR SERVICE.—The term ''year 2000 remediation product or service'' means a software program or service licensed, sold, or rendered by a person or entity and specifically designed to detect or correct year 2000 processing problems with respect to systems, products, or services manufactured or rendered by another person or entity.

(11) YEAR 2000 STATEMENT.—

(A) IN GENERAL.—The term ''year 2000 statement'' means any communication or other conveyance of information by a party to another or to the public, in any form or medium—

(i) concerning an assessment, projection, or estimate concerning year 2000 processing capabilities of an entity, product, service, or set of products and services;

(ii) concerning plans, objectives, or timetables for implementing or verifying the year 2000 processing capabilities of an entity, product, service, or set of products and services;

(iii) concerning test plans, test dates, test results, or operational problems or solutions related to year 2000 processing by—

(I) products; or

(II) services that incorporate or utilize products; or

(iv) reviewing, commenting on, or otherwise directly or indirectly relating to year 2000 processing capabilities.

(B) NOT INCLUDED.—For the purposes of any action brought under the securities laws, as that term is defined in section 3(a)(47) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)(47)), the term year 2000 statement does not include statements contained in any documents or materials filed with the Securities and Exchange Commission, or with Federal banking regulators, pursuant to section 12(i) of the Securities Exchange Act of 1934 (15 U.S.C. 781(i)), or disclosures or writing that when made accompanied the solicitation of an offer or sale of securities.

SEC. 4. PROTECTION FOR YEAR 2000 STATEMENTS.

(a) EVIDENCE EXCLUSION.—No year 2000 readiness disclosure, in whole or in part, shall be admissible against the maker of that disclosure to prove the accuracy or truth of any year 2000 statement set forth in that disclosure, in any covered action brought by another party except that—

(1) a year 2000 readiness disclosure may be admissible to serve as the basis for a claim for anticipatory breach, or repudiation of a contract, or a similar claim against the maker, to the extent provided by applicable law; and

(2) the court in any covered action shall have discretion to limit application of this subsection in any case in which the court determines that the maker's use of the year 2000 readiness disclosure amounts to bad faith or fraud, or is otherwise beyond what is reasonable to achieve the purposes of this Act.

(b) FALSE, MISLEADING AND INACCURATE YEAR 2000 STATEMENTS.—Except as provided in subsection (c), in any covered action, to the extent that such action is based on an allegedly false, inaccurate, or misleading year 2000 statement, the maker of that year 2000 statement shall not be liable under Federal or State law with respect to that year 2000 statement unless the claimant establishes, in addition to all other requisite elements of the applicable action, by clear and convincing evidence, that—

(1) the year 2000 statement was material; and

(2)(A) to the extent the year 2000 statement was not a republication, that the maker made the year 2000 statement—

(i) with actual knowledge that the year 2000 statement was false, inaccurate, or misleading;

(ii) with intent to deceive or mislead; or

(iii) with a reckless disregard as to the accuracy of the year 2000 statement; or

(B) to the extent the year 2000 statement was a republication that the maker of the republication made the year 2000 statement—

(i) with actual knowledge that the year 2000 statement was false, inaccurate, or misleading;

(ii) with intent to deceive or mislead; or

(iii) without notice in that year 2000 statement that—

(I) the maker has not verified the contents of the republication; or

(II) the maker is not the source of the republication and the republication is based on information supplied by another person or entity identified in that year 2000 statement or republication.

(c) DEFAMATION OR SIMILAR CLAIMS.—In a covered action arising under any Federal or State law of defamation, trade disparagement, or a similar claim, to the extent such action is based on an allegedly false, inaccurate, or misleading year 2000 statement, the maker of that year 2000 statement shall not be liable with respect to that year 2000 statement, unless the claimant establishes by clear and convincing evidence, in addition to all other requisite elements of the applicable action, that the year 2000 statement was made with knowledge that the year 2000 statement was false or made with reckless disregard as to its truth or falsity.

(d) YEAR 2000 INTERNET WEBSITE.—

(1) IN GENERAL.—Except as provided in paragraph (2), in any covered action, other than a covered action involving personal injury or serious physical damage to property, in which the adequacy of notice about year 2000 processing is at issue, the posting, in a commercially reasonable manner and for a commercially reasonable duration, of a notice by the entity charged with giving such notice on the year 2000 Internet website of that entity shall be deemed an adequate mechanism for providing that notice.

(2) EXCEPTION.—Paragraph (1) shall not apply if the court finds that the use of the mechanism of notice—

(A) is contrary to express prior representations regarding the mechanism of notice made by the party giving notice;

(B) is materially inconsistent with the regular course of dealing between the parties; or

(C) occurs where there have been no prior representations regarding the mechanism of notice, no regular course of dealing exists between the parties, and actual notice is clearly the most commercially reasonable means of providing notice.

(3) CONSTRUCTION.—Nothing in this subsection shall—

(A) alter or amend any Federal or State statute or regulation requiring that notice about year 2000 processing be provided using a different mechanism;

(B) create a duty to provide notice about year 2000 processing;

(C) preclude or suggest the use of any other medium for notice about year 2000 processing or require the use of an Internet website; or

(D) mandate the content or timing of any notices about year 2000 processing.

(e) LIMITATION ON EFFECT OF YEAR 2000 STATEMENTS.—

(1) IN GENERAL.—In any covered action, a year 2000 statement shall not be interpreted or construed as an amendment to or alteration of a contract or warranty, whether entered into by or approved for a public or private entity.

(2) NOT APPLICABLE.—

(A) IN GENERAL.—This subsection shall not apply—

(i) to the extent the party whose year 2000 statement is alleged to have amended or altered a contract or warranty has otherwise agreed in writing to so alter or amend the contract or warranty;

(ii) to a year 2000 statement made in conjunction with the formation of the contract or warranty; or

(iii) if the contract or warranty specifically provides for its amendment or alteration through the making of a year 2000 statement.

(B) RULE OF CONSTRUCTION.—Nothing in this subsection shall affect applicable Federal or State law in effect as of the date of enactment of this Act with respect to determining the extent to which a year 2000 statement affects a contract or warranty.

(f) SPECIAL DATA GATHERING.—

(1) IN GENERAL.—A Federal entity, agency, or authority may expressly designate a request for the voluntary provision of information relating to year 2000 processing, including year 2000 statements, as a special year 2000 data gathering request made pursuant to this subsection.

(2) SPECIFICS.—A special year 2000 data gathering request made under this subsection shall specify a Federal entity, agency, or authority, or, with its consent, another public or private entity, agency, or authority, to gather responses to the request.

(3) PROTECTIONS.—Except with the express consent or permission of the provider of information described in paragraph (1), any year 2000 statements or other such other information provided by a party in response to a special year 2000 data gathering request made under this subsection—

(A) shall be exempt from disclosure under subsection (b)(4) of section 552 of title 5, United States Code, commonly known as the ''Freedom of Information Act'';

(B) shall not be disclosed to any third party; and

(C) may not be used by any Federal entity, agency, or authority or by any third party, directly or indirectly, in any civil action arising under any Federal or State law.

(4) EXCEPTIONS.—

(A) INFORMATION OBTAINED ELSEWHERE.—Nothing in this subsection shall preclude a Federal entity, agency, or authority, or any third party, from separately obtaining the information submitted in response to a request under this subsection through the use of independent legal authorities, and using such separately obtained information in any action.

(B) VOLUNTARY DISCLOSURE.—A restriction on use or disclosure of information under this subsection shall not apply to any information disclosed to the public with the express consent of the party responding to a special year 2000 data gathering request or disclosed by such party separately from a response to a special year 2000 data gathering request.

SEC. 5. TEMPORARY ANTITRUST EXEMPTION.

(a) EXEMPTION.—Except as provided in subsection (b), the antitrust laws shall not apply to conduct engaged in, including making and implementing an agreement, solely for the purpose of and limited to—

(1) facilitating responses intended to correct or avoid a failure of year 2000 processing in a computer system, in a component of a computer system, in a computer program or software, or services utilizing any such system, component, program, or hardware; or

(2) communicating or disclosing information to help correct or avoid the effects of year 2000 processing failure

(b) APPLICABILITY.—Subsection (a) shall apply only to conduct that occurs, or an agreement that is made and implemented, after the date of enactment of this Act and before July 14, 2001.

(c) EXCEPTION TO EXEMPTION.—Subsection (a) shall not apply with respect to conduct that involves or results in an agreement to boycott any person, to allocate a market or fix prices or output.

(d) RULE OF CONSTRUCTION.—The exemption granted by this section shall be construed narrowly.

SEC. 6. EXCLUSIONS.

(a) EFFECT ON INFORMATION DISCLOSURE.—This Act does not affect, abrogate, amend, or alter the authority of a Federal or State entity, agency, or authority to enforce a requirement to provide or disclose, or not to provide or disclose, information under a Federal or State statute or regulation or to enforce such statute or regulation.

(b) CONTRACTS AND OTHER CLAIMS.—

(1) IN GENERAL.—Except as may be otherwise provided in subsections (a) and (e) of section 4, this Act does not affect, abrogate, amend, or alter any right established by contract or tariff between any person or entity, whether entered into by a public or private person or entity, under any Federal or State law.

(2) OTHER CLAIMS.—

(A) IN GENERAL.—In any covered action brought by a consumer, this Act does not apply to a year 2000 statement expressly made in a solicitation, including an advertisement or offer to sell, to that consumer by a seller, manufacturer, or provider of a consumer product.

(B) SPECIFIC NOTICE REQUIRED.—In any covered action, this Act shall not apply to a year 2000 statement, concerning a year 2000 remediation product or service, expressly made in an offer to sell or in a solicitation (including an advertisement) by a seller, manufacturer, or provider, of that product or service unless, during the course of the offer or solicitation, the party making the offer or solicitation provides the following notice in accordance with section 4(d):

''Statements made to you in the course of this sale are subject to the Year 2000 Information and Readiness Disclosure Act (___ U.S.C. ___). In the case of a dispute, this Act may reduce your legal rights regarding the use of any such statements, unless otherwise specified by your contract or tariff.''.

(3) RULE OF CONSTRUCTION.—Nothing in this Act shall be construed to preclude any claims that are not based exclusively on year 2000 statements.

(c) DUTY OR STANDARD OF CARE.—

(1) IN GENERAL.—This Act shall not impose upon the maker of any year 2000 statement any more stringent obligation, duty, or standard of care than is otherwise applicable under any other Federal law or State law.

(2) ADDITIONAL DISCLOSURE.—This Act does not preclude any party from making or providing any additional disclosure, disclaimer, or similar provisions in connection with any year 2000 readiness disclosure or year 2000 statement.

(3) DUTY OF CARE.—This Act shall not be deemed to alter any standard or duty of care owed by a fiduciary, as defined or determined by applicable Federal or State law.

(d) INTELLECTUAL PROPERTY RIGHTS.—This Act does not affect, abrogate, amend, or alter any right in a patent, copyright, semiconductor mask work, trade secret, trade name, trademark, or service mark, under any Federal or State law.

(e) INJUNCTIVE RELIEF.—Nothing in this Act shall be deemed to preclude a claimant from seeking injunctive relief with respect to a year 2000 statement.

SEC. 7. APPLICABILITY.

(a) EFFECTIVE DATE.—

(1) IN GENERAL.—Except as otherwise provided in this section, this Act shall become effective on the date of enactment of this Act.

(2) APPLICATION TO LAWSUITS PENDING.—This Act shall not affect or apply to any lawsuit pending on July 14, 1998.

(3) APPLICATION TO STATEMENTS AND DISCLOSURES.—Except as provided in subsection (b)—

(A) this Act shall apply to any year 2000 statement made beginning on July 14, 1998 and ending on July 14, 2001; and

(B) this Act shall apply to any year 2000 readiness disclosure made beginning on the date of enactment of this Act and ending on July 14, 2001.

(b) PREVIOUSLY MADE READINESS DISCLOSURE.—

(1) IN GENERAL.—For the purposes of section 4(a), a person or entity that issued or published a year 2000 statement after January 1, 1996, and before the date of enactment of this Act, may designate that year 2000 statement as a year 2000 readiness disclosure if—

(A) the year 2000 statement complied with the requirements of section 3(9) when made, other than being clearly designated on its face as a disclosure; and

(B) within 45 days after the date of enactment of this Act, the person or entity seeking the designation—

(i) provides individual notice that meets the requirements of paragraph (2) to all recipients of the applicable year 2000 statement; or

(ii) prominently posts notice that meets the requirements of paragraph (2) on its year 2000 Internet website, commencing prior to the end of the 45-day period under this subparagraph and extending for a minimum of 45 consecutive days and also by using the same method of notification used to originally provide the applicable year 2000 statement.

(2) REQUIREMENTS.—A notice under paragraph (1)(B) shall—

(A) state that the year 2000 statement that is the subject of the notice is being designated a year 2000 readiness disclosure; and

(B) include a copy of the year 2000 statement with a legend labeling the statement as a ''Year 2000 Readiness Disclosure''.

(c) EXCEPTION.—No designation of a year 2000 statement as a year 2000 readiness disclosure under subsection (b) shall apply with respect to any person or entity that—

(1) proves, by clear and convincing evidence, that it relied on the year 2000 statement prior to the receipt of notice described above and it would be prejudiced by the retroactive designation of the year 2000 statement as a year 2000 readiness disclosure; and

(2) provides to the person or entity seeking the designation a written notice objecting to the designation within 45 days after receipt of individual notice under subsection (b)(1)(B)(i), or within 180 days after the date of enactment of this Act, in the case of notice provided under subsection (b)(1)(B)(ii).

SEC. 8. YEAR 2000 COUNCIL WORKING GROUPS.

(a) IN GENERAL.—

(1) WORKING GROUPS.—The President's Year 2000 Council (referred to in this section as the ''Council'') may establish and terminate working groups composed of Federal employees who will engage outside organizations in discussions to address the year 2000 problems identified in section 2(a)(1) to share information related to year 2000 readiness, and otherwise to serve the purposes of this Act.

(2) LIST OF GROUPS.—The Council shall maintain and make available to the public a printed and electronic list of the working groups, the members of each working group, and a point of contact, together with an address, telephone number, and electronic mail address for the point of contact, for each working group created under this section.

(3) BALANCE.—The Council shall seek to achieve a balance of participation and representation among the working groups.

(4) ATTENDANCE.—The Council shall maintain and make available to the public a printed and electronic list of working group members who attend each meeting of a working group as well as any other individuals or organizations participating in each meeting.

(5) MEETINGS.—Each meeting of a working group shall be announced in advance in accordance with procedures established by the Council. The Council shall encourage working groups to hold meetings open to the public to the extent feasible and consistent with the activities of the Council and the purposes of this Act.

(b) FACA.—The Federal Advisory Committee Act (5 U.S.C. App.) shall not apply to the working groups established under this section.

(c) PRIVATE RIGHT OF ACTION.—This section creates no private right of action to sue for enforcement of the provisions of this section.

(d) EXPIRATION.—The authority conferred by this section shall expire on December 31, 2000.

SEC. 9. NATIONAL INFORMATION CLEARINGHOUSE AND WEBSITE.

(a) NATIONAL WEBSITE.—

(1) IN GENERAL.—The Administrator of General Services shall create and maintain until July 14, 2002, a national year 2000 website, and promote its availability, designed to assist consumers, small business, and local governments in obtaining information from other governmental websites, hotlines, or information clearinghouses about year 2000 Processing of computers, systems, products and services, including websites maintained by independent agencies and other departments.

(2) CONSULTATION.—In creating the national year 2000 website, the Administrator of General Services shall consult with—

(A) the Director of the Office of Management and Budget;

(B) the Administrator of the Small Business Administration;

(C) the Consumer Product Safety Commission;

(D) officials of State and local governments;

(E) the Director of the National Institute of Standards and Technology;

(F) representatives of consumer and industry groups; and

(G) representatives of other entities, as determined appropriate.

(b) REPORT.—The Administrator of General Services shall submit a report to the Committees on the Judiciary of the Senate and the House of Representatives and the Committee on Governmental Affairs of the Senate and the Committee on Government Reform and Oversight of the House of Representatives not later than 60 days after the date of enactment of this Act regarding planning to comply with the requirements of this section.

The title was amended so as to read: ''To encourage the disclosure and exchange of information about computer processing problems, solutions, test practices and test results, and related matters in connection with the transition to the year 2000.''

MEASURE READ THE FIRST TIME—H.R. 4579

Mr. ROBERTS. Mr. President, I understand that H.R. 4579 has arrived from the House and is at the desk. I now ask for its first reading.

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

A bill (H.R. 4579) to provide tax relief for individuals, families, and farming and other small businesses, to provide tax incentives for education, to extend certain expiring provisions, to amend the Social Security Act to establish the Protect Social Security Account into which the Secretary of the Treasury shall deposit budget surpluses until a reform measure is enacted to ensure the long-term solvency of the OASDI trust funds, and for other purposes.

Mr. ROBERTS. I now ask for its second reading and would object to my own request.

The PRESIDING OFFICER. The objection is heard.

The bill will be read the second time on the next legislative day.

CONVICTED PERSONS BENEFITS CORRECTION

Mr. ROBERTS. Mr. President, I ask unanimous consent that the Senate now proceed to the consideration of calendar No. 534, H.R. 3096.

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

A bill (H.R. 3096) to correct a provision relating to termination of benefits for convicted persons.

The PRESIDING OFFICER. Is there objection to the immediate consideration of the bill?

There being no objection, the Senate proceeded to consider the bill.

Mr. ROBERTS. Mr. President, I ask unanimous consent that the bill be considered read the 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.

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

The bill (H.R. 3096) was considered read the third time, and passed.

ORDERS FOR TUESDAY, SEPTEMBER 29, 1998

Mr. ROBERTS. Mr. President, I ask unanimous consent that when the Senate completes its business today, it stand in adjournment until 10 a.m. on Tuesday, September 30. I further ask that when the Senate reconvenes on Tuesday, immediately following the prayer, the Journal of the proceedings be approved, no resolutions come over under the rule, the call of the calendar be waived, the morning hour be deemed to have expired, and the time for the two leaders be reserved.

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

Mr. ROBERTS. Mr. President, I further ask consent that the Senate stand in recess from 12:30 to 2:15 p.m. to allow the weekly party caucuses to meet.

PROGRAM

Mr. ROBERTS. Mr. President, for the information of all Senators, when the Senate reconvenes on Tuesday at 10 a.m., there will be a period of debate until approximately 10:40 a.m. in relation to the Higher Education and Department of Defense conference reports. At the conclusion of that debate time, the Senate will proceed to three stacked votes, the first on adoption of the Higher Education conference report, followed by a vote on adoption of the Defense Appropriations conference report, followed by a cloture vote on the motion to proceed to the Internet tax bill. Following those votes, the Senate will begin a period of morning business until 12:30 p.m. and then recess until 2:15 p.m. to allow the weekly party caucuses to meet. After the caucus meetings, the Senate will resume morning business until 3:15 p.m., at which time the Senate could consider any legislative or executive items cleared for action. The leader would like to remind all Members that there will be no votes on Tuesday afternoon and all day Wednesday in observance of the Jewish holiday.

ADJOURNMENT UNTIL 10 A.M. TOMORROW

Mr. ROBERTS. Mr. President, if there is no further business to come before the Senate, I now ask that the Senate stand in adjournment under the previous order.

There being no objection, the Senate, at 6:49 p.m., adjourned until Tuesday, September 29, 1998, at 10 a.m.

NOMINATIONS

Executive nominations received by the Senate September 28, 1998:

THE JUDICIARY

ALEX R. MUNSON, OF THE NORTHERN MARIANA ISLANDS, TO BE JUDGE FOR THE DISTRICT COURT FOR THE NORTHERN MARIANA ISLANDS FOR A TERM OF TEN YEARS. (REAPPOINTMENT)

EDWARD J. DAMICH, OF VIRGINIA, TO BE A JUDGE OF THE UNITED STATES COURT OF FEDERAL CLAIMS FOR TERM OF FIFTEEN YEARS, VICE JAMES F. MEROW, TERM EXPIRED.

NANCY B. FIRESTONE, OF VIRGINIA, TO BE A JUDGE OF THE UNITED STATES COURT OF FEDERAL CLAIMS FOR A TERM OF FIFTEEN YEARS, VICE MOODY R. TIDWELL III, TERM EXPIRED.

EMILY CLARK HEWITT, OF MASSACHUSETTS, TO BE A JUDGE OF THE UNITED STATES COURT OF FEDERAL CLAIMS FOR A TERM OF FIFTEEN YEARS, VICE ROBERT J. YOCK, TERM EXPIRED.

CONFIRMATIONS

Executive nominations confirmed by the Senate September 28, 1998:

DEPARTMENT OF STATE

STEVEN ROBERT MANN, OF PENNSYLVANIA, A CAREER MEMBER OF THE SENIOR FOREIGN SERVICE, CLASS OF COUNSELOR, TO BE AMBASSADOR EXTRAORDINARY AND PLENIPOTENTIARY OF THE UNITED STATES OF AMERICA TO THE REPUBLIC OF TURKMENISTAN.

ELIZABETH DAVENPORT MCKUNE, OF VIRGINIA, A CAREER MEMBER OF THE SENIOR FOREIGN SERVICE, CLASS OF COUNSELOR, TO BE AMBASSADOR EXTRAORDINARY AND PLENIPOTENTIARY OF THE UNITED STATES OF AMERICA TO THE STATE OF QATAR.

MELISSA FOELSCH WELLS, OF CONNECTICUT, A CAREER MEMBER OF THE SENIOR FOREIGN SERVICE, CLASS OF CAREER MINISTER, TO BE AMBASSADOR EXTRAORDINARY AND PLENIPOTENTIARY OF THE UNITED STATES OF AMERICA TO THE REPUBLIC OF ESTONIA.

RICHARD E. HECKLINGER, OF VIRGINIA, A CAREER MEMBER OF THE SENIOR FOREIGN SERVICE, CLASS OF MINISTER-COUNSELOR, TO BE AMBASSADOR EXTRAORDINARY AND PLENIPOTENTIARY OF THE UNITED STATES OF AMERICA TO THE KINGDOM OF THAILAND.

THEODORE H. KATTOUF, OF MARYLAND, A CAREER MEMBER OF THE SENIOR FOREIGN SERVICE, CLASS OF MINISTER-COUNSELOR, TO BE AMBASSADOR EXTRAORDINARY AND PLENIPOTENTIARY OF THE UNITED STATES OF AMERICA TO THE UNITED ARAB EMIRATES.

FEDERAL EMERGENCY MANAGEMENT AGENCY

ROBERT M. WALKER, OF TENNESSEE, TO BE DEPUTY DIRECTOR OF THE FEDERAL EMERGENCY MANAGEMENT AGENCY.

THE ABOVE NOMINATIONS WERE APPROVED SUBJECT TO THE NOMINEES' COMMITMENT TO RESPOND TO REQUESTS TO APPEAR AND TESTIFY BEFORE ANY DULY CONSTITUTED COMMITTEE OF THE SENATE.

THE JUDICIARY

CARL J. BARBIER, OF LOUISIANA, TO BE UNITED STATES DISTRICT JUDGE FOR THE EASTERN DISTRICT OF LOUISIANA.

GERALD BRUCE LEE, OF VIRGINIA, TO BE UNITED STATES DISTRICT JUDGE FOR THE EASTERN DISTRICT OF VIRGINIA.

PATRICIA A. SEITZ, OF FLORIDA, TO BE UNITED STATES DISTRICT JUDGE FOR THE SOUTHERN DISTRICT OF FLORIDA.

WILLIAM B. TRAXLER, JR., OF SOUTH CAROLINA, TO BE UNITED STATES CIRCUIT JUDGE FOR THE FOURTH CIRCUIT.