The House met at 10 a.m. The Chaplain, Rev. James David Ford, D.D., offered the following prayer:

O God, our help in ages past, our hope for years to come, we pray that You would give to us and all people the gifts of the spirit of knowledge and understanding, of gratitude and praise, of wisdom and tolerance, of justice and mercy, and of peace and goodwill. It is our petition that we would open our hearts to Your love and our souls to Your grace so that we honor You by our words and deeds and serve the people of this Nation with dignity. As You have created a whole world by Your hand, O gracious God, so recreate us in the spirit of reconciliation and unity that together as a nation we will be the people You would have us be. This is our earnest prayer. Amen.

THE JOURNAL

The SPEAKER. The Chair has examined the Journial of the last day’s proceedings and announces to the House his approval thereof.

Pursuant to clause 1, rule 1, the Journial stands approved.

Mr. SOLOMON. Mr. Speaker, pursuant to clause 1, rule 1, I demand a vote on agreeing to the Speaker’s approval of the Journial.

The SPEAKER. The question is on the Chair’s approval of the Journial.

The question was taken; and the Speaker announced that the ayes appeared to have it.

Mr. SOLOMON. Mr. Speaker, I object to the vote on the ground that a quorum is not present and make the point of order that a quorum is not present.

The SPEAKER. Evidently a quorum is not present.

The Sergeant at Arms will notify absent Members.

The vote was taken by electronic device, and there were—yeas 325, nays 72, as follows:

[Roll No. 495]

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Answered “present” 9, not voting 28, as follows:

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| Cooksey     |
| Cox         |
| Coyne       |
| Cromer      |
| Crapo       |
| Cubin       |
| Cummings    |
| Danner      |
| Davis (IL)  |
| Davis (VA)  |
| Deal        |
| DeGette     |
| DeHaulst    |
| Del.auro    |
| Dickey      |
| Dicks       |
| Dingell     |
| Doggett     |
| Dooley      |
| Doolittle   |
| Doyle       |
| Dreher      |
| Dunn        |
| Edwards     |
| Ehlers      |
| Ehrling     |
| Emerson     |
| Eshoo       |
| Etheridge   |
| Evans       |
| Everett    |
| Ewing       |
| Farr        |
| Fawell      |
| Foley       |
| Forbes      |
| Ford        |
| Fossettia  |
| Fowler      |
| Fraus (N.J.) |
| Frelinghuysen|
| Frost       |
| Galagly    |
| Ganske      |
| Gedjenson  |
| Gekas       |
| Gilchrest  |
| Gillmor    |
| Gilman     |
| Gonzalez   |
| Goode      |
| Goodlette  |
| Goodling   |

Ordered that the ayes appear to have it.

Mr. SOLOMON. Mr. Speaker, I object to the vote on the ground that a quorum is not present and make the point of order that a quorum is not present.

The SPEAKER. Evidently a quorum is not present.

The Sergeant at Arms will notify absent Members.

The vote was taken by electronic device, and there were—yeas 325, nays 72, as follows:

[Roll No. 495]

| Linder      |
| Lipinski    |
| Livingston  |
| Lofgren     |
| Lowey       |
| Lucas       |
| Luther      |
| Maloney (NY) |
| Markay      |
| Mascara     |
| Matsul      |
| McCarthy (MO) |
| McCarthy (NY) |
| McCullom    |
| McKeon      |
| McHugh      |
| McIntosh    |
| McIntyre    |
| McKinney    |
| Meehan      |
| Mica        |
| Millender, McDonald |
| Miller (FL) |
| Minge       |
| Minke       |
| Moakley     |
| Moran (VA)  |
| Morgan      |
| Murtha      |
| Myrick      |
| Nader       |
| Neal        |
| Nethercutt  |
| Newman      |
| Ney         |
| Northup     |
| Norwood     |
| Nussle      |
| Ortiz       |
| Owens       |
| Oxley       |
| Packard     |
| Pappas      |
| Parker      |
| Pascrell    |
| Pastor      |

Ordered that the ayes appear to have it.
The SPEAKER pro tempore (Mr. S. O. LOMBARDO) announced as above recorded.

The message also announced that the Senate had passed with amendments in which the concurrence of the House is requested, a bill of the House of the following title:

H.R. 2795. An act to extend certain authorities contained in those Acts through fiscal year 2003, and for other purposes.

The message also announced that the Senate 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. 3574). "An Act to amend the National School Lunch Act and the Child Nutrition Act of 1966 to provide children with increased access to food and nutrition assistance, to simplify program operations and improve program management, to extend certain authorities contained in those Acts through fiscal year 2003, and for other purposes."

So the J. journal was approved. The result of the vote was announced as Clerk announced as above recorded.

PERSONAL EXPLANATION

Mr. HINOJOSA. Mr. Speaker, during rollcall vote No. 495 on the Journal I was unavoidably detained. Had I been present, I would have voted "yes."

PLEDGE OF ALLEGIANCE

The SPEAKER pro tempore (Mr. L. HOOCH) will the gentleman from New York (Mr. S. O. LOMBARDO) come forward and lead the House in the Pledge of Allegiance.

Mr. S. O. LOMBARDO led the Pledge of Allegiance as follows:

I pledge allegiance to the Flag of the United States of America, and to the Republic for which it stands, one nation under God, indivisible, with liberty and justice for all.

MESSAGE FROM THE SENATE

A message from the Senate by Mr. LUNDRIGAN, one of its clerks, announced that the Senate had passed without amendment bills of the House of the following titles:

H.R. 678. An act to require the Secretary of the Treasury to mint coins in commemoration of Thomas Alva Edison and the 125th anniversary of his birth.

H.R. 1659. An act to provide for the expedited completion of the acquisition of private mineral interests within the Mount St. Helens National Volcanic Monument mandated by the 1982 Act that established the Monument, and for other purposes.

H.R. 2000. An act to amend the Alaska Native Claims Settlement Act to make certain clarifications to the land bank protection provisions, and for other purposes.

H.R. 2411. An act to provide for a land exchange involving the Cape Cod National Seashore and to extend the authority for the Cape Cod National Seashore Advisory Commission.

H.R. 2795. An act to extend certain contracts between the Bureau of Reclamation and irrigation water contractors in Wyoming and Nebraska that receive water from Glendo Reservoir.

H.R. 4079. An act to authorize the construction of temperature control devices at Delta Dam.

H.R. 4081. An act to extend the deadline under the Federal Power Act applicable to the construction of a hydroelectric project in the State of Kansas.

H.R. 4166. An act to amend the Idaho Admission Act regarding the sale or lease of school land.

H.R. 4655. An act to establish a program to support a transition to democracy in Iraq.

The message also announced that the Senate passed bills of the following titles in which concurrence of the House is requested:

S. 736. An act to convey certain real property within the Carlsbad Project in New Mexico to the Carlsbad Irrigation District.

S. 744. An act to authorize the construction of the Fall River Water Users District Rural Water System and authorize financial assistance to the Fall River Water Users District, a non-profit corporation, in the planning and construction of the water supply system, and for other purposes.

S. 1175. An act to reauthorize the Delaware Water Gap National Recreation Area Citizen Advisory Commission for 10 additional years.

S. 1637. An act to expedite State review of criminal records of applicants for bail enforcement officer employment, and for other purposes.

S. 1641. An act to direct the Secretary of the Interior to study alternatives for establishing a national historic trail to commemorate and interpret the history of women’s rights in the United States.

S. 2011. An act to amend the Reclamation Project Authorization Act in a manner to provide for better planning and design and to reduce administrative errors.

S. 2016. An act to amend the act that established the George Washington Birthplace National Monument.

S. 2117. An act to authorize the construction of the Perkins County Rural Water System and authorize financial assistance to the Perkins County Rural Water System, Inc., a nonprofit corporation, in the planning and construction of the water supply system, and for other purposes.

S. 2140. An act to amend the Reclamation Projects Authorization and Adjustment Act of 1992 to authorize the Secretary of the Interior to participate in the design, planning, and construction of the Denver Water Reuse Project.

S. 2142. An act to authorize the Secretary of the Interior to convey the facilities of the Pine River Project, to allow jurisdictional transfers of lands between the Department of Agriculture, Forest Service, and the Department of the Interior, Bureau of Reclamation, and the Bureau of Indian Affairs, and for other purposes.


S. 2339. An act to revise the boundary of Fort Matanzas National Monument, and for other purposes.

S. 2340. An act to establish the Adams National Historical Park in the Commonwealth of Massachusetts, and for other purposes.

S. 2341. An act to provide for the acquisition of lands formerly occupied by the Franklin D. Roosevelt family at Hyde Park, New York, and for other purposes.

S. 2256. An act to amend the Act which established the Federal Law Olmsted National Historic Site, in the Commonwealth of Massachusetts, by modifying the boundary, and for other purposes.

S. 2247. An act to permit the payment of medical expenses incurred by the United States Park Police in the performance of duty to be made directly by the National Park Service, and for other purposes.

S. 2248. An act to allow for waiver and indemnification in mutual law enforcement agreements between the National Park Service and a State or political subdivision, when required by State law, and for other purposes.

S. 2257. An act to reauthorize the National Historic Preservation Act.

S. 2294. An act to establish the Minuteman Missile National Historic Site in the State of South Dakota, and for other purposes.

S. 2266. An act to establish a commission, in honor of the 250th Anniversary of the Seneca Falls Convention, to further protect sites of importance in the historic efforts to secure equal rights for women.

S. 2309. An act to authorize the Secretary of the Interior to enter into an agreement for the construction and operation of the Gateway Visitor Center at Independence National Historical Park.

S. 2468. An act to designate the Biscayne National Park Visitor Center as the Dante Fascell Visitor Center.

ANNOUNCEMENT BY THE SPEAKER PRO TEMPORE

The SPEAKER pro tempore. Pursuant to the provisions of House Resolution 577, the Chair announces that he has designated this time for the taking of the official photo of the House of Representatives in session. The House will be in a brief recess while the Chamber is being prepared for the photo. The Members will please remain in place when the photographs are taken. Members will please face the camera. The process will take approximately 25 minutes. Following completion of this time, the House will proceed with the business of the House.

RECESS

The SPEAKER pro tempore. Pursuant to clause 12 of rule I, the Chair declares the House in recess until approximately 10:50 a.m.
Accordingly (at 10 o'clock and 23 minutes a.m.), the House stood in recess until approximately 10:55 a.m.)

REQUEST TO EXTEND DEBATE ON IMPEACHMENT INQUIRY RESOLUTION

☐ 1055

Mr. CONYERS. Mr. Speaker, I ask unanimous consent that the debate on House Resolution 581 regarding proceeding with an impeachment inquiry be expanded to the time of 8 hours.

The SPEAKER. The Chair is constrained not to recognize the gentleman for that purpose at this time.

AUTHORIZING THE COMMITTEE ON THE JUDICIARY TO INVESTIGATE WHETHER SUFFICIENT GROUNDS EXIST FOR THE IMPEACHMENT OF WILLIAM JEFFERSON CLINTON, PRESIDENT OF THE UNITED STATES

Mr. HYDE. Mr. Speaker, by direction of the Committee on the Judiciary, I call up H. Res. 581, and ask for its immediate consideration.

The Clerk read the resolution, as follows:

H. RES. 581

Resolved, That the Committee on the Judiciary, acting as a whole or by any subcommittee thereof appointed by the chairman for the purposes hereof and in accordance with the rules of the committee, is authorized and directed to investigate fully and completely whether sufficient grounds exist for the House of Representatives to exercise its constitutional power to impeach William Jefferson Clinton, President of the United States of America. The committee shall report to the House of Representatives such resolutions, articles of impeachment, or other recommendations as it deems proper.

Sec. 2. (a) For the purpose of making such investigation, the committee is authorized to require—

(1) by subpoena or otherwise—

(A) the attendance and testimony of any person (including at a taking of a deposition by counsel for the committee); and

(B) the production of such things; and

(2) by interrogatory, the furnishing of such information; as it deems necessary to such investigation.

(b) Such authority of the committee may be exercised—

(1) by the chairman and the ranking minority member acting jointly, or, if either declines, the other acting alone, except that in the event either so declines, either shall have the right to refer to the committee for decision the question whether such authority shall be so exercised and the committee shall be convened promptly to render that decision; or

(2) by the committee acting as a whole or by subcommittee.

Subpoenas and interrogatories so authorized may be issued over the signature of the chairman, or ranking minority member, or any member designated by either of them, and may be served on any person designated by the chairman, or ranking minority member, or any member designated by either of them. The chairman, or ranking minority member, or any member designated by either of them (or, with respect to any deposition, answer to interrogatory, or affidavit, any person authorized by law to administer oaths) may administer oaths to any witness. For the purposes of this section, "things" includes, without limitation, books, records, correspondence, logs, journals, memorandums, papers, documents, writings, drawings, graphs, charts, photographs, reproductions, recordings, tapes, transcripts, printouts, data compilations from which information can be obtained (translated if necessary, through detection devices into reasonably usable form), tangible objects, and other things of any nature.

The SPEAKER. The resolution, since reported from the Committee on the Judiciary, constitutes a question of privilege and may be called up at this time.

Mr. HYDE. Mr. Speaker, while the normal procedure grants 1 hour of debate on a privileged resolution, I propose doubting that time.

Therefore, I ask unanimous consent that I be recognized for 2 hours for the debate on H. Res. 581, 1 hour of which I intend to call up H. Res. 581 (Mr. CONYERS) for the purposes of debate only. And anybody on my side who was constrained to object, I hope they will withhold their objection so we can have the 2 hours of debate.

The SPEAKER. Is there objection to the request of the gentleman from Illinois?

Mr. CONYERS. Mr. Speaker, reserving the right to object, I appreciate the unanimous consent that is being put forward, and ask my friend, the distinguished gentleman from Illinois (Mr. HYDE), chairman of the Committee on the Judiciary, if he would add 2 hours to that request, please.

I understand the exigencies of the moment, but I have enormous pressure being put upon the ranking minority member for Members to merely have a chance to get in a brief expression on this historic occasion, and I ask that the gentleman give that his most generous consideration.

Mr. HYDE. Mr. Speaker, will the gentleman yield?

Mr. CONYERS. I yield to the gentleman from Illinois.

Mr. HYDE. Mr. Speaker, I thank the gentleman for yielding. I can only say that we have had extensive discussions and I am fearful that there would be several objections to that. So, I am constrained to offer the extra hour only and not go beyond that.

I would suggest a special order tonight where everybody can speak as long and as loudly as they want.

☐ 1100

Mr. CONYERS. Mr. Speaker, I withdraw my reservation of objection.

The SPEAKER. Is there objection to the request of the gentleman from Illinois?

There was no objection.

The SPEAKER. The gentleman from Illinois (Mr. HYDE) is recognized for 2 hours.

Mr. HYDE. Mr. Speaker, for purposes of debate only, I yield 1 hour to the distinguished minority ranking member on the Committee on the Judiciary, the gentleman from Michigan (Mr. CONYERS), pending which I yield myself such time as I may consume. During consideration of this resolution, all time yielded is for the purpose of debate only.

PARLIAMENTARY INQUIRY

Mr. EDWARDS. Mr. Speaker, considering the historical circumstance that the House has already established by unanimous consent the 2-hour time limit.

Mr. HYDE. Mr. Speaker, reserving the right to object.

The SPEAKER. There is no request to be objected to at this time, but the Chair would be glad to recognize the gentleman from Michigan (Mr. DINGELL) for a parliamentary inquiry.

Mr. DINGELL. Then I will make this a parliamentary inquiry, Mr. Speaker.

Why is it we are not being afforded more time to debate this? This is one of the most important questions—

The SPEAKER. That is not a parliamentary inquiry, but that might be raised during debate, if the gentleman gets time.

PARLIAMENTARY INQUIRY

Mr. ACKERMAN. Mr. Speaker, parliamentary inquiry. I would like to inquire if a unanimous consent request is in order.

The SPEAKER. That would not be in order at this time unless the gentleman from Illinois yielded for that purpose.

Mr. ACKERMAN. Mr. Speaker, will the gentleman yield?

The SPEAKER. The gentleman from Illinois (Mr. HYDE) controls the time.

Mr. ACKERMAN. Will the gentleman yield for a unanimous consent request?

Mr. HYDE. Mr. Speaker, I must insist on regular order or we will not get through with this, so I cannot yield for a unanimous consent request.

GENERAL LEAVE

Mr. HYDE. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days within which to revise and extend their remarks on House Resolution 581, the resolution now under consideration.

The SPEAKER. Is there objection to the request of the gentleman from Illinois?

Mr. ACKERMAN. Mr. Speaker, reserving the right to object, we are just asking for fairness.

The SPEAKER. Does the gentleman from New York (Mr. ACKERMAN) object?

Mr. ACKERMAN. In that case, Mr. Speaker, I object.

The SPEAKER. Objection is heard. The Chair recognizes the gentleman from Illinois (Mr. HYDE).
Mr. HYDE. Mr. Speaker, general leave was objected to?

The SPEAKER. General leave was objected to. The gentleman from Illinois (Mr. HYDE) controls the time and has yielded to himself.

Mr. HYDE. Mr. Speaker, I ask unanimous consent to revise and extend my remarks.

(Mr. HYDE asked and was given permission to revise and extend his remarks.)

Mr. HYDE. Mr. Speaker, today we will vote on an historic resolution to begin an inquiry into whether the President has committed impeachable offenses. All of us are pulled in many directions by our political parties, by philosophy and friendships; we are pulled by many competing forces, but mostly we are moved by our consciences. We must listen to that still small voice that whispers in our ear, duty, duty, duty.

Some years ago Douglas MacArthur, in a famous speech at West Point, asserted the ideal of our military forces as duty, honor and country. We do not have to look very far today to find the force of those words. They are our ideal here today as well.

We have another ideal here, to attain justice through the rule of law. Justice is always and everywhere under assault, and our duty is to vindicate the rule of law as the surest protector of that fragile justice.

And so here, today, having received the referral in 17 cartons of supportive materials from the Independent Counsel, the question asks itself: Shall we look further or shall we look away?

I respectfully suggest that we must look further by voting for this resolution and thus commencing an inquiry into whether or not the President has committed impeachable acts. We do not make any judgments, we do not make any charges, we simply begin a search for truth.

My message will hear from our opponents that, yes, we need to look further, but do it our way. Their way imposes artificial time limits, limits our inquiry to the Lewinsky matter, and requires us to establish standards for impeachment that have never been established before, certainly not in the Nixon impeachment proceedings, which we are trying to follow to the letter.

We have followed the Rodino format. We will move with all deliberate speed. Many of us are concerned about that proposition. Let me speak directly to those concerns. Some suggest the process to date has been partisan, yet every member of the Committee on the Judiciary voted for an inquiry in some form. We differ over the procedural details, not the fundamental question of whether we should go forward.

Many on the other side of the aisle worry that this inquiry will become an excuse for an open-ended attack on this administration. I understand that worry. During times when Republicans controlled the executive branch and I was in the minority, I lived where they are living now.

With that personal experience, I pledge to my colleagues the fairest and most expeditious search for the truth that I can muster. I do not expect that I will agree with my Democratic friends at each step along the way, but I know that to date we have agreed on many things. In fact, we have agreed on many more things than is generally known.

I hope at the end of this long day we will agree on the result. I am determined we will look every day for common ground and to agree where we can. When we must disagree, we will do everything we can to minimize those disagreements. At all times, civility must be the watch word for Members on both sides of the aisle. Too much hangs in the balance for us not to rise above partisan politics.

I will use all my strength to ensure that this inquiry does not become a distraction. Rather, I have determined that it will be a fair and expeditious search for truth. We have plenty enough to do now, we do not need to search for new material.

However, I cannot say that we will never address those facts, nor would it be responsible to do so. I do not know what the future holds. If substantial and credible evidence of other impeachable offenses comes to us, as the Independent Counsel hinted or suggested in a letter yesterday, the Constitution will demand that we do our duty. Like each of my colleagues, I took an oath to answer that call. I intend to do so, and I hope my colleagues will join with me if that comes.

We want to settle for less than the whole truth.

Some are concerned about timing. Believe me, nobody wants to end this any sooner than I do. But the Constitution demands that we take the amount of time necessary to do the right thing in the right way. A rush to judgment does not serve anybody’s interest, certainly not the public’s interest. As I have said publicly, my fervent hope is we can bring this to a close by the end of the year. That is my new year’s resolution. However, to agree to an artificial deadline would be irresponsible. It would only invite delay and discourage cooperation.

For those who worry about the timing, I urge them to do everything possible to encourage cooperation. No one likes to have their behavior questioned. The best way to end the questions is to answer them in a timely and truthful manner. If we are serious and thoughtful cooperation will do more than anything to put this matter behind us.

Mr. Speaker, I yield such time as he may consume to the gentleman from New York (Mr. SOLOMON.)

(Mr. SOLOMON asked and was given permission to revise and extend his remarks.)

Mr. SOLOMON. Mr. Speaker, I certainly thank the gentleman for yielding me this time, and I just rise in support of the resolution and to commend the Committee on the Judiciary.

Mr. Speaker, I rise in support of this resolution to authorize and direct the Committee on the Judiciary to investigate whether sufficient grounds exist to impeach the President of the United States.

I commend the Judiciary Committee for following the intent of the Rules Resolution, H. Res. 525, which passed the House overwhelmingly on September 11. That resolution instructed the Committee to carefully review and release the material in the independent Counsel’s report, expunging that material from the Independent Counsel’s report, expunging that material irrelevant or may interfere with ongoing investigations.

I would say to the Committee—you have judiciously carried out the instructions given to you by the House, and I commend you for it.

The public release of the material in that report, with appropriate redactions, was necessary to give Members of the House the ability to cast informed votes here on the floor today. Members of the House and the public, unfortunately, must have a dialogue about the contents of this report.

I believe that in approving the release of this material by such a large margin, the House relied on the traditional notion that an informed citizenry is critical to the success of our republic.

I support this resolution before the House today, let me say to the Members that regardless of your personal feelings about the President, whether political supporters or not, you have a constitutional obligation to set aside those feelings and cast your vote solely on the basis of whether you believe the evidence submitted to this House is sufficient grounds to undertake an impeachment inquiry.

Prior to today, I have withheld judgment and made no statements to the media regarding the substantive grounds for impeachment. However, I have reviewed the evidence in the report and I find it thorough, well-documented, and exhaustive in its corroborating detail.

After reviewing all of this evidence, I believe we have an overwhelming constitutional duty to vote to proceed with an inquiry.

For one I will continue to reserve judgment on whether articles of impeachment should be brought until after the Judiciary Committee has completed its investigation and sends a further recommendation to the House.

Mr. Speaker, today we should not determine whether to impeach the man who holds the Executive Office of the President. Rather, we should ratify the Judiciary Committee’s recommendation that there is enough evidence to formally ask that question.

In doing so, we affirm the grim charge handed down by the framers of the Constitution, to guard against degradation of the office by the man who happens to hold it.

During the debate on whether to include the impeachment clause in the Constitution at the convention, Governor Morris, a delegate from Pennsylvania, offered an amendment to strike the clause.

At the conclusion of the debate, he changed his mind and supported the impeachment clause and argued, “Our executive is not like a Magistrate having a life interest, much less like one having an hereditary interest in his office.”

With the unique idea of this constitutional clause as a foundation for our deliberation, our action here today affirms that we are not like the rest of the world.
I urge support for the resolution. Mr. HYDE. Mr. Speaker, I reserve the balance of my time.

Mr. CONYERS. Mr. Speaker, I yield myself 10 seconds.

I really want to say to the chairman of the Committee on the Judiciary, the gentleman from Illinois (Mr. HENRY HYDE), that I respect the fulsomeness and fairness of his statement. I know that he is a person of his word, and I hope that these processes within our committee and the Congress will follow along the lines that he has outlined so admirably.

Mr. Speaker, I yield 4½ minutes to the gentleman from Virginia (Mr. Rick BOUCHER), the principal architect of the alternative proposal to the motion on the floor that will be embodied in a motion to recommit. (Mr. BOUCHER asked and was given permission to revise and extend his remarks.)

Mr. BOUCHER. Mr. Speaker, I want to thank the gentleman from Michigan for yielding this time to me and commend him for the leadership that he has exerted as we have worked on this side in order to offer a fair and a balanced alternative to the resolution of inquiry.

At the conclusion of this debate, I will offer a motion to recommit the resolution offered by the gentleman from Illinois to the Committee on the Judiciary with the instruction that the committee immediately report back that resolution to the House with instructions that it contain our Democratic alternative.

While we would have preferred that Democrats have a normal opportunity to present our resolution as an amendment, the procedure that is being used by the House today does not make a Democratic amendment in regular course in order. The motion to recommit with instructions does, however, give us an opportunity to have the House adopt the Democratic plan.

The Democratic amendment is a resolution for a full and complete review by the Committee on the Judiciary of the material that has been presented to the House by the Office of Independent Counsel. The Republican resolution also provides for that full and complete review. The difference between the Democratic and the Republican approaches is only over the scope of the review. Mr. Speaker, I believe at this time that the review will take, and only over our insistence that the Committee on the Judiciary, in conducting its process, pay deference and become aware of the historical constitutional standard for impeachment that has evolved to us over the centuries and was recognized most recently by the Committee on the Judiciary in 1974 and then recognized by the full House of Representatives.

The public interest requires a fair and deliberate inquiry in this matter. Our resolution provides for that fair and deliberate inquiry. But the public interest also requires an appropriate boundary on the scope of the inquiry. It should not become an invitation for a free-ranging fishing expedition, subjecting to a formal impeachment inquiry matters that are not before the Congress today. The potential for such a venture should be strictly limited by the resolution adopted by the House, and our Democratic proposal contains those appropriate limits. It would subject to the inquiry the material presented to us by the office of Independent Counsel, which is the only material before the House today.

The public interest requires that the matter be brought to conclusion at the earliest possible time; that is, consistent with a thorough and complete review. The country has already undergone substantial trauma. If the committee carries this work beyond the time that is reasonably needed to conduct its complete and thorough review, that inquiry to the Nation will only deepen. We should be thorough, but we should also be prompt.

Mr. Speaker, given that the facts of this matter are generally well-known, given that there are only a handful of witnesses who have relevant information that can be addressed in this inquiry, and given the further fact that most of those witnesses have already been the subject of extensive review by the Grand Jury, and their testimony is available, this inquiry can, in fact, be prompt. The committee's work should not extend into next year. A careful and thorough review can be accomplished between now and the end of this year, and our Democratic resolution provides that appropriate limitation on time.

The resolution requires that the committee hold hearings on the constitutional standard for impeachment, which was clearly stated in the conclusion of the committee's report in the Watergate years of 1974. Our substitute then directs that the committee compare the facts that are stated in the referral of the Independent Counsel to the historical constitutional standard and, if any facts rise to the level of impeachable conduct, that material would then be submitted to the thorough inquiry and review process contained within our resolution.

Under the resolution that we are putting forth, the committee will begin its work on the 12th day of October, that is next Monday, and will conclude all proceedings, including the consideration of recommendations, during the month of December.

There would be ample time for the House of Representatives to consider those recommendations and conclude its work by the end of this year.

The procedure we are recommending is fair, it is thorough, it is prompt. It is a recommendation for an inquiry. It is a recommendation for a speedy inquiry. It would give deference to the historical constitutional standard for impeachment, and it would assure that this matter is put behind us so the Nation can proceed with its very important business by the end of this year.

Mr. HYDE. Mr. Speaker, I yield 2 minutes to the distinguished gentleman from Wisconsin (Mr. SENSENBRINNER), a member of the committee.

Mr. SENSENBRINNER. Mr. Speaker, I rise in support of the resolution of inquiry.

At Monday's meeting of the Committee on the Judiciary, Investigative Counsel David Shippers informed the committee that the material received to date shows that the President may have committed 15 felonies. These alleged felonies were in the course of the President's successfully defeating Paula Jones' civil rights lawsuit, to the conclusion that, given the evidence that she had the right to pursue. The President denies all these allegations. Obviously someone is telling the truth and someone is lying.

The Committee on the Judiciary must be given the power to decide this issue. What is at stake here is the rule of law. Even the President of the United States has no right to break the law. If the House votes down this inquiry, in effect, it will say that even if President Clinton committed as many as 15 felonies, not one will be prosecuted. The result will be a return to the imperial presidency of the Nixon era where the White House felt that the laws did not apply to them, since they never would be punished. That would be a national tragedy of immense consequences.

Vote for the resolution. Let the Committee on the Judiciary try to find the truth.

Mr. CONYERS. Mr. Speaker, I yield 3 minutes to the able gentleman from New York (Mr. SCHUMER), a senior member of our Committee on the Judiciary.

Mr. SCHUMER. Mr. Speaker, I thank the gentleman for yielding time.

Mr. Speaker, this is a serious and solemn matter. After a careful reading of the Starr report and other materials submitted by the Office of Independent Counsel as well as a study of the origins and history of the impeachment clause of the Constitution, I, have come to this conclusion: If the evidence before us, while the President deserves significant punishment, there is no basis for impeachment of the President and it is time to move on and solve the problems facing the American people like health care, education, social security, and protecting seniors' retirement.

To me, Mr. Speaker, it is clear that the President lied when he testified before the grand jury not to cover a crime but to cover embarrassing personal behavior. While it is true that in ordinary circumstances and in most instances an ordinary person would not be punished for lying about an extra-marital affair, the President has to be held to a higher standard and must be held accountable. But high crimes and misdemeanors, as defined in the Constitution and as amplified by the Federalist Papers and Justice Story, have always been intended to apply to public
actions relating to or affecting the operation of the government, not to personal or private conduct.

That said, the punishment for lying about an improper sexual relationship should fit the crime. Censure or rebuke is the party improper. Impeachment is not. It is time to move forward, not have the Congress and American people endure the specter of what could be a year-long focus on a tawdry but not impeachable affair. Today, when the world economy is in crisis and cries out for American leadership, without which worldwide turmoil is a grave possibility. The American people cry out for us to solve the problems facing them. This investigation, now in its fifth year, has run its course. It is time to move on.

Mr. HYDE. Mr. Speaker, I yield 3 minutes to the distinguished gentleman from Pennsylvania (Mr. MCHALE).

Mr. MCHALE. Mr. Speaker, Franklin Roosevelt once said that "the presidency is preeminently a place of moral leadership."

I want my strong criticism of President Clinton to be placed in context. I voted for President Clinton in 1992 and 1996. I believed him to be the "Man from Hope" as he was depicted in his 1992 campaign video. I have voted for more than three-fourths of the President's legislative agenda and I would do so again, blunt criticism. The President has always done what was right and what was fair. He has always treated me with courtesy and respect and he has been more than responsive to the concerns of my constituents.

Unfortunately, the President's misconduct has now made immaterial my past support or agreement with him on issues. Last January 17, the President of the United States attempted to cover up a sordid and irresponsible relationship by repeated deceit under oath in a Federal civil rights suit. Contrary to his public statement, his answers were not "legally accurate," they were intentionally and blatantly false. He allowed his lawyer to make arguments to the court based on an affidavit that the President knew to be false. The President later deceived the American people and belatedly admitted the truth only when confronted some 7 months later by a mountain of irrefutable evidence. I am convinced that the President would otherwise have allowed his false testimony to stand in perpetuity.

What is at stake is really the rule of law. When the President took an oath to tell the truth, he was no different at that point from any other citizen, both as a matter of morality and as a matter of legal obligation. We cannot excuse that kind of misconduct because we happen to belong to the same party as the President or agree with him on issues or feel tragically that the removal of the President from office would be enormously painful for the United States of America. The question is whether or not we will say to all of our citizens, including the President of the United States, when you take an oath, you must keep it.

Having deliberately provided false testimony under oath, the President in my judgment has committed a breach of his obligation to the American people. It was with a deep sense of sadness that I called for his resignation. By his own misconduct, the President displayed his character and he defined it badly. His actions were not "inappropriate." They were predatory, reckless, unethical, and illegal. He was already a defendant in a sexual harassment suit, whether or not that suit was politically motivated.

And if in disgust or dismay we were to sweep aside the President's immoral and illegal conduct, what dangerous precedent would we set for the abuse of power by some future President of the United States?

We cannot define the President's character. But we must define the Nation's hour of choice on an affirmative vote on the resolution.

Mr. CONYERS. Mr. Speaker, I yield 2½ minutes to the gentleman from New York (Mr. NADLER), who coauthored the alternative proposal that we should shut down the Starr investigation.

Mr. NADLER. Mr. Speaker, the issue in the potential impeachment is whether to overturn the results of a national election, the free expression of the popular will of the American people. It is an enormous responsibility, and an extraordinary power. It is not one that should be exercised lightly. It is certainly not one which should be exercised in a manner in which or would be perceived to be unfair or partisan.

The work of this House during the Nixon impeachment investigation commanded the respect and support of the American people. A broad consensus that President Nixon had to go was developed precisely because the process was fair, and I hope that the leadership of both parties would be sending out messages to the Members that whatever they are doing, they ought to drop it and get their tails here.

Mr. HYDE. Mr. Speaker, I yield 2½ minutes to the distinguished gentleman from Florida (Mr. CANADY), a member of the committee.

Mr. CANADY of Florida. Mr. Speaker, I rise today to support the impeachment inquiry resolution of the Committee on the Judiciary, a resolution which ensures that we expeditiously deal with the serious charges against the President in a process that is fair, thoughtful and deliberate.

In this resolution, we followed the pattern and procedures established in the Nixon impeachment inquiry. This model served the House well in the Nixon case. It has stood the test of time and there is no reason that we should abandon this model now. The resolution seeks to reject the unprecedented Democratic alternative with its unwise, arbitrary and unrealistic limitations and restrictions on the ability of the Committee on the Judiciary to
Mr. HYDE. Mr. Speaker, I yield 2 minutes to the distinguished gentleman from Arkansas (Mr. HUTCHINSON).

Mr. HUTCHINSON. Mr. Speaker, today we are considering a resolution of inquiry into the conduct of the President. It is not about a person, but it is about the rule of law. Each of us took a simple oath to uphold the Constitution of the United States. The Constitution provides a path to follow in these circumstances. The path may not be well worn, but it is clear, and we will be wise to follow it rather than to concoct our own ideas on how to proceed.

The gentleman from New York concluded that the President has lied under oath, that he should be punished, but he should not be impeached. The gentleman is way ahead in his conclusion of where this process should be and where I am. I would say that this process is not about punishment. The purpose of this process is to examine the public trust, and, if it is breached, to repair it.

We have been referred serious charges of perjury, obstruction of justice and abuse of power. The President and his lawyers have denied each of these charges, as is his right to do. Our response should be that we need to examine these facts to determine the truth and to weigh the evidence, and it is our highest duty today to vote for individuals who do this inquiry so that, if the result is there are no impeachable offenses, we can move on, but if there is more to be done, we can be sure that the rule of law will not be suspended or ignored by this Congress.

The Watergate model was chosen because that was what was demanded by my friends from across the aisle. This resolution does not direct the committee to go into any additional areas, but it does give the committee the authority to carry on its responsibility and to bring this matter to a conclusion without further delay.

It is my firm commitment, as an American, as an American and as someone who has tried to work with my colleagues from both side of the aisle, to be fair in every way in the search for the truth. Did the President participate in a scheme to obstruct justice? Did the President commit perjury? Do these allegations, if proven, constitute impeachable offenses? We can answer these questions in a fair and bipartisan manner, and that is my commitment.

People say this is not Watergate. That is true. Every case is different. But the rule of law and our obligation to it does not change. They do not change because of position, personalities or power. The rule of law and justice depends upon this truth.

I ask my colleagues to support the resolution.

Mr. CONYERS. Mr. Speaker, I yield 1½ minutes to the gentleman from Wisconsin (Mr. BARRETT).

Mr. BARRETT of Wisconsin. Mr. Speaker, many of the President’s actions were wrong. In fact, they were indefensible. But our role today is not to attack him. Our role today is to make sure that this process is defendable.

And this is not a defendable process. This Chamber spent a day, a little more than a day, debating renaming an airport, and we are spending 2 hours on deciding the future of this Presidency. That is unfair.

There should be an inquiry; we should move on. But it has to be fair, and what we are seeing today is not fair, it is not focused.

We have a report from Kenneth Starr. We should focus our inquiry on the report and any subsequent matters Ken Starr brings us.

We should have a target date of completion. We should aim to finish this by December 31. And if we cannot get it done, we can ask for an extension, and that can happen.

But the American people want this to be a fair process, and they are not stupid, and they recognize that this is not a fair process. The President may be punished, the President should be held accountable for how we spend our time, and we have a duty, each and every person in this Chamber has a duty, to do that in a fair way.

And I think each of us has to examine our conscience and ask whether we want to have a wide-ranging fishing expedition or whether we want to focus it on the report that has been brought to us and any subsequent matters the special prosecutor brings to us. If we do that, I think we can do that on a bipartisan basis, and I think that will be fair, and that is what the American people want.

Mr. HYDE. Mr. Speaker, I yield 2 minutes to the distinguished gentleman from California (Mr. DREIER).

Mr. DREIER asked and was given permission to revise and extend his remarks.

Mr. DREIER. Mr. Speaker, this is obviously a very difficult time for every Member of this House. I think it was said first by the gentleman from Illinois (Mr. HYDE): Duty, duty, duty. The gentleman from Wisconsin (Mr. BARRETT) just talked about our duty. I think, over and above our duty, I think it is important for us to recognize the words of the gentleman from Pennsylvania (Mr. MCHAILE) who talked about the importance of the rule of law. That really is why we are here.

Over the past several weeks and months a number of us have dusted off our copies of the Federalist Papers, John Jay, Alexander Hamilton, James Madison—James Madison being the author, the father of the Constitution. The Founding Fathers of the Constitution, I think, would look at the challenge that we face today. He said:

Justice is the end of government. It is the end of civil society. It is ever has been and ever will be pursued until it be obtained or until liberty be lost in the pursuit.

Mr. CONYERS. Mr. Speaker, I ask unanimous consent that on the motion
Mr. Speaker, I think I speak for most of my colleagues when I say that this is not a matter to be taken lightly. Rarely in one's political life is one forced to confront such an awesome and historic responsibility. It is my sincere hope that we can work together as the Founding Fathers envisioned, in a bipartisan fashion, to complete this task as expeditiously as possible and to do what is in the best interests of the country.

I would urge my colleagues on both sides of the aisle to rise above the partisan fires that too often burn in our political life. The facts are at hand and fulfill our constitutional responsibilities by moving forward with a fair and thorough investigation of this important matter.

Mr. Speaker, I yield 3 minutes to the gentleman from California (Ms. Lofgren), a member of the Committee on the Judiciary who has worked tirelessly on crafting a middle ground plan that would allow us to deal with the referral of the independent counsel in a way that is focused, in a way that is fair, in a way that is prompt and efficient, and, most of all, in a way that puts our Constitution first. I am very distressed to say that I do not see that is going to happen today in this chamber.

Mr. Speaker, I fear what Alexander Hamilton warned against in Federalist Paper Number 65, that "there will always be the greatest danger that the decision will be governed by the comparative strength of parties than by the real demonstrations of innocence or guilt." That prophecy, that fear, is about to be realized. I believe that this is the raw voting power to create a proposal that could result in a wide-ranging and lengthy impeachment inquiry. The Committee on the Judiciary may become the standing committee on impeachment. And I further fear that the rules in the Constitution may never be applied to the referral that has been sent to us. Even worse, we may end up—as happened Monday—without the majority counsel creating even entirely new charges for high crimes and misdemeanors, which will have a very serious distorting effect on our constitutional system of government.

When we are lost, the best thing for us to do is to look to our Constitution as a beacon of light and a guideline to get us through trying times. Historically, impeachment was to be used when the misconduct of the executive was so severe that it threatened the very constitutional system of government itself. Ben Franklin described it as an alternative to assassination. It is that standard that needs to be applied in this case.

The question is not whether the President's misconduct was bad. We all know that the President's misconduct was bad. The question is, are we going to punish America instead of him for his misconduct? Are we going to trash our Constitution because of his misconduct? Are we going to make sure that this investigation goes on interminably while we ignore economic crises, or the needs of our students for education?

I fear that we are letting down our country. Twenty-four years ago, as an idealistic student, I watched this body rise to the occasion. Twenty-four years ago, as an idealistic student, I worked on the staff of a member of the Judiciary Committee, and I saw the committee, and I saw this Congress do a very hard thing: come together, become bipartisan, and do a tough job for America.

I am very concerned that, instead of rising to this occasion today, we are falling down and lowering ourselves and America with it. I urge the adoption of the Boucher amendment.

Mr. Speaker, I am pleased to yield 1 minute to the distinguished gentlewoman from Florida (Ms. Ros-Lehtinen).

Ms. Ros-Lehtinen. Mr. Speaker, our laws promise a remedy against sexual harassment. But if we say that lying about sex in court is acceptable or even expected, then we have made our sexual harassment laws nothing more than a false promise, a fraud upon our society upon our legal system, and upon women.

Lying under oath and obstruction of justice are ancient crimes of great weight because they shield other offenses, blocking the light of truth in human affairs. There they are a dagger in the heart of our legal system and our democracy. They cannot and must not be tolerated.

The office of the presidency is due great respect, but the President is a citizen with the same legal rights and duties as any other person. He is to obey the laws as all other citizens. The world marvels that our President is not above the law, and my vote today helps assure that this rule continues.

With a commitment to the principles of the rule of law, which makes this country the beacon of hope for political refugees like myself throughout the world, I cast my vote in favor of the resolution to undertake an impeachment inquiry of the conduct of the President of the United States.

Mr. Conyers. Mr. Speaker, I yield 2 minutes to the gentlewoman from Massachusetts (Ms. Delahunt), my friend and a senior prosecutor.
Mr. DELAHUNT. Mr. Speaker, I am aware of the fact that there is limited time for this debate. I think that is, indeed, unfortunate, because I was going on to talk about how we have abdicated our constitutional duties to an unelected prosecutor, how we have released thousands of pages that none of us in good conscience can say that we have read.

We violated the sanctity of the Grand Jury so that we can arrive here today to launch an inquiry without an independent judicial review of the allegations by this body, which is our constitutional mandate. Ken Starr is not the agent of the United States Congress. It is our responsibility.

I was going to go on and speak about the proposal put forth by the gentleman from Virginia (Mr. BOUCHER), one that would have addressed and would address all of the allegations raised in the Starr referral in a fair way and in an expeditious way without dragging this Nation through hearings that will be interminable in nature.

What it really means for this country, is that the President's, any President's, enemies have to do to commence an impeachment process is to name an independent counsel so that we can here just simply rubber stamp that independent counsel's conclusions.

I was going to speak about the letter that was referred to by the universally respected chairman of the committee and a gentleman whom I hold in high esteem, the gentleman from Illinois (Mr. HYDE), the letter where Mr. Starr is saying that he may make further referrals and keep this inquiry going on indefinitely. That is not a process, Mr. Speaker; it is a blank check. That is what I was going to talk about.

But out of deference to others that want to speak, I will conclude by saying, one hour to begin only the third impeachment inquiry in U.S. history is a tragic moment for this institution. I think that says it all, and besides, I am probably out of time.

Mr. HYDE. Mr. Speaker, I am pleased to yield 2 minutes to the gentleman from Florida (Mr. McCOLLUM), a distinguished member of the committee.

(Mr. McCOLLUM asked and was given permission to revise and extend his remarks.)

Mr. McCOLLUM. Mr. Speaker, the question for us today is not whether or not the President committed impeachable offenses or whether or not we are here to impeach, the question is, do the allegations that have been presented to us by Kenneth Starr and his report merit further consideration?

Some would have us believe today that, even if all of those allegations were proven to be true, that the answer is no. They are wrong. The issue before us when we consider this matter is not Monica Lewinsky. The issue is not sex. The issue is not whether the President committed adultery or betrayed his wife.

The issue is did the President of the United States commit the felony crime of perjury by lying under oath in a deposition in a sexual harassment case. The issue is did the President of the United States commit the felony crime of perjury by lying under oath to a Grand Jury. The issue is did the President of the United States commit a felony crime of fraud or of injury to the United States or the felony crime of witness tampering. If he did, are these high crimes and misdemeanors that deserve impeachment?

I would suggest that these are extraordinarily serious; that if the President is not to be judged not to have committed a high crime and misdemeanor if the facts are proven, and we do not know that, that these things are true and he committed these crimes, but if he is judged not to have committed a high crime and misdemeanor for committing these other crimes of perjury, we will have determined that, indeed, he is no longer the legal officer at the highest panicle of this country.

Because to leave him sitting there is to undermine the very judicial system we have. It is to convey the message that perjury is okay, certainly at least perjury in certain matters and under certain circumstances. It is not okay. That is a very serious crime. Obstructing justice is. Witness tampering is.

One hundred fifteen people are serving in Federal prisons today who may be watching these proceedings today, serving in prison for perjury. Two hundred have been impeached. I have been in Congress for nothing more than perjury, committing perjury as we call it.

What do we say to all of those people who take the oath of office who say "I swear to tell the truth, the whole truth, and nothing but the truth?" What do we say to all of those people who swear to tell the truth, nothing but the truth, but the whole truth when they are witnesses in cases that are not civil and criminal? What do we say to all of the people who we may judge in the future who may be judges or otherwise who come before us who commit perjury? Is it okay?

If we leave this President alone if he committed these crimes, then we have undermined our Constitution, and we have undermined our system of justice. This is serious. We need to investigate these allegations.

Mr. Speaker, I am pleased to yield 2 minutes to the gentleman from California (Mr. FAZIO), the departing chair of our caucus.

Mr. FAZIO of California. Mr. Speaker, today's proceeding is of such great historical importance that it should be approached with a deep and abiding respect for the Congress, the Constitution, and the Presidency.

We had the opportunity to develop a fair and responsible process that would protect, not only the dignity of the office of the President, but create a precedent worth following. But I believe the Republican majority has squandered that, and, by doing so, has set in motion a process that is too much about partisanship and not enough about statesmanship.

The Republican proposal offers no limits on how long this partisan inquiry will go on nor on how long indefinable Ken Starr can hang up issues that he has had 4 years to bring to this House. Sadly, there has been no willingness to limit the duration or scope of this resolution.

Republican proposal moves ahead with an impeachment inquiry before the Committee on the Judiciary has even conducted a review of the facts and determined whether those facts constitute substantial and creditable evidence. It lowers the threshold for which a President can be harassed and persecuted to the point of distraction from his constitutional duties.

From now on, any Congress dissatisfied with the policies of a particular base political instinct thatadal behavior of any President could simply conduct an ongoing, costly, and distracting inquiry designed to dilute the authority of the Presidency.

I urge this entire body to close ranks, when rational behavior returns, and cooler heads can prevail, I urge us to forge a way to rise above the nasty politics that have clouded this body.

I will not be here with those of you who return to this next Congress. I leave after 20 years with my self respect intact. I have reached across the lines within my own party and, when necessary, across the aisle to the other party to make this House work and to get things done for this country.

I fought partisan battles. I have stood my ground on issues that matter to my district. The American people expect us to do that. But they also expect us to, each of us, to rise above the base political instincts that drive such behavior of any President that clouded this body.

In the months ahead, we must find a way, my friends, to do what is right for America to find a way to return this House to the people through a respect for the law, for fairness, and due process. In the end, we must do a lot better than we will do today.

Mr. HYDE. Mr. Speaker, I am very pleased to yield 2½ minutes to the gentleman from Georgia (Mr. BARR), a distinguished member of the committee.

Mr. Speaker, will the gentleman yield to me very briefly? Mr. BARR of Georgia. I am happy to yield to the gentleman from Illinois (Mr. HYDE), the distinguished chairman of the Committee on the Judiciary.

Mr. HYDE. Mr. Speaker, I just want the record to be clear. My good friend the gentleman from Massachusetts (Mr. DELAHUNT) talked about 60,000 pages that were released that were not reviewed or looked at.

I want him to know, and I want everyone listening to know that every single page of anything that was released was reviewed, and things that were not released were reviewed by our staff.

All of these pages have been reviewed and included in the record as of this morning. I would also like to point out that total time spent looking at these
records by the Democrats, members of the Committee on the Judiciary on the Democrat side, were 21.81 hours. Six of them never came over to see the material. On the Republican side, 114.59 hours, and every Member came over to look at the material.

Mr. CONYERS. Mr. Speaker, will the gentleman yield to me?

Mr. HYDE. Mr. Speaker, I will give the gentleman from Georgia additional time.

Mr. BARR of Georgia. I yield to the gentleman from Michigan (Mr. CONYERS), the distinguished ranking member.

Mr. CONYERS. Mr. Speaker, I thank the gentleman from Illinois (Mr. HYDE). That really contributes to the comity of this body, and I am sure it is an interesting statistic that everybody ought to know about.

Mr. BARR of Georgia. Mr. Speaker, reclaiming my time, I yield to the gentleman from Georgia additional time.

Mr. BARR of Georgia. Mr. Speaker, I yield to Mr. Speaker, the distinguished chairman of the committee.

Mr. HYDE. Mr. Speaker, I just want to say to my friend that when the gentleman from Massachusetts (Mr. DELAHUNT) says this has been done carelessly or in a slipshod manner not reviewing these things, it is important to know we took our job seriously. They were there to be reviewed. If my colleagues did not choose to do it, that is their option.

Mr. CONYERS. Thank you, Mr. HYDE.

Mr. HYDE. You are welcome, Mr. CONYERS.

Mr. BARR of Georgia. Mr. Speaker, might I inquire of the gentleman from Illinois (Mr. HYDE), the distinguished chairman of the committee, if I have, in fact, 2 minutes remaining?

Mr. HYDE. Mr. Speaker, the gentleman has every reason to inquire, and I would like to give the gentleman from Georgia (Mr. BARR) a total of 3 minutes for his generosity.

Mr. BARR of Georgia. Mr. Speaker, as the legal counsel for the majority staff, appointed by President Reagan, when a case was presented to me, I started at the beginning. I would look and see what the law says, and I would look and see what the history of that law said.

Here we have similarly to look at the Constitution. It is pretty clear. What makes it even clearer, though, Mr. Speaker, is if we look at the sources for Article II Section 4, which is the impeachment power, we find, for example, Mr. Speaker, that, according to the Federalist writings 211 years ago, that an impeachable offense is, quote, "Any abuse of the great trust reposed in the President."

Moreover, they tell us, as Federalist 65 did, written by that great constitutional scholar Alexander Hamilton, an impeachable offense is a "violation of public trust."

I did not stop there. Mr. Speaker. I looked at further constitutional scholars. I find that 24 years ago, no less a constitutional scholar than William Jefferson Clinton, defined an impeachable offense as, "willful, reckless behavior in office."

I did not stop there. I looked at a report on the part in the Watergate years, and I find that at page 26 of their report, she and others of her colleagues define an impeachable offense as "wrongs that undermine the integrity of office."

Where was she, Mr. Speaker? The step we are taking today is one I first urged nearly a year ago. All we are doing today is taking the constitutionally equivalent step of impeaching a grand jury to inquire into whether or not the evidence shall sustain that offenses have, in fact, occurred.

The passage of H.R. 581 will mark the dawn of a new era in American government. We are sending the American people a clear message, that truth is more important than partisanship, and that the Constitution cannot be sacrosanct on the altar of political expediency; that no longer will we turn a blind eye to clear evidence of obstruction of justice, perjury and abuse of power. We can send a message to this and all future Presidents that if, in fact, the evidence establishes that you or any future President have committed perjury, obstruction of justice, subversion of our judicial system, that we will be saying, no sir, Mr. President, these things you cannot do.

It is our job as legislators to diagnose threats to our democracy and eliminate them. By the time the damage to our system is so great that everyone can see it, the wounds will be too deep to heal. We have already waited too long to address this issue. We must move forward quickly, courageously, fairly, and most importantly, constitutionally, along the one and the one and one half paths of the Constitution, the impeachment process.

We must do this, Mr. Speaker, so that tomorrow morning as we in this Chamber, as teachers all across America, lead their students in the pledge of allegiance, we can look America in the eye and say, yes, at least for today the Constitution is alive and well.

Mr. DELAHUNT. Mr. Speaker, I yield myself such time as I may consume.

I think it is very important for the record, and for those people to know that yes, the staff worked hard; the staff, the majority staff and the minority staff, to review 60,000 and some odd pages. But let me suggest that no Member in this House, no Member in this committee in good conscience can stand here in this well of the history of our people who have struggled against injustice and unfairness. Let us not march backwards, and let us be wise enough to move forward and spend our precious time working on the issues of education, health care, senior citizens, children, and in the final analysis, Mr. Speaker, justice, and opportunity for all Americans.

Mr. HYDE. Mr. Speaker, I would like to inquire as to the time remaining on both sides.

The SPEAKER pro tempore. The gentleman from Illinois (Mr. HYDE) has
Mr. HYDE. Mr. Speaker, I yield 2 minutes to the distinguished gentleman from South Carolina (Mr. INGLES), a valued member of the committee.

Mr. INGLES of South Carolina. Mr. Speaker, we are now engaged in a constitutional process that is about the search for truth. I believe that we should be thinking in a fair and expeditious way, completely disregarding polls, completely disregarding the pendency of an election on November 3, and answering the question that our colleague from California just asked about whether it is appropriate just to move along.

Of course, we do want to move along to important issues facing the country. We do want to restore freedom in health care, we do want to secure the future of Medicare and Social Security, and we do want to continue our progress toward balancing the budget. All of those things we want to do.

But I would ask my colleagues to consider this. Really, this is the crucial business of the country. This is the crucial business.

As we go into the next century, the question is, does the truth even matter. Now, some would say, let us move along, it does not matter, just move along. But if we move along, what we are leaving aside is serious allegations of serious crimes.

Just this week one of my staffers was on her way over here with a staff member of one of our colleagues, the gentleman from Louisiana (Mr. Cooksey). An accident occurred, occurred on a bicycle, struck this young lady, not my staffer, but the other staffer. She was hurt. Now, she has two duties as a citizen. One is to testify, to be a witness, to come forward; and the second is to testify, to be a witness, when called on, if necessary, in court.

Now, what shall we say to her if we are going to just move along and say that the potential of the crime of perjury just does not matter, then what of that small case in a court here in D.C.? We say to that case, well, it is not necessary to testify, I suppose. But we must say, if we are going to preserve the rule of law in this Nation, that it does matter, and that when that young lady wanted to testify, if she must, she must testify, and then she must tell the truth.

This is the essential work of this Congress and of this Nation.

Mr. HYDE. Mr. Speaker, I yield 4 minutes to the distinguished gentleman from North Carolina (Mr. Watt), and a distinguished member of the Committee on the Judiciary.

Mr. WATT of North Carolina. Mr. Speaker, I yield in the fair and expeditious way, we have had the opportunity to indicate our willingness to engage in a process that is fair, measuring the President's conduct against a constitutional standard, not a bicycle standard; focused on what the independent counsel has referred or might refer to us; and timely, one that sets an objective to conclude this matter and put it behind us.

We have already had an opportunity to listen to our colleagues on the Committee on the Judiciary who want to engage in an unfair and open-ended, partisan political fishing expedition, dealing with bicycles rather than constitutional standards, some of whom have already said they had already declared their conclusion in this matter before a trial even begins. We have had our opportunity.

Mr. Speaker, I would like to yield the balance of my time to a nonmember of the Committee on the Judiciary, my good colleague from Texas (Mr. Edwards).

Mr. EDWARDS. Mr. Speaker, I am deeply disappointed that the Republican leadership has placed an incredibly unfair gag rule on a constitutional debate of historic proportions. If this gag rule is the first test of the Republicans' fairness in this inquiry, they have failed that test.

The most important issue today, Mr. Speaker, before us is not the November 3 elections, or even the fate of President Clinton. The most important issue before us is the historical precedent we set in beginning the process of undoing an election for the most important office of our land. The right to vote is the foundation of our entire democracy. To override the votes of millions of Americans in a Presidential election is an extraordinary action. It is a radical action, and, in effect, it is allowing the votes of 35 million citizens to override the votes of tens of millions of citizens.

In its rush to begin an impeachment inquiry just days before a crucial election, this Congress will have lowered the threshold for future Presidential impeachment inquiries in such a way that compromises the independence of the Presidency as a coequal branch of government.

The truth is the Committee on the Judiciary has not even had 1 day, not even 1 hour, of hearings on our Founding Fathers' original intent about the threshold for impeachment. I find it ironic that the very Republicans who have preached all year that we should impeach Federal judges for not adhering to Madison's constitutional intentions have now decided we can start an historic constitutional process without even 1 hour of hearings. How ironic that those same Republicans will today force us to vote on a truly historic constitutional issue without even 1 hour, 1 day of hearings on our Founding Fathers' intent about high crimes and misdemeanors.

To begin a formal impeachment inquiry after only a cursory review of the independent counsel's report, in light of a standard that has not been defined, within the context of a pending congressional election weeks away, at the very least undermines the credibility of this House on this important issue, and at the very worst has set an historical precedent that we can easily begin the process of undoing the freely exercised votes of millions of Americans.

To even begin this radical process without the greatest deliberation, regardless of one's final vote is, in my opinion, an attack upon the very core of our democracy.

Mr. HYDE. Mr. Speaker, I am very pleased to yield 2 minutes to the distinguished gentleman from Tennessee (Mr. Bryant), a member of our committee.

Mr. BRYANT asked and was given permission to revise and extend his remarks.

Mr. BRYANT. Mr. Speaker, I want to remind our colleagues that we are not voting on impeachment today. We are here today simply to uphold our constitutional obligation to look further into the allegations of wrongdoing against this President, and not to look away.

We seem to all agree that the President's conduct was wrong, and we seem to now agree that we must continue this process toward finding the truth. But this is not about keeping political score. It is not about allowing the President to dictate the terms of this process. We are here protecting our Constitution, which we have a duty to uphold. So let us complete our task fairly and expeditiously.

I must respectfully disagree with my good friend and colleague, the gentleman from Virginia (Mr. Boucher) and his alternative to this. Now is not the time to set arbitrary time limits, because, as we have learned before, that encourages stonewalling. We can actually get this done quicker, as the chairman said, without time limits. Now is not the time to agree that we must continue piecemeal allegations. Let us get all this done, get all this behind us, and move forward.

As part and parcel of that, our responsibility to the American people is to be fair throughout this process. It is an elementary principle of fairness that the President should not be allowed to limit or direct or influence the process that Congress uses to investigate these allegations.

At the end of the day, our Constitution will stand as a pillar of our Nation. It will and it should, fittingly, last out any person, whomsoever it might be, who has the great privilege of serving in the office of the presidency.

Mr. DELAHUNT. Mr. Speaker, I yield 10 seconds to the gentleman from New York (Mr. Ackerman).

MOTION OFFERED BY MR. ACKERMAN

Mr. ACKERMAN. Mr. Speaker, I move that when the House adjourns, we do so to Salem, a quaint village in the Commonwealth of Massachusetts, whose history beckons us thence.

The SPEAKER. That is not a proper motion, the Chair would say to the gentleman from New York.
Mr. DELAHUNT. Mr. Speaker, I yield 2 minutes to my friend and colleague, the gentleman from Massachusetts (Mr. MEEHAN), whose district I do not think includes the town of Salem.

Mr. MEEHAN. Mr. Speaker, this debate is about whether or not to have an impeachment hearing. I believe there will be no resolution without an open hearing. There will be no closure for this country, for this Congress, or for our president, without an open hearing.

Mr. Speaker, the House is divided. The House is divided. A House divided against itself will not stand, so if inquire we must, let us do it fairly, and in the words of Lincoln, with malice towards none, with charity towards all, because there will be an inquiry. The American people expect an inquiry. They expect a fair and expeditiously, and then they expect it to end. The people want us to get this over with, and they will be watching. Let the President make his case. Give him a chance to clear his name and get back to his job. Bring everything out in the open. Bring forward the accusers and subject them to the light of day, settle this, and then move forward to do the business of the people, the business for which the people elected us as their economic and moral stewards, to promote social security, to improve health care, and to meet all the other pressing needs of the American people.

Mr. CONyers. Mr. Speaker, it is my pleasure to yield 1 minute to the distinguished gentleman from Michigan (Mr. ALLEN).

Mr. ALLEN. Mr. Speaker, I thank the gentleman for yielding time to me. Mr. Speaker, this is a solemn moment, but as theater, it is overdone. It is undone because this vote is not about whether or not we should have an impeachment inquiry. Both resolutions call for such an inquiry, so we will have one. This vote is about what kind of impeachment inquiry we will conduct. That question is important.

The majority wants an open-ended impeachment inquiry with no limits on its scope or duration. Under their plan, the Committee on the Judiciary can investigate anything and everything it wants for 6 months, a year, or even 2 years, and, in the end, inflame partisan wrangling. And if prolonged, weaken the institution of the presidency and this country.

This is not Watergate. That committee conducted a factual inquiry. We have piles of facts from the special prosecutor. Our task is to find an appropriate consequence for behavior we know is wrong. Our alternative will provide for thorough consideration of the Starr alternative, of the Starr referral, by December 31, 1998. What is wrong with that?

I urge my colleagues to oppose an inquiry resolution that does not say what it will end or what it will cover, and instead, support the focused, fair, and expeditious Democratic alternative.

Mr. HYDE. Mr. Speaker, I am pleased to yield 2 minutes to the distinguished gentleman from Missouri (Mr. KENNY HULSHOF).

Mr. WILSHOF. Mr. Speaker, last night I addressed this body and urged my colleagues to please avoid partisan wrangling. Today I implore the Members of this body to recognize the historical gravity of the moment. Today is not the day to condemn the process or the prosecutor. Today is not the day for talking points or pointing fingers.

Mr. Speaker, in this debate, let us pledge not our loyalty to our party, let us pledge allegiance to our country. Let us not be partisans. Instead, let us be patriots.

I, too, am concerned about the open-ended nature of the investigation. I believe each one of us would fervently wish this cup would pass us by, but I have faith in the integrity and ability of the gentleman from Illinois (Mr. HYDE), and when he says this process will be handled fairly and expeditiously, I think his word deserves great weight in this body.

So the question I have for the Members is simply this: Is it possible, is it possible, that there is credible evidence that exists that would constitute grounds for an impeachment? If Members' answer is a solemn yes, then vote in favor of the resolution.

But I submit, even if Members' answer is an equivocal "I do not know," that the task at hand is to find an improvement in our process. I think that that judgment of the doubt, the benefit of the doubt, must go in favor of the resolution.

Mr. Speaker, last January I was privileged to enter this Chamber for the first time, my family proudly beaming from the House gallery as I rose in unison with the Members of this body to take an oath. I pledged my sacred honor to the Constitution of the United States. That is what this vote is about.

In my humble and considered opinion, that oath requires from me a vote of yes on the resolution.

Mr. CONyers. Mr. Speaker, it is my pleasure to yield 2 minutes to the able gentleman from New York (Mr. CHARLES RANGEL).

(Mr. RANGEL asked and was given permission to revise and extend his remarks.)

Mr. RANGEL. Mr. Speaker, I had the privilege of serving on the Watergate Committee on the Judiciary. One difference then, as opposed to now, is that we worked together as Republicans and Democrats to search for the facts and to report to the House of Representatives for them to make a determination.

Now, we do not have any question of trying to impeach the President of the United States or protecting the integrity of the Congress or the Constitution. The Republicans do not want to impeach, and would not touch it with a 10-foot political pole. They know at the end of this year that this Congress is over, and they even want to carry this over for the next 2 years, to attempt to hound this president, who has been elected twice out of our country.

The reason for it is because it is the only thing they have to take to the American people before this election. What else are they going to take? The impeachment vote? The fact that they have renamed National Airport after Ronald Reagan, that they have deep-sixed the tax code to the year 2002?
On the question of social security, what have they done? Tried to rape the reserve. What have they done as it relates to minimum wage and providing jobs? What have they done for education? What have they done for the health of this Nation?

They are not just going to get elected by hounding the President of the United States, because as they judge the President of the United States, the voters will be judging them on November 3.

Mr. HYDE. Mr. Speaker, I am very pleased to yield 1 minute to the distinguished gentleman from California (Mr. CHRIS COX).

Mr. COX of California. Mr. Speaker, I thank the chairman for yielding time to me.

Mr. Speaker, a member of the minority stated during the debate that the decision to limit the debate to 2 hours on this resolution is partisan. In allocating 2 hours for debate on a resolution authorizing an inquiry of impeachment, the Congress is adhering to precedent, the precedents established by the House of Representatives when it was under Democratic control. It is in fact doubling the amount of time that was spent in debate on the identical resolution in February, 1974.

Likewise, the wording of the resolution adheres directly to precedent. The minority argues today that an impeachment inquiry should be narrowly limited to the evidence we already know, but on February 6, 1974, when the Democrats were in the majority, Committee on the Judiciary Chairman Rodino stated: “To be locked into... a date (for completion of the inquiry) should be one of integrity and honor. Of all the votes cast in this Congress, this is the most important vote of my whole time here in the United States Congress. And if we are not going to listen to each other, then I would like us to listen to the eminent scholar, Lawrence Tribe, on what we are doing today.

He said that, “Today this Congress is twine the people into something else, instead of keeping it within its historical boundaries, and our Nation and its form of government are imperiled as a result.” He went on to say that, “Today we are losing sight of the constitutional wreckage that this will cause and I say that it is an historical precedent that a President of the United States can be impeached for something other than official misconduct as President of the United States.”

Mr. HYDE. Mr. Speaker, I yield such time as he may consume to the gentleman from Kentucky (Mr. BUNNING).

(Mr. BUNNING asked and was given permission to revise and extend his remarks.)

Mr. BUNNING. Mr. Speaker, I rise in support of the resolution. Except for declaring war, impeachment is the most serious and sobering issue that the House can consider. The question before us today demands that we act out of statesmanship and not raw, political partisanship. Our history and our Constitution demand the best for us.

I have read the referral to the House from the Independent Counsel, Ken Starr, and I believe there is enough evidence to warrant further inquiry by the Judiciary Committee. The Judiciary Committee’s review of the evidence accumulated by the Independent Counsel indicates that there exists substantial and credible evidence of fifteen separate events directly involving the President that constitute grounds to proceed with an impeachment inquiry. The charges are tripping—perjury, obstruction of justice, witness tampering, and abuse of power. They are not simply about extra-marital affairs, or making misleading statements. Instead, the allegations touch more profoundly upon claims of criminal conduct.

I do not know if all of the allegations in the Starr report are true and factual. But the charges are serious and some of the claims made against the President are compelling. However, the report represents only one side of the story, and the President deserves the right to exonerate himself before the Judiciary Committee, the full House and the American people.

Our Constitution and historical precedent set out a procedure to follow in proceedings such as this, and believe it must strictly follow the letter of the law. Impeachment is a grave matter, and at this crucial moment in our history we must not rush to judgment.

The inquiry by the Judiciary Committee must be orderly, and judicial. But it must be fair. I do not think that an arbitrary deadline should be imposed on the panel, for the good of the country I believe it is incumbent upon the Committee to work with all deliberate speed in order to conclude this matter as soon and as fairly as possible. Chairman Hyde’s goal of the Committee concluding its work by the end of the year is fair and reasonable.

By the same token, I also believe that the President has a duty to work with, and not against, the Judiciary Committee to speedily resolve this matter. We can conclude these proceedings, the better it will be for the country. Now is not the time for further foot-dragging and delay by anyone.

I believe the President was right yesterday when he said members of the House should cast “a vote of principle and conscience” on authorizing the impeachment inquiry. I agree. Of all the votes cast in this Congress, this should be one of integrity and honor.

Mr. HYDE. Mr. Speaker, I yield 2½ minutes to the gentleman from Texas (Mr. LAYNE) for the response. Mr. DELAY. Mr. Speaker, I thank the gentleman from Illinois (Chairman Hyde) for yielding me this time.

Mr. Speaker, I do not want to be here today. I wish I could just ignore all of this and make it go away. But I have a responsibility to answer a question today and that question is: How will history judge our actions that we take today?

I believe that this Nation sits at a crossroad. One direction points to the high road of the rule of law. Sometimes hard, sometimes unpleasant. This path relies on truth, justice, and the rigorous application of the principle that no man is above the law.

Now, the other road is the path of least resistance. This is where we start making exceptions to our laws based on poll numbers and spin control. This is when we pitch the law completely overboard when the mood fits us; when we ignore the facts in order to cover up the truth.

Shall we follow the rule of law and do our constitutional duty no matter how unpleasant, or shall we follow the path of least resistance, close our eyes to the potential law breaking, forgive and forget, move on, and tear an unfixable hole in our legal system? No man is above the law and no man is below the law. That is the principle that all hold dear in this country.

The President has many responsibilities and many privileges. His chief responsibility is to uphold the laws of this land. He does not have the privilege to break the law.

Our Constitution and system of government is built on the proposition that the President of the United States can be removed if he violates his oath of office. This resolution simply starts that process of inquiry. Did the President break the law? And if he did, does that lawbreaking constitute an impeachable offense?

Closing our eyes to allegations of wrongdoing by voting “no,” or by limiting scope or time, constitutes a breach of our responsibility to the Members of this House. So let history judge us as having done our duty to uphold that sacred rule of law.

Mr. CONYERS. Mr. Speaker, I yield such time as he may consume to the able gentleman from Pennsylvania (Mr. KANJORSKI).

(Mr. KANJORSKI asked and was given permission to revise and extend his remarks and to include extraneous material.) And if the President breaks the law?

Mr. KANJORSKI. Mr. Speaker, I rise in opposition to any impeachment inquiry.

Mr. Speaker, I rise today with a heavy heart. Today, for only the third time in our nation’s history, the House will consider whether to initiate an impeachment inquiry against the President. I take my sworn constitutional duty and responsibility in this matter very seriously.

Over the last four weeks, I have reviewed the Starr report and other material submitted by his office. I have also listened to legal experts, constitutional scholars, and my constituents about the referral. I have further studied the origins and history of our Constitution’s impeachment clause. After considerable deliberation, I have determined that there is no
President Nixon had committed such fraud, the evidence overwhelmingly indicated that he had committed tax fraud during his presidency. Although substantial evidence that Richard Nixon committed crimes and misdemeanors. In 1974, the House of Representatives voted to impeach the President for violation of the President's duty to preserve, protect, and defend the Constitution and the most extensive injustice.

Both the text of the Constitution and the comments of its authors place the bar for impeachment quite high, and mandate that Congress use the impeachment process to address only those actions which constitute a high crime or misdemeanor. In general, the Constitution indicates that the Founders deemed impeachable because it was not a serious abuse of power or a serious abuse of official duties. Furthermore, the Constitution's authors firmly imply that the bar for impeachment should be reserved for treason, bribery, or other high crimes and misdemeanors.

Because this phrase is often truncated and used out of context, it is necessary to carefully examine the writings and debates of the Constitution's authors. Fortunately, evidence of the phrase's meaning and development is extensive. One individual who can provide especially helpful guidance about the meaning of the term is George Mason, the man who proposed the language adopted by the Constitutional Convention. Mr. Mason noted that “impeachment should be reserved for treason, bribery, and high crimes and misdemeanors where the President's actions are great and dangerous offenses or attempts to subvert the Constitution and the most extensive injustice.”

Read in their entirety the writings of the Constitution's authors firmly imply that the bar for impeachment is extremely high, and that Congress should use it to address only those actions which constitute a high crime or misdemeanor. In 1787, the House Judiciary Committee concluded that Richard Nixon committed a high crime and misdemeanor. In 1974, the House Judiciary Committee concluded that Richard Nixon committed tax fraud during his presidency. Although the evidence overwhelmingly indicated that President Nixon had committed such fraud, the panel concluded by a bipartisan vote of 26 to 12 that personal misconduct is not an impeachable offense. Further, the Supreme Court has ruled that other remedies exist for addressing Presidential wrongdoing, including civil lawsuits and criminal prosecutions.

Finally, it must be clear that the Founders included impeachment as a constitutional remedy because they worried about Presidential tyranny and gross abuse of power. They did not intend impeachment or the threat of its use to serve as a device for defending themselves and their ideals. Instead, they left punishment for improper private Presidential conduct to public opinion, the political process, and judicial proceedings. I support the Framers' wise counsel on impeachment. The consideration of whether to overturn a decision of the electorate should only be undertaken in extreme situations. In short, Presidents ought not to be impeached for private conduct, however reprehensible.

IMPEACHMENT DEFINITION

Beyond failing to meet the standard of impeachment envisioned by our Founders and strengthened by past practice, an impeachment inquiry into the matters recently referred by the independent counsel would create dangerous and undesirable precedents for the country in at least three significant ways. First, if this process were allowed to continue, it would tilt the delicate system of checks and balances in favor of Congress. The result would be a parliamentary system whereby the party in power in Congress could impeach a President and a Vice President of another party for virtually any reason. Our Founders thought it important to create a balance of power in government, but equal branches of government. We should remember this fact today and not upset the balance of power they so sensibly established. Second, as noted above, the House should vote to pursue an impeachment inquiry only if it has credible evidence of action constituting fundamental injuries to the governmental process. Assuming the facts presented by the independent counsel thus far to be true, the President's conduct does not rise to the level the Founders deemed impeachable because it does not constitute either a serious abuse of official duties. Furthermore, Congress has in more than 200 years never removed a President from office even though several Presidents have committed far more serious abuses. One must consequently ask whether this is where we want to set the bar for impeaching this and future Presidents. From my perspective it is not.

Finally, based on the facts of this referral, an impeachment inquiry would impose an extraordinary invasion of privacy. An impeachment inquiry would intrude on the privacy of a private citizen, but in the case of a public official, the President, the invasion would be even more serious. We have already heard that this was a personal matter for the President, but...
The initial draft of the Constitution took the form of resolutions presented before the 30 odd members on June 13. One read that the president could be impeached for “malpractice.” And, on June 20, this provision provoked extensive debate. The notes of Madison, who was representing Virginia, were quite distinct. Madison dominated the day’s discussion. One extreme view, represented by Roger Sherman of Connecticut, was that “the National Legislature should be the judge of the offenses committed by the President.” There is no evidence that the founders intended impeachment to be “solely at the pleasure.” Charles Pinckney of South Carolina, Rufus King of Massachusetts and Gouverneur Morris of Pennsylvania opposed, with Morris arguing that “no one would say that the separation of powers should be paramount, and in some respect the public money, on the grounds that the executive “will have great opportunities of abusing his power, particularly in time of war when the military force, and in some respect the public money, will be in his hands.” The clear trend of the discussion was to allow a narrower impeachment power by which the president could be removed only for gross abuses of public authority.

To Pinckney’s continued protest that the separation of powers should be paramount, Morris argued that “no one would say that we ought to expose ourselves to the danger of seeing the first Magistrate in foreign pay without being able to guard against it by displacing him.” At the same time, Morris insisted that “shalt be taken” to mean that will not make him dependent on the Legislature.” Thus, led by Morris, the framers moved toward a position that would maintain a balance between the executive, Congress, and to permit the president to be removed in extreme situations.

A few of the Constitution’s impeachment clause, which emerged two weeks later on Aug. 6, permitted the president to be impeached, but only for treason, bribery and corruption (exemplified by the president’s securing his office by unlawful means). With little additional debate, this provision was narrowed on Sept. 4 to “treason and bribery.” Before a short time later, the delegates took up the impeachment clause anew. Mason complained that the provision was too narrow, that “maladministration should be considered as an offense.” Mason argued for the re-form the Constitution and would not count as treason or bribery. But Madison, the convention’s most careful lawyer, insisted that the term “maladministration” was “so vague” that it would “be equivalent to a tenure during pleasure.” In Madison’s version, the framers attempted to avoid what the framers were attempting to avoid. Hence, Mason withdrew “maladministration” and added the new terms “high crimes and misdemeanors.” Madison referred to a category of distinctly political offenses against the state. There is a further wrinkle in the clause’s history. On Sept. 10, the entire Constitution was referred to the Committee on Style and Arrangement. When that committee’s version was accepted, the words “against the United States” had been dropped, probably on the theory that they were redundant, although we have no direct evidence. It is possible that this change was intended to have a substantive effect, for the committee had no authority to change the meaning of any provision. The word “against” alone the impeachment clause on which the framers had converged. The Constitution as a whole, including the impeachment provision, was sent to the nation on Sept. 17.

These debates support a narrow understanding of “high crimes and misdemeanors”; few offenses of bribery and treachery. The early history tends in the same direction. The Virginia and Delaware constitutions, providing a background for the founders’ work, generally allowed impeachment for acts “by which the safety of the State may be endangered.” And consider the words of the highly respected (and later Supreme Court) Justice James Iredell, speaking in the North Carolina ratifying convention: “I suppose the only instances, in which the executive is liable to impeachment, would be where he had received a bribe, or had acted from some corrupt motive or other.” By way of explanation, Iredell added that a “reformed a President has received a bribe . . . from a foreign power, and, under the influence of that bribe, had addressed enough with the Senate, by artifices and misrepresentations, to seduce their consent to a pernicious treaty.”

James Wilson, a convention delegate from Pennsylvania, wrote similarly in his 1791 “Conflict” (Oxford University Press). This bipartisan conclusion was made easier because the first order of business when the committee convened in 1974 was to discuss what the standards should be for impeachment. Without such standards, the impeachment process could become a partisan free-for-all.

The committee stipulated at the beginning that “because impeachment of a President is a grave step for the nation, it is predicted to conduct seriously incompatible with either the constitutional form and principles of our government or the proper performance of constitutional duties of the Presidential office.”

The current House judiciary Committee would do well to “follow the precedents set in the Nixon impeachment.” Said former Speaker of the House, Henry Hyde, recently pledged to do. If the panel applies the standard that emerged in 1974, it will decide that the charges against Clinton do not fall under the definition of impeachment.—Robert F. Drinan and Wayne Owens are former Democratic Representatives from, respectively, Massachusetts and Utah.

**Recent Statements Comparing the Lewinsky Matter to Watergate by Independent Individuals Closely Involved in Watergate**

“With Mr. Nixon, of course, you had really serious abuse of high office. He was engaged in wiretapping of newsmen and government officials. He committed a crime, a tax evasion. I did not even carry that of government institutions, and then there was a cover-up there where there was clearly no question when you’re paying hush money that you are trying to hide what you’re doing.”—John Dean (CNN, 9/11/98)

“The offenses being investigated are totally different. . . . In the aggregate, Watergate was serious, piece-by-piece subversion of our constitutional process and our Congress and public. Those are very wide differences from Whitewater and Monica

October 8, 1998  CONGRESSIONAL RECORD — HOUSE  H10027

[From the New York Times, Oct. 1, 1998] ‘AN EASY LINE TO DRAW’

(By Robert F. Drinan and Wayne Owens)

This is not the first time the House judiciary Committee has been called on to determine whether actions of the President in his Clinton (like the Articles of Impeachment)? In 1974, we were members of the House judiciary Committee that considered evidence that showed the President had commuted tax fraud while President. The panel concluded that personal misconduct is not an impeachable offense.

Evidence against President Nixon was convincing. He had claimed a $655,000 deduction on his taxes for the donation of his Vice Presidential papers, but the loophole that allowed the deduction was closed in 1969. The IRS concluded that the documents for the donation had been signed in 1970 and backdated. There was persuasive evidence that Nixon was personally involved in the decision, making him criminally liable for tax fraud.

But the committee decided by a vote of 26 to 12 that he should not be impeached for tax fraud because it did not involve official conduct or abuse of Presidential powers.

The decision of the bipartisan Democrats, Jerry Waldee, said, “Though I find the conduct of the President to have been shabby, to have been unacceptable, and to have been disgraceful even, this is not an abuse of power sufficient to warrant impeachment.”

This bipartisan conclusion was made easier because the first order of business when the committee convened in 1974 was to discuss what the standards should be for impeachment. Without such standards, the impeachment process could become a partisan free-for-all.

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The current House judiciary Committee would do well to “follow the precedents set in the Nixon impeachment.” Said former Speaker of the House, Henry Hyde, recently pledged to do. If the panel applies the standard that emerged in 1974, it will decide that the charges against Clinton do not fall under the definition of impeachment.—Robert F. Drinan and Wayne Owens are former Democratic Representatives from, respectively, Massachusetts and Utah.
Lewinsky."—Elliott Richardson (Associated Press, 9/10/98)

Asked if the Starr Report established grounds for impeachment, Ben-Veniste answered that he had not thought through the report itself in detail. He said he believed the report was "a flagrant and arrogant misuse of the power and the authority of an independent counsel." He had been reported as saying that he would try to show the example of the Watergate prosecutors in transmitting evidence as a statute permits him to do relating to his view of impeachable offenses.

"Mr. Starr has set himself up, not only as investigator and prosecutor, but as judge and jury and has had the arrogance to write articles of impeachment as to make an argument there, a prosecution argument for the removal of the President of the United States. This report has gone so far beyond what he was authorized to do that it has now merged Starr, the prosecutor, and Star the Supermarket tabloid."—Richard Ben-Veniste (Meet the Press, 9/13/98)

"I think we have to remember what the crimes in Watergate were. Watergate was about a vast and pervasive abuse of power by a President who ordered break-ins; who ordered wiretaps; who ordered a squadron of goons to thwart the constitutional electoral process. We've seen nothing like that here."—Carl Bernstein (CNN Saturday Morning News, 9/12/98)

\[\text{[From the New York Times, Oct. 4, 1998]}\]

\[\text{"The Path Back to Dignity"} \quad \text{—Gerald R. Ford}\]

\[\text{GRAND RAPIDS, Mich.—Almost exactly 25 years have passed since Richard Nixon nominated me to replace Spiro Agnew as Vice President. In the contentious days of 1973, my confirmation was by no means assured. Indeed, a small group of House Democrats, led by Bella Abzug, risked a constitutional crisis in order to pursue their views.} \]

\[\text{"We can get control and keep control."} \quad \text{—Ms. Abzug talked to the Speaker of the House, Carl Albert.} \]

\[\text{The group hoped, eventually, to replace Nixon himself with Mr. Albert.} \]

\[\text{The Speaker, true to form, refused to have anything to do with the scheme.} \quad \text{—Mr. Albert.} \]

\[\text{On Dec. 6, 1973, we voted 387 to 35 to confirm my nomination on accordance with the 25th Amendment to the Constitution.} \]

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eral defenses if raised would disprove lying—such truth, or whether the proponent thought he or she was telling the truth, and materiality. My friends on the other side of the aisle are rushing to judgment. But I am reminded of the words of Congressman Barbara Jordan, "It is burden and not position which must guide our deliberations, guide our debate, and guide our decision." We must proceed deliberately—not eager to accuse without the facts.

Mr. Speaker, I implore my colleagues to consider the price we paid. And then let me say to my constituents and those who face a moral dilemma, I have been in churches in my district, they believe in redemption. And, yes, the President has sinned. But those of you who want to rise and cast the first stone, my question is: Who has not sinned?

And whatever we do today, those of us who have received death threats in our office, attacks against our children because of the hysteria that has been created by this Congress, I simply ask that we give this proceeding a chance to be fair, to act judiciously, and to follow the Constitution.

Lastly, might I say I believe that we will come together as a Nation and we will do this if we let constitutional principals guide us for 40:31 says, "They that wait upon the Lord shall renew their strength. They shall mount up with wings as eagles and they shall not be weary, and they shall not faint." Mr. Speaker, I will stand for the preservation of the Constitution.

It is fate that has put us all here today.

But history will reflect—and tell the story of how we acted today—whether or not the Constitution matters. Truth does matter, but the Constitution dictates that impeachable offenses be grounded in attempts to subvert the Constitution. I am supporting the democratic amendment today that focuses our review, establishes the constitutional standards, and allows us to bring this inquiry to closure by the end of the year.

Truth matters and the Constitution matters. The President is not above the law, however, neither is he beneath the law. We need to act with reason, not fury, harmony not acrimony, with deliberation, not recklessness, with constitutional discharge, and not with opinion, and speculations with justice and fairness and not injustice and unfairness.

Mr. Speaker, in November of 1992 President William Jefferson Clinton was elected President of the United States by focusing on the economy and using the slogan "It's the Economy Stupid." I come here today with mixed feelings. We come here today not to focus on the economy, but the Constitution. It's the Constitution that matters!

Article II, Section IV states that the President shall be removed from Office on Impeachment for, and Conviction of, treason, Bribery, or other High Crimes and Misdemeanors.

It's the Constitution that matters! The Framers of our Constitution set the standard. George Mason, one of the Framers, stated that "high crimes and misdemeanors" refers to Presidential actions that are "great and dangerous offenses" to attempt to subvert the Constitution. The noted legal scholar from Yale University Professor, Charles Black, writes in his Impeachment Handbook that, "In the English practice from which the Framers borrowed the phrase, "High Crimes and Misdemeanors"... was intended to render a President and his subordinates immune from removal from office by the impeachment process unless they behaved in a manner which was both ". . . high in character and . . . high in quality."".

The resolution before you carries no cutoff date. Although charges have raged in the media there has yet to be demonstrated any evidence of impeachable conduct. Therefore, if by the end of April no such evidence has been produced, the committee should so report to the House and end its labors.

The American people have spoken and they have said that this has gone on too long. This can not be an endless process. There must be a time certain or the House should "end its labors."

So far what we have in Congress is the word of one man, an Independent Counsel who is not duly elected by the people. We have convoluted facts, inconsistent stories and versions, possible illegal tape recordings, but no real hard evidence.

In Act V of Macbeth, William Shakespeare writes,

Life's but a walking shadow, a poor player
That struts and frets his hour upon the stage,
And then is heard no more; it is a tale
Told by an idiot, full of sound and fury,
Signifying nothing.

That's what we have so far Mr. Speaker. We have fury, but no facts, and a tale told by a nonelected official that is full of allegations, not facts signifying anything.

In Watergate, as in all prior impeachments, the allegations concerned official misconduct that threatened to subvert the constitutional order or balance, not private misbehavior. Impeachment is not a personal punishment. In all of American history, no official has been impeached for misbehavior unrelated to his official responsibilities. I make no attempt to explain the President's behavior, but as we vote on whether to launch a full scale impeachment inquiry, I admonish my colleagues that we must adhere to the constitution and the writings of the Framers. It's the Constitution that matters!

As James Wilson explained in the Pennsylvania ratification convention: "far from being above the laws, [the President] is amenable to them in this private character as [a] citizen, and in his public character by impeachment."

The Constitution imposes a grave and serious responsibility on us to protect the fabric of the Constitution. To perform our job requires that we investigate the facts thoroughly before we begin dealing with what our predecessors called "delicate issues of basic constitutional
law." We must avoid prejudging the issues or turning this solemn duty into another forum for partisan wrangling. The Republican resolution on the floor today, which may result in the House acting without all the facts, weakens the foundation of the Constitution.

The former Congressman and now a renowned Georgetown Law Professor, Father Drinan, who served on the House Judiciary Committee during the Watergate Impeachment hearings stated that,

There is no such thing as a Democratic or Republican approach to the allegation of impeachment. The House of Representatives is now involved in a proceeding which was described by George Mason [a Founding Father] as private, the President's own Attorney General providing no regular punishment of the executive when his misconduct should deserve it" but also "for his honorable acquittal when he should be unjustly accused.

It was George Washington, the first President of the United States who said in his Farewell Address on September 17, 1796, "Let me now . . . warn you in the most solemn manner against the baneful effects of the spirit of party.

This should be a nonpartisan debate, and a constitutional debate. We need to act with reason, not fury, harmony not acrimony, with deliberation . . . not recklessness, with constitutional discharge, and not with opinions and speculation, with justice and fairness, and not injustice and unfairness.

I hope my colleagues will allow for full consideration and debate of the Democratic amendment which is focused and fair. I leave you with the words of Martin Luther King, who said, "Injustice anywhere is a threat to justice everywhere." Whatever affects one directly, affects all indirectly." It's the Constitution that matters Mr. Speaker, and I hope today it will rule.

Mr. HYDE. Mr. Speaker, I yield 1 minute to the gentleman from Texas (Mr. SMITH), a distinguished member of the committee.

I urge my colleagues to reject this Republican double standard which excludes the gentleman from Ohio (Mr. KUCINICH). I urge my colleagues to reject this Republican double standard which excludes the gentleman from Ohio (Mr. KUCINICH).

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without delay whether to forward articles of impeachment to the House. But I strongly disagree with the delay tactics and the blatantly unfair and partisan approach adopted by Republican leaders—a strategy aimed more at improving their party’s election prospects than at promoting the national interest. Impeachment of a President is not a matter for Congress to take lightly or use for narrow partisan purposes. By its very nature, impeachment repudiates the will of the people as expressed in a popular election. It severely undermines the separation of powers, which is at the core of our system of government. And in the long term, it would weaken not only the office of the President, but the nation’s strength and prestige in international affairs.

For those reasons and others, I oppose the Republican leadership’s drawn-out and openended impeachment inquiry proposal and will vote today in favor of the alternative: a prompt and focused impeachment inquiry aimed at resolving this crisis and putting these issues behind us, one way or another.

Mr. CONYERS. Mr. Speaker, I yield such time as Mr. Speaker may allow to the gentleman from Washington (Mr. McDermott), my dear friend.

Mr. McDermott asked and was given permission to revise and extend his remarks, and to include extraneous materials.

Mr. MCDERMOTT. Mr. Speaker, I rise in opposition to the Hyde amendment.

Mr. McDermott. Mr. Speaker, in 1789, the Founding Fathers wrote a Constitution designed to create a stable government. They established a democracy of the people—not a parliamentary democracy—because they did not want a government that would change whenever the executive fell into disfavor with the majority party. The Founding Fathers wanted a government of laws, not people, so they made only one option available to change the chief executive outside of an election by the people—impeachment. Impeachment was prescribed only in unique and extraordinary circumstances.

The impeachment process was vaguely outlined in the Constitution and the established criteria are very few. Article II, Section 4 says that the President, “shall be removed from Office on Impeachment for, and Conviction of, Treason, Bribery, or other high Crimes and Misdemeanors.” Impeachment does not require criminal acts. In fact, the House Report on the Constitutional Grounds of Presidential Impeachment states, “the emphasis has been on the significant effects of the conduct—undermining the integrity of the office, disregard of the core oath of the office, arrogation of power, abuse of the governmental process, adverse impact on the system of government.” The bar was set high so that impeachment would be neither casual nor easy for fear that we would undermine the stability of the office. Alexander Hamilton summed up the dangers of impeachment by saying, “there will always be the greatest danger that the decision will be regulated more by the comparative strength of parties, than by the real demonstrations of innocence or guilt.”

Hamilton’s warning seems prophetic today. Aside from its partisan nature, the situation before us is quite unusual. It is the first time an Independent Counsel has presented findings to the Congress for determination of the need for an impeachment process. Secondly, the House of Representatives undermined the process when they ignored the precedents which have been followed in the evaluation and released large volumes of testimony and documents collected in the grand jury process to not only the Congress but to the world at large.

This has allowed the full membership of the House of Representatives and the public to come to conclusions before the process of impeachment has begun. The polls would suggest that the public does not favor removing the President from office but it is clear what they feel is an adequate sanction.

Today, the members of the House will be confronted with the question of whether or not an impeachment inquiry should begin. I will vote against an inquiry for the following reasons:

The evidence presented to the Congress by Mr. Starr does not support the charge of an impeachable offense. When all is said and done, the President made some false statements under oath about a sexual relationship and lied to many people about that relationship. While I in no way condone the President’s behavior, I have concluded that it requires no further investigation and does not support impeachment.

The framers of the Constitution did not anticipate illegal conduct by a President in a sexual harassment case or investigation by an independent counsel. The framers limited impeachment to the kinds of improprieties—treason, bribery, and the like—that threatened the nation for the benefit of the individual. We are in no way condoning President Clinton’s actions, while those unacceptable, do not rise to the level of a high crime or misdemeanor. The President’s actions do not threaten our ability to act decisively in the world for politics for the benefit of all Americans, sadly, the House of Representatives’ actions do.

Mr. Speaker.

Top Prof : Not Enough To Impeach

NJ ‘JURY’ OF 12 CON-LAW EXPERTS WEIGHTS EVIDENCE

(Parry Berman)

ON A ‘JURY’ OF 12 constitutional law professors, all but one has held The National Law Journal that, from a constitutional standpoint, President Clinton should not be impeached for the things Independent Counsel Kenneth W. Starr claims he did.

Some of the scholars call the question a close one, but most suggest that it is not; they warn that impeaching President Clinton for the sin he admits or the crimes he denies would flout the Founding Fathers’ intentions.

On the other hand, we now have them, assuming there is no additional report [from Mr. Starr], impeaching the president would probably be unconstitutional,” asserts Cass R. Sunstein, co-author of a treatise on constitutional law, who teaches at the University of Chicago Law School.

The first reason for this conclusion is that the one charge indisputably encompassed by the Constitutional Grounds of Presidential Impeachment for, and Conviction of, and otherwise using the judicial system to wield information ... is an abuse of power that should lead to impeachment and removal from office, not only frivolous, but also dangerous,” says Laurence H. Tribe, of Harvard Law School.
grounds for impeachment, while his activities surrounding Monica Lewinsky would not, the professors say, is that misuse of FBI files would implicate Mr. Clinton's powers as president. But if Mr. Starr has found any such evidence, he has not sent it to Congress, which he is statutorily bound to do.

One professor who believes there is no doubt that Clinton's behavior in the Lewinsky matter merits his impeachment is John O. McGinnis, who teaches at Yeshiva University, Benjamin N. Cardozo School of Law. "I don't think we want a parliamentary system, although I would point out that it's not as though we're really going to have a change in power. If Clinton is removed, there will be Gore, sort of a policy clone of Clinton. A parliamentary system suggests a change in party power. That fear is somewhat overblown." Professor McGinnis considers the reasons for impeachment obvious. "I don't think the Constitution cares one whit what sort of incident [the alleged felonies] come from," he says. "The question is, 'Can you have a juror and someone who obstructs justice as president?' And it seems to me self-evident that you cannot. The whole structure of our country depends on giving honest testimony under law. That's the glue of the rule of law. You can go back to Plato, who talks about the crime of perjury. You'll read in a regression that's why perjury and obstruction of justice are such dangerous crimes.'"

This argument has some force, says Professor Tribe, but the public is hesitant to impeach in this case because of a feeling that "the entire process started illegitimately, that the independent counsel statute is flawed and that the president's enemies to lay snares at every turn in what appears to be quite a calculated, single, essential lie—that his encounters did not meet the definition of sexual relations at his Paula J. ones deposition. Mr. Clinton admits that he did not ever have touched any part of her body with the intent to inflame or satiate her desire. It is an assertion that is hard to impeach. Lewinsky's recounting of her White House trysts to friends, erstwhile friends and the grand jury, but also with human nature. That's one of the two things that trouble me most about his testimony—that he continues to insist on the quite implausible proposition of 'look, Ma, no hands,' which is quite inconsistent with Monica Lewinsky's testimony, and that he's doing that in what appears to be quite a calculated way."

Professor Tribe laments, "But I take some solace in the fact that a criminal prosecution of perjury) awaits him when he leaves office." Professor Tribe agrees that "whatever crimes he may have committed, he'll have to answer for it when he leaves office, and that is the punishment that will fit his crime."

Also disturbing to Professor Tribe is the president's apparent comfort with a peculiar concept of what it means to tell the truth, a concept the professor describes as "It may be a magnifying glass tilted at a certain angle, you're OK.'"

But even that distortion, he believes, does not reach the high bar the Founders set for imposing on presidents the political equivalent of capital punishment.

"It would be a disastrous precedent to say that when one's concept of truth makes it harder for people to trust you, that that fuzzy fact is enough to say there has been impeachable conduct," Professor Tribe says. "It would move us very dramatically toward a parliamentary system. Whether anyone is trustworthy is very much in the eye of the beholder. The concept of truth rests on this testimony, and he can't have confidence in him, but the impeachment process cannot be equated with a vote of no confidence without moving us much closer to a parliamentary system."

Professor Kmiec does suggest that some thing stronger than simple "no confidence" might form the possible basis for impeachment. Call it "no confidence at all." "It is possible that one could come to the conclusion that the president's credibility is so destroyed that he'd have difficulty functioning as an effective president," Professor Kmiec says. "But the public doesn't seem to think so, and I don't know that foreign leaders think so," given the standing ovation Mr. Clinton received at the United Nations.

In the end, Professor Howard says that he opposes impeachment under these conditions not only because the past suggests it is inappropriate, but also because of the dangerous precedent it would set. "Starting with the Supreme Court's devastatingly unfortunate and totally misconceived opinion [in Clinton v. J. ones, which allowed Ms. J. ones to proceed against the president while he was still in office], this whole controversy has played out in a way that makes it possible for every future president to be harassed at any turn by his political enemies," Professor Howard warns. "To draw fine lines and say that any instance of stepping across that line becomes impeachable invites a president's enemies to lay snares at every turn in the path. I'm not sure we want a system that works that way."

The other "jurors" on this panel of constitutional law professors were the one essentially abstaining "juror": Michael J. Gerhardt, of the College of William and Mary, Marshall-Wythe School of Law.

Douglas Laycock, of The University of Texas School of Law.

Thomas O. Sargentich, co-director of the program on law and government at American University, Washington College of Law.

Suzanna A. Sherry, professor at the University of Minnesota Law School.

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**CONFERENCE REPORT ON H.R. 1853, CARL D. PERKINS VOCATIONAL-TECHNICAL EDUCATION ACT OF 1998**

Mr. Goodling submitted the following conference report and statement on the bill (H.R. 1853) to amend the Carl D. Perkins Vocational and Applied Technology Education Act:

**CONFERENCE REPORT (105-800)**

The committee of conference on the disagreeing votes of the two Houses on the amendment of the Senate to the bill (H.R. 1853), to amend the Carl D. Perkins Vocational and Applied Technology Education Act, having met, after full and free conference, have agreed to recommend and do recommend to their respective Houses as follows:

That the House recede from its disagreement to the amendment of the Senate and agree to the same with an amendment as follows:

In lieu of the matter proposed to be inserted by the Senate amendment, insert the following:

**SECTION 1. SHORT TITLE; AMENDMENT.**

(a) SHORT TITLE.—This Act may be cited as the "Carl D. Perkins Vocational and Applied Technology Education Amendments of 1998".

(b) AMENDMENT.—The Carl D. Perkins Vocational and Applied Technology Education Act (20 U.S.C. 2301 et seq.) is amended to read as follows:

"(a) SHORT TITLE.—This Act may be cited as the "Carl D. Perkins Vocational and Technical Education Act of 1998." (b) TABLE OF CONTENTS.—The table of contents for this Act is as follows:
EDUCATION ASSISTANCE TO THE STATES

``TITLE I—VOCATIONAL AND TECHNICAL EDUCATION ASSISTANCE TO THE STATES

PART A—ALLOTMENT AND ALLOCATION

Sec. 111. Reservations and State allotment.

Sec. 112. Within State allocation.

Sec. 113. Accountability.

Sec. 114. National activities.

Sec. 115. Assistance for the outlying areas.

Sec. 116. Application of funds for technical education programs.

Sec. 117. Tribally controlled postsecondary vocational and technical institutions.

Sec. 118. Native American program.

Sec. 119. State leadership activities.

Sec. 114. Accountability.

Sec. 116. National activities.

Sec. 117. Assistance for the outlying areas.

Sec. 118. Application of funds for technical education programs.

Sec. 119. Tribally controlled postsecondary vocational and technical institutions.

Sec. 120. State leadership activities.

Sec. 121. State plan.

Sec. 122. State plan.

Sec. 123. State plan.

PART B—STATE PROVISIONS

Sec. 124. State plan.

Sec. 125. State plan.

Sec. 126. State plan.

PART C—LOCAL PROVISIONS

Sec. 127. Local plan for vocational and technical education programs.

Sec. 128. Local plan for vocational and technical education programs.

Sec. 129. Local plan for vocational and technical education programs.

Sec. 130. Local plan for vocational and technical education programs.

Sec. 131. Distribution of funds to secondary school programs.

Sec. 132. Distribution of funds to postsecondary vocational and technical education programs.

Sec. 133. Special rules for vocational and technical education.

Sec. 134. Local uses of funds.

Sec. 135. Local uses of funds.

Title II—TECH-PREP EDUCATION

Sec. 201. Short title.


Sec. 203. State allotment and application.

Sec. 204. Tech-prep education.

Sec. 205. Consortium applications.

Sec. 206. Export.

Sec. 207. Demonstration program.

Sec. 208. Authorization of appropriations.

Title III—GENERAL PROVISIONS

PART A—FEDERAL ADMINISTRATIVE PROVISIONS

Sec. 301. Fiscal requirements.

Sec. 302. Authority to make payments.

Sec. 303. Construction.

Sec. 304. Voluntary selection and participation.

Sec. 305. Limitation for certain students.

Sec. 306. Federal laws guaranteeing civil rights.

Sec. 307. Authorization of Secretary.

Sec. 308. Participation of private school personnel.

PART B—STATE ADMINISTRATIVE PROVISIONS

Sec. 321. Joint funding.

Sec. 322. Prohibition on use of funds to induce out-of-State relocation of businesses.

Sec. 323. State administrative costs.

Sec. 324. Limitation on Federal regulations.

Sec. 325. Student assistance and other Federal programs.

TITLE I—VOCATIONAL EDUCATION

Sec. 107. Short title; table of contents.

Sec. 108. Purpose.

Sec. 109. Definitions.

Sec. 110. Transition provisions.

Sec. 111. Limitation.

Sec. 112. Special rule.

Sec. 113. Authorization of appropriations.

Title II—TECH-PREP EDUCATION

Sec. 207. Short title.

Sec. 208. Definitions.

Sec. 209. State allotment and application.


Sec. 211. Consortium applications.

Sec. 212. Definitions.

Sec. 213. Authorization of appropriations.

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Sec. 306. Federal laws guaranteeing civil rights.

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Sec. 322. Prohibition on use of funds to induce out-of-State relocation of businesses.

Sec. 323. State administrative costs.

Sec. 324. Limitation on Federal regulations.

Sec. 325. Student assistance and other Federal programs.

Sec. 2. Purpose.

The purpose of this Act is to develop more fully the academic, vocational, and technical skills of secondary students and postsecondary students who elect to enroll in vocational and technical education programs, by—

(1) building on the efforts of States and localities to develop challenging academic standards;

(2) promoting the development of services and activities that integrate academic, vocational, and technical instruction, and that link secondary and postsecondary education for participating vocational and technical education students;

(3) increasing State and local flexibility in providing required services; and

(4) disseminating national research, and providing professional development and technical assistance, that will improve vocational and technical education programs, services, and activities.

SEC. 3. DEFINITIONS.

In this Act:

(1) ADMINISTRATION.—The term ‘administration’, when used with respect to an eligible institution, means any activity necessary for the proper and efficient performance of the eligible agency or eligible recipient’s duties under this Act, including supervision, but does not include curriculum development activities, personnel development, or research activities.

(2) ALL ASPECTS OF AN INDUSTRY.—The term ‘all aspects of an industry’ means strong experience in, and comprehensive understanding of, the industry that the individual is preparing to enter.

(3) AREA VOCATIONAL AND TECHNICAL EDUCATION SCHOOL.—The term ‘area vocational and technical education school’ means—

(A) a secondary school used exclusively or principally for the provision of vocational and technical education to individuals who are available for study in preparation for entering the labor market, if the institution or school admits as regular students individuals who are available for study in preparation for entering the labor market; or

(B) a department of a public secondary school used exclusively or principally for providing vocational and technical education in not fewer than 5 different occupational fields to individuals who are available for study in preparation for entering the labor market, if the institution or school admits as regular students both individuals who have completed secondary school and individuals who have left secondary school; or

(1) the department or division of an institution of higher education, that operates under the title of an eligible agency and that provides vocational and technical education in not fewer than five different occupational fields leading to immediate employment but not necessarily leading to either certificate or degree, if the department or division admits as regular students both individuals who have completed secondary school and individuals who have left secondary school;

(4) CAREER GUIDANCE AND ACADEMIC COUNSELING.—The term ‘career guidance and academic counseling’ means providing access to information regarding career awareness and planning with respect to an individual’s occupational and academic future that shall involve guidance and counseling with respect to career options, financial aid, and postsecondary options.

(5) CHARTER SCHOOL.—The term ‘charter school’ has the meaning given the term in section 13036 of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 8066).

(6) COOPERATIVE EDUCATION.—The term ‘cooperative education’ means a method of instruction on an individual basis for individuals who, through written cooperative arrangements between a school and employers, receive instruction, including required academic courses and related instruction in technical education, by alternation of study in school with a job in any occupational field, which alternation shall be planned and supervised by the school and employer so that each contributes to the education and employability of the individual, and may include an arrangement in which work periods and school attendance may be on alternate half days, full days, weeks, or other periods of time in fulfilling the cooperative program.

(7) DISPLACED HOMEMAKER.—The term ‘displaced homemaker’ means an individual who—

(A) has worked primarily without remuneration to care for a home and family, and for that reason has diminished marketable skills; and

(ii) has been dependent on the income of another family member but is no longer supported by that income; or

(iii) is a parent whose youngest dependent child will become ineligible to receive assistance under part A of title IV of the Social Security Act (42 U.S.C. 601 et seq.) not later than 2 years after the date on which the parent applies for assistance under this title; and

(B) is unemployed or underemployed and is experiencing difficulty in obtaining or upgrading employment.

(8) EDUCATIONAL SERVICE AGENCY.—The term ‘educational service agency’ has the meaning given the term in section 14101 of the Elementary and Secondary Education Act of 1965.

(9) ELIGIBLE AGENCY.—The term ‘eligible agency’ means a State board designated or created consistent with State law as the sole agency responsible for the administration of vocational and technical education or for supervision of the administration of vocational and technical education in the State.

(10) ELIGIBLE INSTITUTION.—The term ‘eligible institution’ means—

(A) an institution of higher education;

(B) a local educational agency providing education at the postsecondary level;

(C) an area vocational and technical education school providing education at the postsecondary level;

(D) a postsecondary educational institution controlled by the Bureau of Indian Affairs or operated by or on behalf of any Indian tribe that is eligible to contract with the Secretary of the Interior for the administration of programs under the Indian Self-Determination Act or the Act of April 16, 1934 (48 Stat. 596; 25 U.S.C. 452 et seq.);

(E) an educational service agency; or

(F) a consortium of 2 or more of the entities described in subparagraphs (A) through (E).

(11) ELIGIBLE RECIPIENT.—The term ‘eligible recipient’ means—

(A) a local educational agency, an area vocational technical education school, an educational service agency, or a consortium, eligible to receive assistance under section 132.

(B) eligible institutions eligible to receive assistance under section 132.

(12) GOVERNOR.—The term ‘Governor’ means the chief executive officer of a State or an outlying area.

(13) INDIVIDUAL WITH LIMITED ENGLISH PROFICIENCY.—The term ‘individual with limited English proficiency’ means a secondary school student or an adult, or an out-of-school youth, who has limited ability to read, write, or understand the English language, and—

(A) whose native language is a language other than English; or

(B) who lives in a family or community environment in which a language other than English is the dominant language.

(14) INDIVIDUAL WITH A DISABILITY.—

(A) IN GENERAL.—The term ‘individual with a disability’ means an individual with an disability as defined in section 3 of the Americans with Disabilities Act of 1990 (42 U.S.C. 12102).

(15) INSTITUTION OF HIGHER EDUCATION.—The term ‘institution of higher education’ has
the meaning given the term in section 101 of the Higher Education Act of 1965.

(18) LOCAL EDUCATIONAL AGENCY.—The term 'local educational agency' means an agency designated by the Commonwealth of Puerto Rico, and each of the United States, the District of Columbia, the Marshall Islands, the Federated States of Micronesia, and the Republic of Palau.

(19) POSTSECONDARY EDUCATIONAL INSTITUTION.—The term 'postsecondary educational institution' means—

(A) a institution of higher education that provides not less than a 2-year program of instruction that is acceptable for credit toward a bachelor's degree;

(B) a tribally controlled college or university;

(C) a nonprofit educational institution offering certificate or apprenticeship programs at the postsecondary level;

(D) an outlying area.

(20) SCHOOL DROPOUT.—The term 'school dropout' means an individual who is no longer attending any school and who has not received a secondary school diploma or its recognized equivalent.

(21) SECONDARY SCHOOL.—The term 'secondary school' has the meaning given the term in section 14101 of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 7801).

(22) SECRETARY.—The term 'Secretary' means the Secretary of Education.

(23) SPECIAL POPULATIONS.—The term 'special populations' means—

(A) individuals with disabilities;

(B) individuals from economically disadvantaged families, including foster children;

(C) individuals preparing for nontraditional training and employment;

(D) single parents, including single pregnant women;

(E) displaced homemakers; and

(F) individuals with other barriers to educational achievement, including individuals with limited English proficiency.

(24) STRONGER-STATE term 'State,' unless otherwise specified, means each of the several States of the United States, the District of Columbia, the Commonwealth of Puerto Rico, and each outlying area.

(25) SUPPORT SERVICES.—The term 'support services' means services related to curriculum modification, equipment modification, classroom modification, supportive personnel, and instructional aids and devices.

(26) TECH-PREP PROGRAM.—The term 'tech-prep program' means a program of study that—

(A) combines at least 2 years of secondary education (as determined under State law) and 2 years of postsecondary education in a non-duplicative sequential course of study;

(B) strengthens the applied academic component of vocational and technical education through the integration of academic, and vocational and technical, instruction;

(C) provides technical preparation in an area such as engineering technology, applied science, business, or trade, agriculture, a health occupation, business, or applied economics;

(D) reduces the duplication in the curriculum of mathematics, science, and communications (including through applied academics) in a coherent sequence of courses; and

(E) leads to an associate degree or a certificate in a specific career field, and to high skill, high wage employment, or further education.

(27) TRIBALLY CONTROLLED COLLEGE OR UNIVERSITY.—The term 'tribally controlled college or university' has the meaning given such term in section 2 of the Tribally Controlled College or University Assistance Act of 1978 (25 U.S.C. 1801(a)(4)).

(28) TRIBALLY CONTROLLED POSTSECONDARY VOCATIONAL AND TECHNICAL INSTITUTION.—The term 'tribally controlled postsecondary vocational and technical institution' means an institution of higher education (as defined in section 101 of the Higher Education Act of 1965, except that paragraph (4) shall not be applicable and the reference to Secretary in paragraph (5) of such section shall be deemed to refer to the Secretary of the Interior) that—

(A) is formally controlled, or has been formally sanctioned or chartered, by the governing body of an Indian tribe or Indian tribes;

(B) offers a technical degree or certificate granting program;

(C) is governed by a board of directors or trustees, a majority of whom are individuals with the academic and technical skills, technical skills, and occupation-specific skills of an individual;

(D) demonstrates adherence to stated goals, a philosophy, or a plan of operation, that fosters individual Indian economic and self-sufficiency opportunities, and that is appropriate to stated tribal goals of developing individual entrepreneurs and self-sustaining economic infrastructures on reservations;

(E) has been in operation for 3 years;

(F) holds accreditation with or is a candidate for accreditation by a nationally recognized accrediting authority for postsecondary vocational and technical education; and

(G) enrolls the full-time equivalent of not less than 100 students, of whom a majority are Indians.

(29) VOCATIONAL AND TECHNICAL EDUCATION.—The term 'vocational and technical education' means organized educational activities that—

(A) offer a sequence or series of courses that provides individuals with the academic and technical knowledge and skills the individuals need to prepare for further education and for careers (other than careers requiring a baccalaureate, master's, or doctoral degree) in current or emerging employment sectors; and

(B) individual entrepreneurships and self-sustain education program that engages individuals with the academic and technical knowledge, higher-order reasoning and problem-solving skills, work attitudes, general employability skills, technical skills, and occupation-specific skills of an individual.

(30) VOCATIONAL AND TECHNICAL STUDENT ORGANIZATION.—The term 'vocational and technical student organization' means an organization for individuals enrolled in a vocational and technical education program that engages in student-based activities as an integral part of the instructional program.

(31) STATE AND NATIONAL UNITS.—An organization described in subparagraph (A) may have State and national units that aggregate the work and purposes of instruction in vocational and technical education at the local level.

(32) 4. TRANSITION PROVISIONS.—The Secretary shall allot to a State for the fiscal year for which the determination is made—

(A) an amount that bears the same ratio to 50 percent of the sum of the amounts allotted to all the States as the product of the population aged 15 to 19 inclusive, in the State in the fiscal year preceding the fiscal year for which the determination is made and the State's allotment ratio bears to the sum of the corresponding products for all the States;

(B) an amount that bears the same ratio to 20 percent of the sum of the amounts allotted to all the States as the product of the population aged 20 to 24, inclusive, in the State in the fiscal year preceding the fiscal year for which the determination is made and the State's allotment ratio bears to the sum of the corresponding products for all the States;

(C) an amount that bears the same ratio to 15 percent of the sums allotted being the product of the population aged 25 to 65, inclusive, in the State in the fiscal year preceding the fiscal year for which the determination is made and the State's allotment ratio bears to the sum of the corresponding products for all the States; and

(D) an amount that bears the same ratio to 10 percent of the sums allotted being the product of the population aged 65 and over, inclusive, in the State in the fiscal year preceding the fiscal year for which the determination is made and the State's allotment ratio bears to the sum of the corresponding products for all the States.

(33) MINIMUM ALLOTMENT.—(A) IN GENERAL.—Notwithstanding any other provision of law and subject to paragraphs (A), (B), and (C) for such year—

(B) PROHIBITION ON DEVELOPMENT OF NA TIONAL DATABASE.—Nothing in this Act shall be construed to permit the development of a national database of personally identifiable information on individuals receiving services under this Act.
(B) and (C), and paragraph (4), no State shall receive for a fiscal year under this subsection less than 1/2 of 1 percent of the amount appropriated under subsection (a) and not reserved under paragraph (1) for such fiscal year, as necessary for increasing such payments to States to comply with the preceding sentence shall be obtained by ratably reducing the amount of other States.

(2) REQUIREMENT.—No State, by reason of the application of subparagraph (A), shall receive for a fiscal year more than 150 percent of the amount the State received under this subsection for the preceding fiscal year (or in the case of fiscal year 1999 only, under section 101 of the Carl D. Perkins Vocational and Applied Technology Education Act, as such section was in effect on the day before the date of enactment of the Carl D. Perkins Vocational and Applied Technology Education Amendments of 1998).

(2) PROMULGATION.—The allotment ratios shall be promulgated by the Secretary for each fiscal year beginning October 1 and December 31 of the fiscal year preceding the fiscal year for which the determination is made. Allotment ratios shall be based on the basis of the average of the appropriate per capita incomes for the 3 most recent consecutive fiscal years for which satisfactory data are available.

(3) DEFINITION OF PER CAPITA INCOME.—For the purpose of this section, the term ‘per capita income’ means, with respect to a fiscal year, the total personal income in the calendar year ending in such year, divided by the population of the area concerned in such year.

(4) POPULATION DETERMINATION.—For the purposes of this section, population shall be determined to the extent possible by the latest estimates available to the Department of Education.

(5) DEFINITION OF A STATE.—For the purpose of this subparagraph, the term ‘State’ means each of the several States of the United States, the District of Columbia, the Commonwealth of Puerto Rico, and the United States Virgin Islands.

SEC. 112. WAYS AND MEANS OF APPORTIONMENT.

(a) IN GENERAL.—From the amount allotted to each State under section 111 for a fiscal year, the State board (hereinafter referred to as the ‘eligible agency’) shall make available—

(A) an amount equal to not more than 1 percent of the amount allotted to the State under section 111 for the fiscal year preceding the fiscal year for which the determination is made. Allotment ratios shall be based on the basis of the average of the appropriate per capita incomes for the 3 most recent consecutive fiscal years for which satisfactory data are available.

(B) and (C), and paragraph (4), no State shall receive for a fiscal year under this subsection less than 1/2 of 1 percent of the amount appropriated under subsection (a) and not reserved under paragraph (1) for such fiscal year, as necessary for increasing such payments to States to comply with the preceding sentence shall be obtained by ratably reducing the amount of other States.

(2) REQUIREMENT.—No State, by reason of the application of subparagraph (A), shall receive for a fiscal year more than 150 percent of the amount the State received under this subsection for the preceding fiscal year (or in the case of fiscal year 1999 only, under section 101 of the Carl D. Perkins Vocational and Applied Technology Education Act, as such section was in effect on the day before the date of enactment of the Carl D. Perkins Vocational and Applied Technology Education Amendments of 1998).

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(3) DEFINITION OF PER CAPITA INCOME.—For the purpose of this section, the term ‘per capita income’ means, with respect to a fiscal year, the total personal income in the calendar year ending in such year, divided by the population of the area concerned in such year.

(4) POPULATION DETERMINATION.—For the purposes of this section, population shall be determined to the extent possible by the latest estimates available to the Department of Education.

(5) DEFINITION OF A STATE.—For the purpose of this subparagraph, the term ‘State’ means each of the several States of the United States, the District of Columbia, the Commonwealth of Puerto Rico, and the United States Virgin Islands.

SEC. 113. ACCOUNTABILITY.

(a) PURPOSE.—The purpose of this section is to establish a State accountability system, comprised of the activities described in this section, to assess the effectiveness of the State in achieving statewide progress in vocational and technical education, and to optimize the return of investment of Federal funds in vocational and technical education activities.

(b) STATE PERFORMANCE MEASURES.—

(1) IN GENERAL.—Each eligible agency, with input from eligible recipients, shall establish performance measures for a State that consist of—

(A) the core indicators of performance described in paragraph (2)(A);

(B) any additional indicators of performance identified by the eligible agency under paragraph (2)(B); and

(C) a State adjusted level of performance described in paragraph (3)(A) for each core indicator of performance, and paragraph (3)(B) for each additional indicator of performance.

(2) INDICATORS OF PERFORMANCE.

(A) CORE INDICATORS OF PERFORMANCE.—Each eligible agency shall identify in the State plan core indicators of performance that include, at a minimum, measures of each of the following:

(i) Student attainment of challenging State established academic, vocational and technical education standards;

(ii) Student participation in and completion of vocational and technical education programs that lead to nontraditional training and employment;

(iii) Placement in, completion of, postsecondary education or advanced career/technical education programs or service, or placement or retention in employment.

(3) ADDITIONAL INDICATORS OF PERFORMANCE.—An eligible agency, with input from eligible recipients, may identify in the State plan additional indicators of performance for vocational and technical education activities authorized under the title.

(4) CORE INDICATORS OF PERFORMANCE.—If a State previously has developed State performance measures that meet the requirements of this section, the State may use such performance measures to the extent that they describe the progress of vocational and technical education students.

(D) STATE ROLE.—Indicators of performance described in this paragraph shall be established solely by each eligible agency with input from eligible recipients.

(E) LEVELS OF PERFORMANCE.—

(1) IN GENERAL.—From amounts made available under subsection (a)(1) to carry out this section, an eligible agency may award grants under this subsection to carry out the system, comprised of the activities described in this section, to assess the effectiveness of the State in achieving statewide progress in vocational and technical education, and to optimize the return of investment of Federal funds in vocational and technical education activities.

(2) LEVELS OF PERFORMANCE.

(A) IN GENERAL.—An eligible agency, with input from eligible recipients, shall establish in the State plan described in paragraph (1)(A) for vocational and technical education activities authorized under this subpart, levels of performance established under this subparagraph shall, at a minimum—

(a) the Carl D. Perkins Vocational and Applied Technology Education Amendments of 1998 to the within State allocation under section 231 of the Carl D. Perkins Vocational and Applied Technology Education Act as such section was in effect on the day before the date of enactment of the Carl D. Perkins Vocational and Applied Technology Education Amendments of 1998.

(2) SPECIAL RULE.—Each eligible agency awarding a grant under this subsection shall use the grant funds to serve at least 2 of the core indicators of performance described in paragraphs (A) through (D) of paragraph (1).

SEC. 113. ACCOUNTABILITY.

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(b) STATE PERFORMANCE MEASURES.—

(1) IN GENERAL.—Each eligible agency, with input from eligible recipients, shall establish performance measures for a State that consist of—

(A) the core indicators of performance described in paragraph (2)(A);

(B) any additional indicators of performance identified by the eligible agency under paragraph (2)(B); and

(C) a State adjusted level of performance described in paragraph (3)(A) for each core indicator of performance, and paragraph (3)(B) for each additional indicator of performance.

(2) INDICATORS OF PERFORMANCE.

(A) CORE INDICATORS OF PERFORMANCE.—Each eligible agency shall identify in the State plan core indicators of performance that include, at a minimum, measures of each of the following:

(i) Student attainment of challenging State established academic, vocational and technical education standards;

(ii) Student participation in and completion of vocational and technical education programs that lead to nontraditional training and employment;

(iii) Placement in, completion of, postsecondary education or advanced career/technical education programs or service, or placement or retention in employment.

(3) ADDITIONAL INDICATORS OF PERFORMANCE.—An eligible agency, with input from eligible recipients, may identify in the State plan additional indicators of performance for vocational and technical education activities authorized under the title.

(4) CORE INDICATORS OF PERFORMANCE.—If a State previously has developed State performance measures that meet the requirements of this section, the State may use such performance measures to the extent that they describe the progress of vocational and technical education students.

(D) STATE ROLE.—Indicators of performance described in this paragraph shall be established solely by each eligible agency with input from eligible recipients.

(E) LEVELS OF PERFORMANCE.—

(1) IN GENERAL.—From amounts made available under subsection (a)(1) to carry out this section, an eligible agency may award grants under this subsection to carry out the system, comprised of the activities described in this section, to assess the effectiveness of the State in achieving statewide progress in vocational and technical education, and to optimize the return of investment of Federal funds in vocational and technical education activities.

(2) LEVELS OF PERFORMANCE.

(A) IN GENERAL.—An eligible agency, with input from eligible recipients, shall establish in the State plan described in paragraph (1)(A) for vocational and technical education activities authorized under this subpart, levels of performance established under this subparagraph shall, at a minimum—

(a) the Carl D. Perkins Vocational and Applied Technology Education Amendments of 1998 to the within State allocation under section 231 of the Carl D. Perkins Vocational and Applied Technology Education Act as such section was in effect on the day before the date of enactment of the Carl D. Perkins Vocational and Applied Technology Education Amendments of 1998.

(2) SPECIAL RULE.—Each eligible agency awarding a grant under this subsection shall use the grant funds to serve at least 2 of the core indicators of performance described in paragraphs (A) through (D) of paragraph (1).
"(I) be expressed in a percentage or numerical form, so as to be objective, quantifiable, and measurable; and

"(II) require the State to continually make available to the public information about, and report on, the extent and success of integration of vocational and technical education programs under this Act on that development, improvement, including the capacity of State, tribal, and local vocational and technical education systems to achieve the purpose of this Act;

"(III) the extent to which expenditures at the Federal, State, tribal, and local levels address program improvement in vocational and technical education, including the impact of Federal allocation requirements (such as within State allocation formulas) on the delivery of services;

"(IV) the preparation and qualifications of teachers of vocational and technical, and academic and technical education programs, as well as shortages of such teachers;

"(V) student participation in vocational and technical education programs;

"(VI) academic and employment outcomes of vocational and technical education, including analyses of—

"(i) the number of vocational and technical education students and tech-prep students who meet State adjusted levels of performance;

"(ii) the extent to which existing or innovative agreements that are awarded on a competitive basis.

"(A) IN GENERAL.ÐFrom amounts made available under paragraph (8), the Secretary shall provide for the conduct of an independent evaluation and assessment of vocational and technical education programs under this Act through studies and analyses conducted independent of grants, contracts, and cooperative agreements that are awarded on a competitive basis.

"(B) CONTENTS.ÐThe assessment required under paragraph (1) shall include descriptions and evaluations of—

"(i) the extent to which State, local, and tribal education agencies develop and implement improved State and local vocational and technical education programs and the extent of programs assisted under this Act on that development, improvement, including the capacity of State, tribal, and local vocational and technical education systems to achieve the purpose of this Act;

"(ii) the extent to which expenditures at the Federal, State, tribal, and local levels address program improvement in vocational and technical education, including the impact of Federal allocation requirements (such as within State allocation formulas) on the delivery of services;

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"(I) the number of vocational and technical education students and tech-prep students who meet State adjusted levels of performance;

"(II) the extent to which existing or innovative agreements that are awarded on a competitive basis.
this subsection shall not be subject to any review outside of the Department of Education before their transmittal to the Committee on Education and the Workforce of the House of Representatives, on the report of key research findings of such center or centers and shall submit copies of the report to the Secretary, the Committee on Education and the Workforce of the House of Representatives, on the Library of Congress, and each eligible agency.

(4) DEMONSTRATION PROGRAM.—The Secretary is authorized to carry out demonstration vocational and technical education programs, to replicate successful methods and techniques for providing vocational and technical education programs assisted under this Act.

(5) DISSEMINATION.—The center or centers shall conduct dissemination and training activities based upon the research described in subparagraph (A).

(6) DEMONSTRATIONS AND DISSEMINATION.—

(7) DEMONSTRATION PROGRAM.—The Secretary shall carry out a demonstration partnership project involving a 4-year, accredited postsecondary institution, in cooperation with local public education organizations, volunteer groups,ETRI

(8) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to carry out this title, $1,500,000 for each of fiscal years 1994 through 2000.

(9) AUTHORITY.—Funds reserved under subsection (a)(3)(B)(i) may be used to provide assistance to a second ary school program in Bureau funded schools.

(10) AUTHORITY.—Funds reserved under section 111(a)(3)(B)(i), the Secretary shall make grants to and enter into contracts with Indian tribes, tribal organizations, and other entities to carry out the purposes described in subsection (d), except that such grants or contracts shall not be awarded to secondary school programs in Bureau funded schools.

(11) AUTHORITY.—Funds reserved under section 111(a)(3)(B)(ii), the Secretary shall make grants to and enter into contracts with Indian tribes, tribal organizations, and other entities to carry out the purposes described in subsection (d), except that such grants or contracts shall not be awarded to secondary school programs in Bureau funded schools.

(12) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to carry out this title, $1,500,000 for each of fiscal years 1994 through 2000.
“(A) confer with, and allow for active participation by, representatives of Indian tribes, tribal organizations, and individual tribal members; and

“(B) promulgate the regulations under subchapter III of chapter 5 of title 5, United States Code, commonly known as the ‘Negotiated Rulemaking Act of 1990’.

“(6) Make funds available to any Indian tribe, tribal organization, or Bureau funded school eligible to receive assistance under subsection (b) may apply individually or as part of a consortium with another such Indian tribe, tribal organization, or Bureau funded school.

“(c) AUTHORIZED ACTIVITIES.—

“(1) PROGRAMS.—Funds made available under this section shall be used to carry out vocational and technical education programs consistent with the purpose of this Act.

“(2) STIPENDS.—

“(A) IN GENERAL.—Funds received pursuant to grants or contracts awarded under subsection (b) may be used to provide stipends to students who are enrolled in vocational and technical education programs and who have acute economic needs which cannot be met through work-study programs.

“(B) AMOUNT.—Stipends described in subparagraph (A) shall not exceed reasonable amounts as prescribed by the Secretary.

“(c) AMOUNT OF GRANTS.—

“(1) IN GENERAL.—The amounts of any grants made to or entered into contracts with organizations primarily serving and representing Native Hawaiians which are recognized by the Governor shall be submitted to the Secretary for approval.

“(2) ACCOUNTING.—Each institution receiving a grant under this section shall provide annually to the Secretary an accurate and detailed accounting of the institution’s operating and program expenses and such other information concerning costs as the Secretary may reasonably require.

“(d) OTHER PROGRAMS.—

“(1) IN GENERAL.—Except as specifically provided in this Act, eligibility for assistance under this section shall not preclude any tribally controlled postsecondary vocational and technical institution from receiving Federal financial assistance under any program authorized under the Higher Education Act of 1965, or any other Federal program for the benefit of institutions of higher education or vocational and technical education.

“(2) PROHIBITION ON CONTRACT DENIAL.—No tribally controlled postsecondary vocational and technical institution for which an Indian tribe has been designated a participating organization under this section shall be used to provide a grant under this section which shall not be altered because of funds appropriated under the Act of November 2, 1921 (commonly known as the ‘Snyder Act’) [42 Stat. 208, chapter 115, 25 U.S.C. 142].

“SEC. 117. TRIBALLY CONTROLLED POSTSECONDARY VOCATIONAL AND TECHNICAL EDUCATION PROGRAMS.

“(a) GRANTS AUTHORIZED.—The Secretary shall, subject to the availability of appropriations, make grants pursuant to this section to tribally controlled postsecondary vocational and technical institutions to provide basic support for the education and training of Indian students.

“(b) USE OF GRANTS.—Amounts made available pursuant to this section shall be used for vocational and technical education programs.

“(c) AMOUNT OF GRANTS.—

“(1) IN GENERAL.—The Secretary shall determine the sums appropriated for any fiscal year for grants under this section are not sufficient to pay in full the total amount which approved applicants are eligible to receive for any fiscal year under this section, the Secretary shall first allocate to each such applicant who receives funds under this part for the preceding fiscal year an amount equal to 100 percent of the per capita payment determined for the preceding fiscal year and such applicant’s Indian student count for the current program year, plus an amount equal to the actual costs of any increase to the per capita figure resulting from inflationary increases to necessary costs beyond the institution’s control.

“(2) APPLICATION.—For the purposes of paragraph (1), the per capita payment for any fiscal year shall be determined by dividing the amount available for grants to tribally controlled postsecondary vocational and technical institutions for the current fiscal year by the sum of the Indian student counts of such institutions for such program year. The Secretary shall, on the basis of the most accurate data available from the institutions, compute the Indian student count for any fiscal year for which such count was not used for the purpose of making allocations under this section.

“(d) APPLICATIONS.—Any tribally controlled postsecondary vocational and technical institution that desires to receive a grant under this section shall submit an application to the Secretary in such manner and form as the Secretary may require.

“(1) IN GENERAL.—The Secretary shall, subject to the availability of appropriations, provide for each program year to each tribally controlled postsecondary vocational and technical institution having an application approved by the Secretary, an amount necessary to pay expenses associated with the conduct of a long-term study of the institution’s operating and program expenses and such other information concerning costs as the Secretary may reasonably require.

“(2) ACCOUNTING.—Each institution receiving a grant under this section shall provide annually to the Secretary an accurate and detailed accounting of the institution’s operating and program expenses and such other information concerning costs as the Secretary may reasonably require.

“(e) EXPENSES.—

“(1) IN GENERAL.—The Secretary shall, subject to the availability of appropriations, provide for the conduct of a long-term study of the facilities of each institution eligible under this section.

“(2) LONG-TERM STUDY OF FACILITIES.—

“(A) IN GENERAL.—The Secretary shall, subject to the availability of appropriations, provide for the conduct of a long-term study of the facilities of each institution eligible under this section.

“(B) STUDY OF TRAINING AND HOUSING BY INDIAN TRIBES.—The Secretary shall, subject to the availability of appropriations, provide for a study of the training, housing, and immediate facilities needs of Indian tribes which are eligible under this section.

“SEC. 118. CONDUCT OF STUDY.

“(a) IN GENERAL.—The Secretary shall, subject to the availability of appropriations, provide for the conduct of a study of the training, housing, and immediate facilities needs of Indian tribes which are eligible under this section.

“(b) AMOUNT OF GRANTS.—The amount of any grant for which tribally controlled postsecondary vocational and technical institutions are eligible under this section shall not be altered because of funds appropriated under the Act of November 2, 1921 (commonly known as the ‘Snyder Act’) [42 Stat. 208, chapter 115, 25 U.S.C. 142].

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of training facilities, equipment, and housing needs and shall consider such factors as project service population, employment, and economic development forecasting, based on the most current and accurate data available to the institutions and Indian tribes affected.

(C) Submission.—The Secretary shall submit to Congress a detailed report on the results of such surveys, or of the end of the 6-month period beginning on the date of enactment of this Act.

(D) Definitions.—In this section:

(1) INDIAN.—The terms 'Indian' and 'Indian tribe' have the meanings given the terms in section 2 of the Tribally Controlled College or University Act of 1970.

(2) INDIAN STUDENT COUNT.—The term 'Indian student count' means a number equal to the total number of Indian students enrolled in each tribally controlled postsecondary vocational and technical institution, determined as follows:

(A) Registrations.—The registrations of Indian students as in effect on October 1 of each year.  

(B) Summer Term.—Credits or clock hours toward a certificate earned in classes offered during the summer term shall be counted toward the computation of the Indian student count in the succeeding fall term.

(C) Admission Criteria.—Credits or clock hours toward a certificate earned in classes during the summer term shall be counted toward the computation of the Indian student count if the institution at which the student is in attendance has established criteria for the admission of such student on the basis of the student's ability to benefit from the education or training offered. The institution shall be presumed to have established such criteria if the admission procedures for such studies include counseling or testing that measures the student's aptitude to successfully complete the course in which the student seeks credit and to update the admission criteria for purposes of obtaining a secondary school degree or its recognized equivalent shall be counted toward the computation of the Indian student count.

(D) Determination of Hours.—Indian students earning credits in any continuing education program of a tribally controlled postsecondary vocational and technical institution shall be included in determining the sum of all credit or clock hours.

(E) Auxiliary Education.—Credits or clock hours earned in a continuing education program shall be converted to the basis that is most current and accurate data available from the institutions and Indian tribes affected.

(F) Authorization of Appropriations.—There are authorized to be appropriated to carry out this section $4,000,000 for fiscal year 1999 and each of the 4 succeeding fiscal years.

SEC. 112. OCCUPATIONAL AND EMPLOYMENT INFORMATION.

(a) National Activities.—From funds appropriated under subsection (f), the Secretary, in consultation with appropriate Federal agencies, is authorized—

(1) to prepare assistance to an entity to enable the entity—

(A) to provide technical assistance to State entities designated under subsection (b) to enable the State entities to carry out the activities described in subsection (b); 

(B) to disseminate information that promotes the replication of the quality practices described in subsection (b); 

(C) to develop and disseminate products and services related to the activities described in subsection (b); 

(2) to award grants to States that designate State entities in accordance with subsection (b) to enable the State entities to carry out the State plan described in subsection (b); 

(b) State Level Activities.—In order for a State to receive a grant under this section, the eligible agency and the Governor of the State shall jointly designate an entity in the State—

(1) to provide support for a career guidance and academic counseling program designed to assist eligible students in self-reliant decisionmaking by individuals (especially in areas of career information delivery and use); 

(2) to make available to students, parents, teachers, administrators, and counselors with the knowledge and skills needed to assist students in career exploration, educational opportunities, and education financing; 

(3) to assist appropriate State entities in tailoring career-related educational resources and training for use by such entities; 

(4) to improve coordination and communication among administrators and planners of programs carried out by this Act and by section 15 of the Wagner-Peyser Act at the Federal, State, and local levels to ensure nonduplication of efforts and the appropriate use of shared information and data; 

(5) to provide ongoing needs for customers, such as students and parents, to provide comments and feedback on products and services and to update the products, where appropriate, to better meet customer requirements.

(c) Determination of Hours.—Indian students earning credits in any continuing education program of a tribally controlled postsecondary vocational and technical institution shall be included in determining the sum of all credit or clock hours.

(d) Determination of Levels.—Indian students earning credits in any continuing education program of a tribally controlled postsecondary vocational and technical institution shall be included in determining the sum of all credit or clock hours.

(e) Authorization of Appropriations.—There are authorized to be appropriated to carry out this section $4,000,000 for fiscal year 1999 and each of the 4 succeeding fiscal years.

PART B—STATE PROVISIONS

SEC. 121. STATE ADMINISTRATION.

(a) Eligible Agency Responsibilities.—

(1) in general.—The responsibilities of an eligible agency under this title shall include—

(A) coordination of the development, submission, and implementation of the State plan, and the evaluation of the program, services, and activities assisted under this section; 

(B) consultation with the Governor and appropriate agencies of the State, including Minimum Education Standards, to develop the State plan to carry out the requirements of this title; 

(C) implementation of the State plan to carry out the requirements of this title; 

(D) dissemination of information to the appropriate agencies, groups, and individuals in the State, and to update resources, as appropriate, to better meet customer requirements.

(b) Plan Development.—The State plan shall—

(1) describe the specific products and services assisted under this section that were delivered during the prior program year; 

(2) describe the specific products and services assisted under this section that were designed to meet or exceed the State adjusted levels of performance, including a description of—

(A) the secondary and postsecondary vocational and technical education programs to be assisted under this section, and the extent to which the eligible agency will be responsible or liable for the activities carried out under this section; 

(B) the criteria that will be used by the eligible agency to determine the extent of the activities covered under this section; 

(C) selecting and evaluating eligible agencies; 

(3) provide ongoing needs for customers, such as students and parents, to provide comments and feedback on products and services and to update the products, where appropriate, to better meet customer requirements.

(c) Authorization of Appropriations.—There are authorized to be appropriated to carry out this section $4,000,000 for fiscal year 1999 and each of the 4 succeeding fiscal years.

(d) Funding Rule.—Of the amounts appropriated to carry out this section, the Federal entity designated under subsection (a) shall use—

(1) not less than 85 percent to carry out subsection (b); and 

(2) not more than 15 percent to carry out subsection (a).

(e) Report.—The Secretary, in consultation with appropriate Federal agencies, shall prepare and submit to the appropriate committees of Congress, an annual report that includes—

(1) an identification of activities assisted under this section during the prior program year; 

(2) a description of the specific products and services assisted under this section that were delivered during the prior program year; and 

(3) an assessment of the extent to which States and Indian tribes have effectively coordinated activities assisted under this section with activities authorized under section 15 of the Wagner-Peyser Act.

(f) Authorization of Appropriations.—There are authorized to be appropriated to carry out this section such sums as may be necessary for each of the fiscal years 1999 through 2003.
into high skill, high wage jobs in current and emerging occupations; and

(18) ensure that students who participate in such postsecondary vocational and technical education programs are taught the same challenging academic and technical skills as students in other postsecondary programs.

(19) describe how the eligible agency will annually evaluate the effectiveness of such vocational and technical education programs and describe, to the extent practicable, how the eligible agency will coordinate such programs to ensure nonduplication with other existing Federal programs;

(20) describes how the eligible agency will evaluate the effectiveness of such programs consistent with the requirements of this Act.

(21) contains the description and information specified in sections 112(b)(8) and 121(c) of Public Law 105-220, provisions of services only for postsecondary students and school dropouts.

(22) PLAN OPTION. The eligible agency may fulfill the requirements of subsection (a) by submitting a plan under section 501 of Public Law 105-220.

(23) PLAN APPROVAL. (1) IN GENERAL. The Secretary shall approve a State plan, or a revision to an approved State plan, unless the Secretary determines that

(24) the State's levels of performance on the core indicators of performance consistent with section 113 are not sufficiently rigorous to meet the purpose of this Act.

(25) the Secretary shall not finally disapprove a State plan, except after giving the eligible agency notice and an opportunity for hearing.

(26) CONSULTATION. The eligible agency shall develop and implement a program improvement plan in consultation with the State agency responsible for supervision of community colleges, technical institutes, or other 2-year postsecondary institutions primarily engaged in providing postsecondary vocational and technical education and training.

(27) PROVIDE A SANCTION. If a State agency finds that a portion of the final State plan is objectionable, the State agency shall file such objections with the eligible agency. The eligible agency shall respond to any objections of the State agency in the State plan submitted to the Secretary.

(28) TIMEFRAME. A State plan shall be deemed approved by the Secretary if the Secretary has not responded to the eligible agency for 90 days of the date the Secretary receives the State plan.

(29) TRANSITION. This section shall be subject to section 4 for fiscal year 1999 only, with respect to activities under this section.

SEC. 123. SECULAR STATE LEADERSHIP ACTIVITIES.

(a) STATE PROGRAM IMPROVEMENT PLAN. If a State fails to meet the State adjusted levels of performance described in the report submitted under section 113(c), the eligible agency shall develop and implement a program improvement plan in consultation with appropriate agencies, and provide students with strong experience in, and provide students with strong experience in, academic, and vocational and technical, subjects, and to the extent practicable, how the eligible agency will

(30) describes how the eligible agency will implement improvement activities consistent with the requirements of this Act.
(1) an assessment of the vocational and technical education programs carried out with funds under this title that includes an assessment of how the needs of special populations are being met and includes programs designed to enable special populations to meet State adjusted levels of performance and prepare the special populations for further learning or for high wage careers;

(2) developing, improving, or expanding the use of technology in vocational and technical education programs that include—

(A) training of vocational and technical education personnel to use state-of-the-art technology, that may include distance learning;

(B) training in technical and vocational education students with the academic, and vocational and technical, skills that lead to entry into the high technology and telecommunication fields; or

(C) encouraging schools to work with high technology industries to offer voluntary internships and mentoring programs;

(3) pilot and demonstration programs, including providing comprehensive professional development (including initial teacher preparation) for vocational and technical, academic, guidance, and administrative personnel, that—

(A) will provide inservice and preservice training in state-of-the-art vocational and technical education; students to gain an understanding of industry for which they are preparing to enter;

(B) support for family and consumer sciences programs;

(9) support for education and business partnerships;

(10) support to improve or develop new vocational and technical education courses;

(11) providing vocational and technical education programs for adults and school dropouts to complete their secondary school education; and

(12) providing assistance to students, who have participated in services and activities under this title, in finding an appropriate job and continuing their education.

(4) support for vocational and technical education programs that improve the academic, and vocational and technical, skills of students participating in vocational and technical education programs by strengthening the academic, and vocational and technical, components of such vocational and technical education programs through the integration of academics with vocational and technical education to ensure learning in the core academic, and vocational and technical, subjects;

(5) providing preparation for nontraditional training and employment;

(6) supporting partnerships among local educational agencies, institutions of higher education, adult education providers, and, as appropriate, other entities, such as employers, labor organizations, parents, and local partnerships, to achieve State academic standards, and vocational and technical skills;

(7) serving individuals in State institutions, such as State correctional institutions and institutions that serve individuals with disabilities; and

(8) support for programs for special populations that lead to high skill, high wage careers.

(1) technical assistance for eligible recipients;

(2) improvement of career guidance and academic counseling programs that assist students in making informed academic, and vocational and technical, decisions;

(3) establishment of agreements between secondary and postsecondary vocational and technical education programs in order to provide postsecondary education and training opportunities for students participating in such vocational and technical education programs, such as technical institutes, and

(4) support for cooperative education.

(5) support for vocational and technical student organizations, especially with respect to efforts to increase the participation of students who are members of special populations;

(6) support for public charter schools operating secondary vocational and technical education programs;

(7) support for vocational and technical education programs that offer experience in, and awareness of, emerging technologies, and industry for which students are preparing to enter;

(8) support for family and consumer sciences programs;

(9) support for education and business partnerships;

(10) support to improve or develop new vocational and technical education courses;

(11) providing vocational and technical education programs for adults and school dropouts to complete their secondary school education; and

(12) providing assistance to students, who have participated in services and activities under this title, in finding an appropriate job and continuing their education.

(1) demonstrates that a proposed alternative for more effectively serving students under the basis of poverty (as defined by the Office of Management and Budget and revised annually in accordance with section 673(2) of the Community Services Block Grant Act (42 U.S.C. 9902(2))) applicable to a family of the size involved for the fiscal year for which the determination is made compared to the number of such individuals who reside in the school districts served by all the local educational agencies in the State for such preceding fiscal year.

(2)Waiver for more equitable distribution.—The Secretary may waive the applicability of subsection (b) in the case of any eligible agency that submits to the Secretary an application for such a waiver that—

(1) demonstrates that a proposed alternative for more effectively serving students under the basis of poverty (as defined by the Office of Management and Budget and revised annually in accordance with section 673(2) of the Community Services Block Grant Act (42 U.S.C. 9902(2))) applicable to a family of the size involved for the fiscal year for which the determination is made compared to the number of such individuals who reside in the school districts served by all the local educational agencies in the State for such preceding fiscal year.

(2)Waiver for more equitable distribution.—The Secretary may waive the applicability of subsection (b) in the case of any eligible agency that submits to the Secretary an application for such a waiver that—

(1) demonstrates that a proposed alternative for more effectively serving students under the basis of poverty (as defined by the Office of Management and Budget and revised annually in accordance with section 673(2) of the Community Services Block Grant Act (42 U.S.C. 9902(2))) applicable to a family of the size involved for the fiscal year for which the determination is made compared to the number of such individuals who reside in the school districts served by all the local educational agencies in the State for such preceding fiscal year.

(2)Waiver for more equitable distribution.—The Secretary may waive the applicability of subsection (b) in the case of any eligible agency that submits to the Secretary an application for such a waiver that—

(1) demonstrates that a proposed alternative for more effectively serving students under the basis of poverty (as defined by the Office of Management and Budget and revised annually in accordance with section 673(2) of the Community Services Block Grant Act (42 U.S.C. 9902(2))) applicable to a family of the size involved for the fiscal year for which the determination is made compared to the number of such individuals who reside in the school districts served by all the local educational agencies in the State for such preceding fiscal year.
"(1) I N GENERAL.—Each eligible agency shall distribute the portion of funds made available under section 112(a)(1) for any fiscal year by each eligible agency for secondary school vocational and technical education programs under this section to the appropriate area vocational and technical education service agency in any case in which the area vocational and technical education service agency is under this section to the appropriate area vocational and technical education service agency, and the local educational agency concerned—

(A) have formed or will form a consortium for the purpose of receiving funds under this section; or

(B) have entered into or will enter into a cooperative arrangement for such purpose.

"(2) GENERAL.—If an area vocational and technical education service agency meets the requirements of paragraph (1), then the amount that would otherwise be distributed to the local educational agency shall be allocated to the area vocational and technical education service agency, the educational service agency, and the local educational agency based on each school, agency or entity’s relative share of students who are attending vocational and technical education programs (based, if practicable, on the average enrollment for the preceding 3 years);

"(3) APPEALS PROCEDURE.—The eligible agency shall establish an appeals procedure for resolution of disputes arising between the area vocational and technical education school or educational service agency with respect to the allocation procedures under this section, including the decision of a local educational agency to leave a consortium or terminate a cooperative arrangement.

"(4) CONSORTIUM REQUIREMENTS.—

(A) ALLIANCE.—Any local educational agency receiving an allocation that is not sufficient to conduct a program which meets the requirements of section 112(a)(1) shall be encouraged to—

(A) form a consortium or enter into a cooperative agreement with an area vocational and technical education school or educational service agency offering programs that meet the requirements of section 135; and

(B) transfer such allocation to the area vocational and technical education school or educational service agency; and

(C) operate programs that are of sufficient size, scope, and quality to be effective.

(B) DEMAND.—Funds allocated to a consortium formed to meet the requirements of this paragraph shall be used only for purposes and programs that are mutually beneficial to all members of the consortium and shall be used only for programs authorized under this title. Such funds may not be reallocated to individual eligible institutions or consortia benefiting only one member of the consortium.

"(5) WAIVER.—The eligible agency may waive the application of paragraph (3)(A)(i) in any case in which the eligible institution is located in a rural, sparsely populated area.

"(6) WAIVER FOR MORE EQUITABLE DISTRIBUTION.—The Secretary may waive the application of subsection (a) if an eligible agency submits to the Secretary an application for such a waiver that—

(A) demonstrates that the formula described in subsection (a) does not result in a distribution of funds to the eligible institutions or consortia within the State that have the highest numbers of economically disadvantaged individuals and that an alternative formula will result in such a distribution; and

(B) includes a proposal for such an alternative formula.

"(7) MINIMUM GRANT AMOUNT.—

(A) IN GENERAL.—No institution or consortium shall receive under this section in an amount that is less than $50,000.

(B) REDISTRIBUTION.—Any amounts that are not distributed by reason of paragraph (1) shall be redistributed to eligible institutions or consortia in accordance with this section.

"SEC. 133. SPECIAL RULES FOR VOCATIONAL AND TECHNICAL EDUCATION.

"(a) SPECIAL RULE FOR MINIMAL ALLOCATION.—

(A) GENERAL AUTHORITY.—Notwithstanding the provisions of sections 112 and 132 and in order to ensure that a significant portion of funds for programs serving the areas of greatest economic need, for any program year for which a minimal amount is made available by an eligible agency under section 132, such State may distribute such minimal amount for such year—

(A) on a competitive basis; or

(B) through any alternative method determined by the State.

(B) MINIMAL AMOUNT.—For purposes of this section, the term ‘minimal amount’ means not more than 15 percent of the total amount made available for distribution under section 112(a)(1).

"(b) REDISTRIBUTION.—(1) IN GENERAL.—In any academic year that an eligible recipient does not expend all of the

amounts the eligible recipient is allocated for such year under section 131 or 132, such eligible recipient shall return any unexpended amounts to the eligible agency to be reallocated under section 132.

(2) REDISTRIBUTION LATE IN AN ACADEMIC YEAR.—In any academic year in which amounts are returned to the eligible agency, the eligible agency shall reallocate such amounts for distribution in combination with amounts provided under section 112(a)(1) for the following academic year.

"(c) CONSTRUCTION.—Nothing in section 131 or 132 shall be construed—

(1) to prohibit a local educational agency or a consortium thereof that receives assistance under section 131, from working with an eligible institution or consortium thereof that receives assistance under section 132, to carry out secondary school vocational and technical education programs in accordance with this title;

(2) to prohibit an eligible institution or consortium thereof that receives assistance under section 132, from working with a local educational agency or consortium thereof that receives assistance under section 131, to carry out postsecondary and adult vocational and technical education programs in accordance with this title; or

(3) to require a charter school, that provides vocational and technical education programs and is considered a local educational agency under State law, to jointly establish the charter school’s eligibility for funds under this title; unless the charter school is explicitly permitted to do so under the State’s charter school statute.

"(d) CONSISTENT APPLICATION.—For purposes of this section, the eligible agency provides those funds to charter schools offering vocational and technical education programs in the same manner as the eligible agency provides those funds to other schools. Such vocational and technical education programs within a charter school shall be of sufficient size, scope, and quality to be effective.

"SEC. 134. LOCAL PLAN FOR VOCATIONAL AND TECHNICAL EDUCATION PROGRAMS.

"(a) LOCAL PLAN REQUIRED.—Any eligible recipient desiring financial assistance under this part shall, in accordance with requirements established by the eligible agency in consultation with such other educational entities as the eligible agency determines to be appropriate, submit a local plan to the eligible agency. Such local plan shall cover the period of time as the period of time applicable to the State plan submitted under section 122.

"(b) CONTENTS.—The eligible agency shall determine requirements for local plans, except that each local plan shall—

(1) describe how the vocational and technical education programs required under section 132 will be carried out with funds received under this title;

(2) describe how the vocational and technical education activities will be carried out with respect to meeting the requirements of performance established under section 133;

(3) describe how the eligible recipient will—

(A) improve the academic and technical skills of students participating in vocational and technical education programs through a coherent sequence of courses to ensure learning in the core academic, and vocational and technical, subjects; and

(B) provide students with strong experience in and understanding of all aspects of an industry; and
“(C) ensure that students who participate in such vocational and technical education programs are taught to the same challenging academic proficiencies as are taught for all other students; and

“(D) describe how parents, students, teachers, representatives of business and industry, labor organizations, representatives of special populations, and individuals are involved in the development, implementation, and evaluation of vocational and technical education programs assisted under this title, and how such individuals and entities are effectively informed about, and assisted in understanding, the requirements of this title;

“(5) provide assurances that the eligible recipient will provide vocational and technical education programs that is of such size, scope, and quality to bring about improvement in the quality of vocational and technical education programs;

“(6) describe the process that will be used to independently evaluate and continuously improve the performance of the eligible recipient;

“(7) describe how the eligible recipient—

“(A) will review vocational and technical education programs, and identify and adopt strategies to overcome barriers that result in lowering rates of access to or improving success in the programs, for special populations; and

“(B) will provide programs that are designed to enable the special populations to meet the State standards for performance;

“(8) describe how individuals who are members of the special populations will not be discriminated against on the basis of their status as members of the special populations;

“(9) describe how funds will be used to promote preparation for nontraditional training and employment; and

“(10) describe how comprehensive professional development (including initial teacher preparation) for vocational and technical, academic, and administrative personnel will be provided.

“SEC. 135. LOCAL USES OF FUNDS.

“(a) General Authority.—Each eligible recipient that receives funds under this part shall use such funds to improve vocational and technical education programs.

“(b) Requirements for Uses of Funds.—Funds made available to eligible recipients under this part shall be used to support vocational and technical education programs that—

“(1) strengthen the academic, and vocational and technical, skills of students participating in vocational and technical education programs; and

“(2) develop, improve, or expand the use of vocational and technical education programs through a coherent sequence of courses to ensure learning in the core academic, and vocational and technical, subjects;

“(3) provide students with strong experience in and understanding of all aspects of an industry;

“(4) develop, improve, or expand the use of technology in vocational and technical education, which may include—

“(A) training of vocational and technical education personnel to use state-of-the-art technology, which may include distance learning;

“(B) providing vocational and technical education students with the academic, and vocational and technical, skills that lead to entry into the high technology and telecommunications field; or

“(C) encouraging schools to work with high technology industries to offer voluntary internships and other work-based learning opportunities;

“(5) provide professional development programs to teachers, counselors, and administrators, including—

“(A) in-service and preservice training in state-of-the-art vocational and technical education programs and techniques, in effective teaching skills based on research, and in effective practices to improve parental and community involvement;

“(B) support of education programs for teachers of vocational and technical education that are offered in public schools and other public school personnel who are involved in the delivery of educational services to vocational and technical education students, to ensure that such teachers and personnel stay current with all aspects of an industry;

“(C) internship programs that provide business experience to teachers; and

“(D) programs designed to train teachers specifically in the use and application of technology;

“(6) develop and implement evaluations of the vocational and technical education programs carried out with funds under this title, including an assessment of how the needs of special populations are being met;

“(7) provide services and activities that are of sufficient size, scope, and quality to be effective; and

“(8) link secondary vocational and technical education and postsecondary vocational and technical education, including implementing tech-prep programs.

“(c) Permissive. Funds made available to an eligible recipient under this title may be used—

“(1) to involve parents, businesses, and labor organizations in the design, implementation, and evaluation of vocational and technical education programs authorized under this title, including establishing effective programs and procedures to enable informed and effective participation in such programs;

“(2) to provide career guidance and academic counseling for students participating in vocational and technical programs;

“(3) to provide work-related experience, such as internships, cooperative education, school-based enterprises, entrepreneurship, and job shadowing that are related to vocational and technical education programs;

“(4) to provide programs for special populations;

“(5) for local education and business partnerships;

“(6) to assist vocational and technical student organizations as appropriate, in the design, implementation, and evaluation of vocational and technical education programs authorized under this title, including establishing effective programs and procedures to enable informed and effective participation in such programs;

“(7) to provide support for family and consumer sciences programs;

“(8) to provide assistance to students who have participated in services and activities under this title to secure an appropriate job and continue their education;

“(9) to support nontraditional training and employment activities; and

“(10) to support vocational and technical education activities that are consistent with the purpose of this Act.

“(d) Administrative Costs.—Each eligible recipient receiving funds under this part shall not use more than 5 percent of the funds for administrative costs associated with the administration of activities assisted under this section.

“TITLE II—TECH-PREP EDUCATION

“SEC. 201. SHORT TITLE.

“This title may be cited as the ‘Tech-Prep Education Act’.

“SEC. 202. DEFINITIONS.

“(a) In this title:

“(1) Articulation Agreement.—The term ‘articulation agreement’ means a written commitment to a program that the student will demonstrate the achievement of specific career field skills, and the student will have a non-duplicative sequence of post-secondary achievements leading to degrees or certificates in a tech-prep education program.

“(b) Community College.—The term ‘community college’—

“(i) means an institution of higher education that is defined in section 101 of the Higher Education Act of 1965, which provides not less than than a two-year program that is acceptable for full credit toward a bachelor’s degree and;

“(ii) includes tribally controlled colleges or universities.

“(c) Tech-Prep Program.—The term ‘tech-prep program’ means a program of study that combines at a minimum two years of secondary education (as determined under State law) with a minimum of two years of postsecondary education, a nondenfucative, sequential course of study;

“(1) integrates academic, and vocational and technical, instruction, and utilizes work-based and work-site learning where appropriate and available;

“(2) provides technical preparation in a career field such as engineering technology, applied science, a mechanical or practical art or trade, agriculture, health occupations, business, or applied economics;

“(3) builds student competence in mathematics, science, reading, writing, communications, economics, and workplace skills through applied, contextual academics, and integrated instruction, in a coherent sequence of courses;

“(4) leads to an associate or a baccalaureate degree or a postsecondary certificate in a specific career field;

“(5) leads to placement in appropriate employment or to further education.

“SEC. 203. STATE ALLOTMENT AND APPLICATION.

“(a) In General.—For any fiscal year, the Secretary shall allocate the amount made available under section 200 among the States in the same manner as funds are allotted to States under section 200(b)(1) of the Higher Education Opportunity Act of 2008.

“(b) Payments to Eligible Agencies.—The Secretary shall make a payment in the amount of the State’s allotment under subsection (a) to the eligible agency that serves the State and has an articulation agreement approved under subsection (c).

“(c) State Application.—Eligible agencies desiring assistance under this title shall submit an application to the Secretary at such time, in such manner, and be accompanied by such information as the Secretary may require.

“SEC. 204. TECH-PREP EDUCATION.

“(a) Grant Program Authorized.—

“(1) In General.—From amounts made available to each eligible agency under section 203, the eligible agency, in accordance with the provisions of this title, shall award grants, on a competitive basis or on the basis of a formula determined by the eligible agency, for tech-prep education programs described in subsection (c). The grants shall be awarded to consortia between two or more—

“(A) a local educational agency, an intermediate educational agency or area vocational and technical education school serving secondary students, an institution of secondary school funded by the Bureau of Indian Affairs; and

“(B) a nonprofit institution of higher education that offers—

“(i) a 2-year associate degree program, or a 2-year certificate program, and is qualified as an institution of higher education pursuant to section 102 of the Higher Education Act of 1965, in the installation of secondary education assistance under the Tribally Controlled College or University Assistance Act of 1978 (25 U.S.C. 1801 et seq.) and a tribally controlled postsecondary vocational and technical institution; and

“(ii) a 2-year apprenticeship program that follows secondary instruction,
if such nonprofit institution of higher education is not prohibited from receiving assistance under part B of title IV of the Higher Education Act of 1965 (20 U.S.C. 1071 et seq.) to the provisions of section 434(a)(3) of such Act (20 U.S.C. 1083(a)) or

(iii) a proprietary institution of higher education that offers a 2-year associate degree program and is qualified as an institution of higher education pursuant to section 102 of the Higher Education Act of 1965, if such proprietary institution of higher education is not subject to a default management plan required by the Secretary.

(2) SPECIAL RULE.—In addition, a consortium described in paragraph (1) may include 1 or more

(A) institutions of higher education that award a baccalaureate degree; and

(B) employers or labor organizations.

(3) CONTENTS OF TECH-PREP PROGRAM.—Each tech-prep program shall

(1) be carried out under an articulation agreement between the participants in the consortium;

(2) consist of at least 2 years of secondary school education and 2 years or more of higher education, or an apprenticeship program of at least 2 years following secondary instruction, with a common core of required proficiency outcomes that addresses technical preparation programs, to individuals with special populations; and labor organizations;

(3) address effectively the issues of school dropout prevention and reentry and the needs of special populations;

(4) provide education and training in areas or skills in which there are significant workforce shortages, including the information technology industry; and

(5) demonstrate how tech-prep programs will help students achieve high academic and employability competencies.

(4) EQUITABLE DISTRIBUTION OF ASSISTANCE.—In awarding grants under this title, the eligible agency shall ensure an equitable distribution of assistance between urban and rural consortium participants.

(5) SEC. 206. REPORT.—Each eligible agency that receives a grant under this title annually shall prepare and submit to the Secretary a report on the effectiveness of the tech-prep programs assisted under this title, including a description of how grants were awarded with consideration to the consortium.

(6) SEC. 207. DEMONSTRATION PROGRAM.—(a) DEMONSTRATION PROGRAM AUTHORIZED.—From funds appropriated under subsection 206(c) and each of the 4 succeeding fiscal years.

(1) shall increase the number of secondary school students in the tech-prep education programs; and

(2) may provide summer internships at a business for students or teachers.

(c) APPLICATION.—Each consortium desiring a grant under this section shall submit an application to the Secretary, in such manner and accompanied by such information as the Secretary may require.

(d) APPLICABILITY.—The provisions of sections 204, 205, and 206 shall not apply to this section, except that—

(1) the provisions of section 204(a) shall apply for purposes of describing consortia eligible to receive assistance under this section;

(2) each tech-prep education program assisted under this section shall meet the requirements of paragraphs (1), (2), (3)(A), (3)(B), (3)(C), (3)(D), (4), (5), (6), and (7) of section 204(c), except that such paragraph (3)(B) shall be applied by striking "and" and, if possible and practicable, 4-year institutional and postsecondary education through nonduplicative sequences of courses in career fields; and

(3) in awarding grants under this section, the Secretary shall give special consideration to consortia submitting applications under subsection (c) that meet the requirements of paragraphs (1), (3), (4), and (5) of section 205(d), except that such paragraph (3)(B) shall be applied by striking "or the transfer of students to baccalaureate degree programs".

(e) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated to carry out this section $25,000,000 for fiscal year 1999 and each of the 4 succeeding fiscal years.

SEC. 208. AUTHORIZATION OF APPROPRIATIONS.

There is authorized to be appropriated to carry out this title (other than section 207) such sums as may be necessary for fiscal year 1999 and each of the 4 succeeding fiscal years.

TITLE III—GENERAL PROVISIONS

PART A—FEDERAL ADMINISTRATIVE PROVISIONS

SEC. 311. FISCAL REQUIREMENTS.

(a) SUPPLEMENT NOT SUPPLANT.—Funds made available under this Act for vocational and technical education activities and tech-prep activities shall supplement, and shall not supplant, non-Federal funds expended to carry out vocational and technical education activities and tech-prep activities.

(b) MAINTENANCE OF EFFORT.—(1) DETERMINATION.—Except as provided in subparagraphs (B) and (C), no payments shall be made under this Act for any fiscal year to a State for vocational and technical education programs or tech-prep programs unless the State determines that the aggregate expenditures of such State for vocational and technical education programs for the fiscal year preceding the fiscal year for which the determination is made, equal to or exceed such effort or expenditures for vocational and technical education programs, for the fiscal year preceding the fiscal year for which the determination is made.

(2) COMPUTATION.—In computing the fiscal effort or aggregate expenditures pursuant to subparagraph (A), the following items shall be included in the calculation:

(A) Program funds.

(B) Income from Federal, State, and local sources, and capital expenditures, special one-time project costs, and the cost of pilot programs.

(C) Decrease in Federal support.—If the amount made available for vocational and technical education programs under this Act for a fiscal year is less than the amount made available for vocational and technical education programs for the fiscal year preceding the fiscal year for which the determination is made, then the fiscal effort or aggregate expenditures shall be decreased by the percentage decrease in the amount so made available.

(D) Waiver.—The Secretary may, subject to the requirements of this section, with respect to not more than 5 percent of expenditures by any eligible agency for fiscal year 1998, on making a
determination that such waiver would be equitable due to exceptional or uncontrollable circumstances affecting the ability of the eligible agency to meet such requirements, such as a natural disaster or an unforeseen and precipitous decline in financial resources. No level of funding permitted under such a waiver may be used as the basis for computing the fiscal effort or expenditures required under such a section for years subsequent to the year covered by such waiver. The fiscal effort or aggregate expenditures for the subsequent years shall be computed on the basis of the level of funding that would, but for such waiver, have been required.

SEC. 312. AUTHORITY TO MAKE PAYMENTS.

Any such funds to provide payments or enter into contracts under this Act shall be available only to such extent or in such amounts as are provided in advance in appropriation Acts.

SEC. 313. CONSTRUCTION.

Nothing in this Act shall be construed to permit, allow, encourage, or authorize any Federal control over any aspect of a private, religious, or home school, regardless of whether a home school is treated as a private school or home school under State law. This section shall not be construed to bar students attending private, religious, or home schools from participation in programs or activities under this Act.

SEC. 314. VOLUNTARY SELECTION AND PARTICIPATION.

No funds made available under this Act shall be used—

(1) to require any secondary school student to choose or pursue a specific career path or major; and

(2) to mandate that any individual participate in a vocational and technical education program, including a vocational and technical education program that requires the attainment of a high school level, skills, or a certificate of mastery.

SEC. 315. LIMITATION FOR CERTAIN STUDENTS.

No funds received under this Act may be used to provide vocational and technical education programs to students prior to the seventh grade, except that equipment and facilities purchased under funds with this Act may be used by such students.

SEC. 316. FEDERAL LAWS GUARANTEEING CIVIL RIGHTS.

Nothing in this Act shall be construed to be inconsistent with applicable Federal law prohibiting discrimination on the basis of race, color, sex, national origin, age, or disability in the provision of Federal programs or services.

SEC. 317. AUTHORIZATION OF SECRETARY.

For the purposes of increasing and expanding the training in vocational and technical education instruction, including the training of vocational and technical education personnel as provided in this Act, the Secretary is authorized to receive and use funds collected by the Federal Government from the fees for the use of property, rights-of-way, and easements under the control of Federal departments and agencies for the public streets and communications facilities that are dependent, in whole or in part, upon the utilization of general spectrum rights for the transmission or reception of such services.

SEC. 318. PREFERENCE OF PRIVATE SCHOOL PERSONNEL.

An eligible agency or eligible recipient that uses funds under this Act for inservice or pre aggregate expenditures required under this Act for vocational and technical education professional development programs for vocational and technical education teachers, administrators, and other personnel may, upon request, permit the participation in such programs of vocational and technical education teachers, administrators, and other personnel in nonprofit private schools offering vocational and technical education programs located in geographical area served by such agency or recipient.

PART B—STATE ADMINISTRATIVE PROVISIONS

SEC. 321. JOINT FUNDING.

(a) GENERAL AUTHORITY.—Funds made available to eligible agencies under this Act may be used to provide additional funds under an applicable program if—

(1) such program otherwise meets the requirements and the requirements of the applicable program;

(2) such program serves the same individuals that are served under this Act;

(3) such programs are provided in a coordinated manner with services provided under this Act; and

(4) such funds are used to supplement, and not supplant, funds provided from non-Federal sources.

(b) APPLICABLE PROGRAM.—For the purposes of this section, the term ‘additional funds’ does not include funds used as matching funds.

SEC. 322. PROHIBITION ON USE OF FUNDS TO INCREASE STATE RESOURCES OR TO RELOCATE BUSINESSES.

No funds provided under this Act shall be used for the purpose of directly providing incentives or inducements to employers to relocate a business enterprise from one State to another State so that such relocation will result in a reduction in the number of jobs available in the State in which the business enterprise is located before such incentives or inducements are offered.

SEC. 323. STATE ADMINISTRATIVE COSTS.

(a) GENERAL RULE.—Except as provided in subsection (b), no eligible agency carries out programs under this Act an amount that is not less than the amount provided by the eligible agency from non-Federal sources for such costs for the preceding fiscal year.

(b) EXCEPTION.—If the amount made available for administration of programs under this Act for a fiscal year is less than the amount of Federal funds available for administration of programs under this Act for the preceding fiscal year, the amount the eligible agency is required to provide from non-Federal sources for the eligible agency to carry out programs under this Act shall be the same percentage as the amount made available for administration of programs under this Act.

SEC. 324. LIMITATION ON FEDERAL REGULATIONS.

The Secretary may issue regulations under this Act only to the extent necessary to administer and ensure compliance with the specific requirements of this Act.

SEC. 325. STUDENT ASSISTANCE AND OTHER PROVISIONS.

(a) ATTENDANCE COSTS NOT TREATED AS INCOME OR RESOURCES.—The portion of any student financial assistance received under this Act that is made available for attendance costs described in subparagraph (B) shall not be considered as income or resources in determining eligibility for assistance under any other program funded in whole or in part with Federal funds.

(b) ATTENDANCE COSTS.—The attendance costs described in this subsection are—

(1) tuition and fees normally assessed a student pursuing an academic workload as determined by the institution, and including costs for rental or purchase of any equipment, materials, or supplies required of all students in that course of study;

(2) an allowance for books, supplies, transportation, dependent care, and miscellaneous personal expenses for a student attending the institution on at least a part-time basis, as determined by the institution.

(c) COSTS OF VOCATIONAL AND TECHNICAL EDUCATION SERVICES.—Funds made available under this Act may be used to pay for the costs of vocational and technical education services required in an individualized education plan developed pursuant to section 1414 of the Individuals with Disabilities Education Act and services necessary to meet the requirements of section 564 of the Rehabilitation Act of 1973 with respect to ensuring equal access to vocational and technical education.

SEC. 2. PROMOTING SCHOLAR-ATHLETE COMPETITIONS.

Section 1203 of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 7904) is amended—

(1) by striking paragraph (a) and inserting ‘‘(a) in paragraph (a), by striking ‘‘to be held in 1995’’ and inserting ‘‘to be held in 1999’’; and

(2) in subsection (b)—

(A) in paragraph (4), by striking ‘‘in the summer of 1995’’ and inserting ‘‘in the summer of 1999’’;

(B) in paragraph (5), by striking ‘‘in 1996 and thereafter’’ and inserting ‘‘in 1998 and thereafter’’;

(C) in paragraph (6), by striking ‘‘1995’’ and inserting ‘‘1999’’.

SEC. 3. REFERENCES TO CARL D. PERKINS VOCATIONAL AND APPLIED TECHNOLOGY EDUCATION ACT.

(a) IMMIGRATION AND NATIONALITY ACT.—Section 245A(h)(4)(A) of the Immigration and Nationality Act (8 U.S.C. 1255a(h)(4)(A)) is amended—

(1) by redesignating subsection (c) as subsection (d); and

(2) by striking ‘‘1995’’ and inserting ‘‘1999’’.

(b) ELEMENTARY AND SECONDARY EDUCATION ACT OF 1965.—The Elementary and Secondary Education Act of 1965 (20 U.S.C. 6301 et seq.) is amended—


(2) in section 1115(b)(5) (20 U.S.C. 6315(b)(5)), by striking ‘‘Carl D. Perkins Vocational and Technical Education Act of 1998’’.

(c) ELEMENTARY AND SECONDARY EDUCATION ACT OF 1994.—Section 6302(a) (20 U.S.C. 6302(a))—

(1) by striking subparagraph (C); and

(2) by redesignating subparagraphs (D), (E), and (F) as subparagraphs (C), (D), and (E), respectively; and

(d) in the matter preceding subparagraph (A) of section 1430(a)(1) (20 U.S.C. 2226(a)(1)), by striking ‘‘Carl D. Perkins Vocational and Applied Technology Education Act’’; and

(e) in section 1430(a)(2) (20 U.S.C. 2226(a)(2)), by striking subparagraph (A); and

(f) by redesignating subparagraphs (D), (E), and (F) as subparagraphs (C), (D), and (E), respectively.

(g) in section 1204(a)(1) (20 U.S.C. 7904(a)(1)), by striking ‘‘1995’’ and inserting ‘‘1998’’.

(h) in section 1204(a)(2) (20 U.S.C. 7904(a)(2)), by striking ‘‘120 U.S.C. 2397(h)(3)’’ and inserting ‘‘as such section was in effect on the date preceding the date of enactment of the Carl D. Perkins Vocational and Applied Technology Education Amendments of 1998’’.

(i) in section 1205(a)(1) (20 U.S.C. 7905(a)(1)), by striking ‘‘1995’’ and inserting ‘‘1998’’.

(j) in section 1205(b)(1)(A) (20 U.S.C. 7905(b)(1)(A)), by striking ‘‘to be held in 1995’’ and inserting ‘‘to be held in 1999’’;

(k) in section 1205(b)(1)(C) (20 U.S.C. 7905(b)(1)(C)), by striking ‘‘Carl D. Perkins Vocational and Technical Education Act of 1998’’; and

(l) by redesignating subsections (C) and (D) as subsections (B) and (C), respectively; and

(m) in section 1205(b)(3) (20 U.S.C. 7905(b)(3)), by striking ‘‘July 1, 1995’’ and inserting ‘‘July 1, 2000’’.

(n) by redesignating paragraphs (4) and (5) respectively.

(o) by redesignating paragraphs (5) and (6) as paragraphs (4) and (5), respectively.

(p) by redesignating paragraphs (6) and (7) as paragraphs (5) and (6), respectively; and

(q) by redesignating paragraphs (8) and (9) as paragraphs (7) and (8), respectively.

(r) in section 1205(b)(6) (20 U.S.C. 7905(b)(6)), by striking ‘‘Carl D. Perkins Vocational and Technical Education Act of 1998’’; and

(s) in section 1205(c)(1) (20 U.S.C. 7905(c)(1)), by striking ‘‘1995’’ and inserting ‘‘1999’’;

(t) by redesigning subparagraphs (D), (E), and (F) as subparagraphs (C), (D), and (E), respectively; and

(u) by redesigning subparagraphs (C), (D), and (E) as subparagraphs (B), (C), and (D), respectively.

(g) Appalachian Regional Development Act of 1965.—Section 214(c) of the Appalachian Regional Development Act of 1965 (40 U.S.C. App. 214(c)) is amended by striking "Carl D. Perkins Vocational and Technical Education Act of 1998".

(2) Effective Date.—The amendments made by this subsection take effect on October 8, 1998.

Sec. 5. Technical and Conforming Amendments.

(a) Workforce Investment Act of 1998.—Section 121 of the Workforce Investment Act of 1998 (29 U.S.C. 2811) is amended—

1. by striking subsection (b)(1)(N)(i) and inserting "public funds set aside for education purposes shall be used for services targeting programs for which there is the greatest need and for which there is the greatest demand; and"

2. by adding a new subsection (g), to read as follows:

"(g) Transition.—The provisions of this section shall be effective upon the date upon which the applicable Federal regulations are adopted and enforced.

3. by adding a new section 506(b), to read as follows:

"(b) Limitation.—The authority to take action under paragraph (1) shall be effective until 2001.

Sec. 6. Repeals and Extensions of Previous Higher Education Amendments.

(a) Higher Education Amendments of 1986.—Title XIII of the Higher Education Amendments of 1986 (Public Law 99-498) is repealed.

(b) Higher Education Amendments of 1992.—The following provisions of the Higher Education Amendments of 1992 (Public Law 102-325) are repealed:

1. Parts A, B, C, and D of title X.

2. By amending paragraph (2) of section 502(b)(1)(N)(i) (42 U.S.C. 2951(a)(1)), by striking "the Carl D. Perkins Vocational and Applied Technology Education Act, submit an application for a grant of $500,000 to States, to be used for purposes of States, the distribution of Federal funds shall be based upon the number of students in vocational and technical education by reason of the increase in the number of full-time equivalent students. This distribution would be subject to the minimum and maximum adjustment ratios provided for in current law. The formula for the distribution of Federal funds shall be based upon the number of students in vocational and technical education by reason of the increase in the number of full-time equivalent students. This distribution would be subject to the minimum and maximum adjustment ratios provided for in current law.

The Conference agreement follows the Senate bill.

The Senate bill follows current law.

The Conference agreement follows the Senate bill.

Outlaying areas

Both bills provide for grants of $500,000,000 to Guam and $30,000,000 to each American Samoa, and the Commonwealth of the Northern Mariana Islands from reserved funds. In addition, both bills require the President to compensate the Federated States of Micronesia, the Republic of the Marshall Islands, and the Republic of Palau to compete for their allotment with Guam and American Samoa.


The Conference agreement follows the Senate bill.

Within State formula

The House bill requires States to send 90 percent of their basic State grant to the local level for secondary, postsecondary, and adult vocational education activities. Of this 90 percent, a State may reserve up to ten percent for rural (five percent) and urban (five percent) areas in the State. A State is required to reserve eight percent of the basic State grant for State leadership activities and two percent for administrative activities.

The Senate bill maintains several key set-asides found in current law. The Senate bill allocates 75 percent of the State grant for secondary, postsecondary, and adult vocational and technical education activities. The bill allows States to reserve 14 percent of their allotment for State leadership activities, ten percent for categorical purposes, and one percent for programming for criminal offenders.

The Conference agreement allocates 85 percent of the State grant for secondary, postsecondary, and adult vocational and technical education programs at the local level. Of this 85 percent, the Conference provides that any reductions in current law may be made available to award grants to rural areas; areas with high percentages of vocational and technical education students; areas with high numbers of vocational and technical education students; and communities negatively impacted as a result of changes in the new within State formula.

In adopting this provision, the Conference agrees that any reduction in the State's allocation under current law would be commensurate with the reduction in the State's allocation under the within State formula. The Conference agreement follows the Senate bill.


The Conference agreement follows the House bill.

The Senate bill follows current law. The Senate bill allocates 75 percent of the State grant for secondary, postsecondary, and adult vocational and technical education activities. The bill allows States to reserve 14 percent of their allotment for State leadership activities, ten percent for categorical purposes, and one percent for programming for criminal offenders.

The Conference agreement allocates 85 percent of the State grant for secondary, postsecondary, and adult vocational and technical education programs at the local level. Of this 85 percent, the Conference provides that any reductions in current law may be made available to award grants to rural areas; areas with high percentages of vocational and technical education students; areas with high numbers of vocational and technical education students; and communities negatively impacted as a result of changes in the new within State formula.

In adopting this provision, the Conference agrees that any reduction in the State's allocation under current law would be commensurate with the reduction in the State's allocation under the within State formula. The Conference agreement follows the Senate bill.
preparation for nontraditional training and employment. The Conference agreement authorizes the State eligible agency to reserve up to five percent of the total allotment, or $50,000 (whichever is greater), for State administrative activities. This may be used for the costs of developing a State plan, reviewing a local plan, monitoring, and evaluating the effectiveness of programs. Additional provisions relate to the Tribally controlled secondary vocational and technical institutions. The Conference agreement follows the Senate bill with regard to the issuance of grants to Tribally controlled secondary vocational and technical institutions, but adds Alaska Native entities as eligible to receive a grant or enter into a contract. The agreement follows the House bill on the waiver under section 5(b) of the Wagner-Peyser Act. The Conference agreement closely follows current law on these provisions. The Conference agreement changes the minimum grant to $25,000. The Conference agreement changes the secondary substate formula over two years. In the first year, the reauthorization, funds for secondary activities would be distributed under current law. In the second year, seventy percent of the funds would be distributed based upon each LEA’s share of the individuals aged 15-19 from economically disadvantaged families, and 30 percent of the population of individuals aged 15-19. The minimum grant would be $35,000. The bill also allows the Secretary to waive requirements to permit alternative formulas. The Senate bill requires the Secretary to develop a State plan to be reviewed prior to the third program year. In addition, the plan describes the vocational education activities and for which funds are used to: provide preparation for nontraditional training and employment; support public charter schools and tribal colleges; develop an alternative formula that more effectively targets funds on the basis of poverty to Local Educational Agencies (LEAs). The Senate bill follows current law on the distribution of funds, but raises the minimum grant to $50,000, and waives authority. The Conference agreement follows current law with regard to the minimum grant of $15,000. Substate funding at the postsecondary level

The Conference agreement follows the Senate bill with regard to the waiver of the minimum grant to $25,000. The Conference agreement also permits the Secretary to waive requirements to permit alternative formulas. The Senate bill requires the Secretary to publish performance measures to assess the progress of the State. If the State has not demonstrated improvement in meeting its performance measures for two consecutive years, the Secretary may withhold all, or a portion of, the allotment. In addition, each eligible agency that receives an allotment annually must prepare and submit a report to the Secretary on the State’s performance. This report is to include, in addition to other things, a description of the programs and special projects. The Senate bill requires the Secretary to publish performance measures to assess the progress of the State. If the State has not demonstrated improvement in meeting its performance measures for two consecutive years, the Secretary may withhold all, or a portion of, the allotment. In addition, each eligible agency that receives an allotment annually must prepare and submit a report to the Secretary on the State’s performance. This report is to include, in addition to other things, a description of the programs and special projects.
progress of each eligible agency. Each eligible agency is to negotiate with the Secretary the adjusted levels of performance. Each eligible agency is to annually evaluate vocational and technical education and tech-prep activities to determine the progress. If an organization is not making substantial progress, the Secretary, at the end of the third year, may enter into an improvement plan based on the assessment, and conduct regular evaluations of the program. If the organization continues to not demonstrate improvement, the Secretary may withhold all, or a portion of, the allotment. The eligible agency that receives the allotment is to report annually on the progress made, including a description of the progress of special populations.

The Conference agreement requires the State performance measures to be established solely by the State, and are to include core indicators of performance. The State adjusted levels of performance shall be agreed upon by the State eligible agency (with input from local eligible recipients) and the Secretary for the first two program years covered by the State plan. Prior to the third program year, the Secretary and eligible agency shall reach agreement on the core indicators of performance to be used in both fourth and fifth program years. Each eligible agency that receives this allotment shall prepare and submit an annual report to the Secretary describing the agency’s efforts in:

**LOCAL PROVISIONS**

**LOCAL USES OF FUNDS**

**Required use of funds**

The House bill requires funds to be used for strengthening the academic and technical skills of participating students by strengthening the program components through the integration of academics with vocational and technical education; developing, improving, or expanding the use of technical in vocational and technical education; providing professional development programs. The Senate bill requires funds to be used to integrate academic education with vocational and technical education for participating student; to improve or expand the use of technology in vocational and technical education, including professional development; to provide professional development activities to teachers, counselors, and administrators in program and implement performance management systems and evaluations; to initiate and improve quality programs; to link secondary and postsecondary education and tech-prep programs; to develop implement programs that provide access to quality programs for participating students, including special populations; to promote preparation for nontraditional training and employment. The Conference agreement follows the major of the provisions in the House bill. The agreement also requires funds to be used for programs designed to train teachers specifically in the use of technology; to provide services and activities that are of sufficient size, scope, and quality to be effective; and to link secondary and postsecondary education and tech-prep programs; to develop implement programs that provide access to quality programs for participating students, including special populations; to promote preparation for nontraditional training and employment.

The Conference agreement follows the conference, have agreed to recommend the following:

**TITLE II — TECH-PREP PROGRAMS**

The House bill permits the eligible agency to award grants to consortia on a competitive basis in support of nontraditional training and employment when describing special populations. The Senate bill allows funds to be used for special populations including foster children, individuals with disabilities, single parents and displaced homemakers, and individuals with other barriers to educational achievement including individuals with limited English proficiency when describing special populations. The Conference agreement defines special populations as individuals with disabilities; individuals from economically disadvantaged families, including foster children; individuals preparing for non-traditional training and employment; single parents, including single pregnant women; displaced homemakers; and individuals with other barriers to educational achievement, including individuals with limited English proficiency.

**BILL GOODLING,** **HOWARD "Buck" MCKEON,** **FRANK RIGGS,** **JOHN E. PETERSON,** **S. J. JOHNSON,** **BILL CLAY,** **MATTHEW G. MARTINEZ,** **DALE E. KILDEE,** **JIM EFFORDS,** **DAN COATS,** **JUDD GREGG,** **BILL FRIST,** **MICHAEL B. ENZI,** **TIM HUTCHINSON,** **SUZAN COLLINS,** **MITT ROMNEY,** **TED KENNEDY,** **CHRIS DODD,** **TOM HARKIN,** **BARBARA A. MIKLUSKI,** **PAUL WELLSTONE,** **JACK REED,** **Managers on the Part of the House.**

**CONGRESSIONAL RECORD — HOUSE**

**October 8, 1998**

**DEFINITIONS**

**SPECIAL POPULATIONS**

The House bill includes individuals with disabilities, economically disadvantaged individuals, individuals with limited English proficiency, and individuals participating in non-traditional training and employment when describing special populations. The Senate bill includes low-income individuals including foster children, individuals with disabilities, single parents and displaced homemakers, and individuals with other barriers to educational achievement including individuals with limited English proficiency when describing special populations. The Conference agreement defines special populations as individuals with disabilities; individuals from economically disadvantaged families, including foster children; individuals preparing for non-traditional training and employment; single parents, including single pregnant women; displaced homemakers; and individuals with other barriers to educational achievement, including individuals with limited English proficiency.
That the House recede from its disagreement to the amendment of the Senate and agree to the same with an amendment as follows:

In lieu of the matter proposed to be inserted by the Senate amendment, insert the following:

**SECTION 1. SHORT TITLE.**

This Act may be cited as the "Digital Millennium Copyright Act".

**SEC. 2. TABLE OF CONTENTS.**

1. SHORT title.
2. Table of contents.
3. Limitations on exclusive rights; computer programs.
4. REPAIR COPYRIGHT EXEMPTION.
6. COPYRIGHT IN RESTORED WORKS.

**SEC. 3. INFRINGEMENT LIABILITY LIMITATION.**

(a) DEFINITIONS.—Section 101 of title 17, United States Code, as amended—

(1) in paragraph (1), by striking "all countries" and substituting "all countries of origin or of any other Berne Convention work not the United States";

(2) in paragraph (2), by striking the words "a treaty country with which the United States is also a party" and inserting the words "a treaty party or parties";

(b) COPYRIGHT IN RESTORED WORKS.—Section 104A(h) of title 17, United States Code, as amended—

(1) in paragraph (1), by striking subparaphs (B) and (C) and inserting "is not a treaty party";

(2) in paragraph (2), by striking "does not adhere to the Berne Convention" and inserting "is not a treaty party";

(3) in the matter following paragraph (3) by striking "For purposes of section 411, the "country of origin" of any other Berne Convention work is not the United States";

(4) by inserting after the definition of "fixed" the following:

"The Berne Convention, the Universal Copyright Convention, the WIPO Copyright Treaty, the WIPO Performances and Phonograms Treaty, and the WIPO Performances and Phonograms Treaty, and (7) any other copyright treaty to which the United States is a party;"

(5) by inserting after the definition of "transmit" the following:

"A party treaty is a country or intergovernmental organization other than the United States that is a party to an international agreement;"

(6) by inserting after the definition of "widow" the following:

"The WIPO Copyright Treaty is the WIPO Performances and Phonograms Treaty concluded at Geneva, Switzerland, on December 20, 1996;"

(7) by inserting after the definition of "The WIPO Copyright Treaty" the following:

"(4) the WTO Agreement;"

(8) by inserting after the definition of "work made for hire" the following:

"(A) becomes a WTO member country after the date of the enactment of this chapter;"

(9) by including the following:

"(d) EFFECT OF PHONOGRAMS TREATIES.—(1) any other copyright treaty to which the United States is a party;"

(10) by striking "for infringements" and inserting "for infringement of copyright in Berne Convention works whose country of origin is not the United States and;"

(11) by inserting "United States" after "no action for infringement of the copyright in any";

(12) by inserting "subject to a Presidential proclamation of the adherence of the United States to the Geneva Phonograms Convention or the WIPO Performances and Phonograms Treaty.".

(13) by inserting "copyright in Berne Convention works whose country of origin is not the United States and;"

(14) by inserting "copyright in restored works;"

(15) by inserting "copyright in restored works" following "in respect of any other';

(16) by inserting "expiration of the term of copyright in Berne Convention works whose country of origin is not the United States and;"

(17) by inserting "in respect of any other' following "in respect of any other;"

(18) by inserting "country for which the United States is a party;"

(19) by inserting "in respect of any other' following "in respect of any other;"

(20) by inserting "country for which the United States is a party;"

(21) by inserting "copyright in restored works' following "copyright in restored works;"

(22) by inserting "copyright in restored works' following "by requiring the holder of copyright in restored works to grant to the public works;"

(23) by inserting "copyright in restored works" following "in respect of any other';

(24) by inserting "copyright in restored works" following "in respect of any other;".

(c) COPYRIGHT IN RESTORED WORKS.—Section 101A(n) of title 17, United States Code, is amended—

(1) in paragraph (1), by striking subparagraphs (A) and (B) and inserting the following:

"(A) a nation adhering to the Berne Convention;"

(2) in paragraph (2), by striking subparagraphs (A) and (B) and inserting the following:

"(A) a nation adhering to the Berne Convention;"

(3) in paragraph (3) by striking the provisions of subsection (b), no works other than sound recordings shall be eligible for protection under this title solely by virtue of the adherence of the United States to the Geneva Phonograms Convention or the WIPO Performances and Phonograms Treaty;".

(ii) any other copyright treaty to which the United States is a party;"

(iii) any other copyright treaty to which the United States is a party;"

(2) in paragraph (2), by striking subparagraphs (A) and (B) and inserting the following:

"(A) a nation adhering to the Berne Convention;"

(3) in paragraph (3) by striking subparagraphs (A) and (B) and inserting the following:

"(A) a nation adhering to the Berne Convention;"

(4) by striking paragraph (4) and inserting the following:

"(4) the WTO Agreement;"

(5) by inserting after subparagraph (D) the following:

"(D) a nation adhering to the WIPO Copyright Treaty;"

(6) by inserting after subparagraph (E) the following:

"(E) subject to a Presidential proclamation under subsection (g);"

(7) by adding at the end the following new subparagraph (f):

"(f) the term 'eligible country' means a nation, other than the United States, that—

(1) becomes a WTO member country after the date of the enactment of the Uruguay Round Agreements Act;"

(8) by inserting after the date of enactment of this chapter the following:

"(8) by including the following:

"(a) in paragraph (2), by striking "does not adhere to the Berne Convention" and inserting "is not a treaty party"; and

"(b) by striking "does not adhere to the Berne Convention" and inserting "is not a treaty party"; and
"(B) The prohibition contained in subparagraph (A) shall not apply to persons who are users of a copyrighted work which is in a particular class of works, if such persons are, or are likely to become, not later than the end of the 3-year period, adversely affected by virtue of such prohibition in their ability to make noninfringing uses of that particular class of works under this title, as determined in a rulemaking proceeding conducted under subparagraph (C)."

"(C) During the 3-year period described in subparagraph (A), and during each succeeding 3-year period, the Librarian of Congress, upon the recommendation of the Register of Copyrights, who shall consult with the Assistant Secretary for Communications and Information of the Department of Commerce and report and comment on his or her views in making such recommendation, shall make the determination in a rulemaking proceeding on the record for purposes of subparagraph (B) of whether persons who are users of a copyrighted work are, or are likely to be, in the succeeding 3-year period, adversely affected by the prohibition under subparagraph (A) in their ability to make noninfringing uses under this title of a particular class of copyrighted works. In conducting such rulemaking, the Librarian shall examine--

(i) the availability for use of copyrighted works;

(ii) the availability for use of works for non-profit archival, preservation, and educational purposes;

(iii) the impact that the prohibition on the circumvention of technological measures applied to copyrighted works has on criticism, comment, news reporting, teaching, scholarship, or research;

(iv) the effect of circumvention of technological measures on the market for or value of copyrighted works; and

(v) such other factors as the Librarian considers appropriate.

"(D) The Librarian shall publish any class of copyrighted works for which the Librarian has determined, pursuant to the rulemaking conducted under subparagraph (C), that persons infringing uses by persons who are users of a copyrighted work are, or are likely to be, adversely affected, and the prohibition contained in subparagraph (A) shall not apply to such users with respect to such class of works for the ensuing 3-year period.

"(E) Neither the exception under subparagraph (B) from the applicability of the prohibition contained in subparagraph (A), nor any determination made in a rulemaking conducted under subparagraph (C), nor any means or defenses to copyright infringement in connection with any technology, product, service, device, component, or part thereof, that--

(1) is primarily designed or produced for the purpose of circumventing a technological measure that effectively controls access to a work protected under this title;

(2) has only limited commercial significance for purposes other than to circumvent a technological measure that effectively controls access to a work protected under this title; or

(3) provides for a response to any particular technological measure, so long as such part or component, or the product in which such part or component is integrated, does not otherwise fall within the prohibitions of subparagraph (a)(2) or (b)(1), shall be in the public domain and shall be acquired and used by anyone for any purpose.

"(F) Notwithstanding the provisions of subsection (a)(2) or (b), a person may develop and employ technological means to circumvent a technological measure, or to circumvent protection afforded by a technological measure, in order to enable interoperability of an independently created computer program with other programs, and that have not previously been readily available to the person enabling interoperability, to the extent that doing so does not constitute infringement under this title.

"(G) The information acquired through the activities permitted under paragraph (1) and the means permitted under paragraph (2), may be made available to others if the person referred to in paragraph (1) or (2), as the case may be, proves such availability is necessary for the purpose of enabling interoperability of an independently created computer program with other programs, and to the extent that doing so does not constitute infringement under this title or violate applicable law other than this section.

"(H) For purposes of this subsection, the term 'interoperability' means the ability of computer programs to exchange information and such programs mutually to use the information which has been exchanged.

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"(1) The term 'encryption research' means activities necessary to identify and analyze flaws and vulnerabilities of encryption technologies applied to copyrighted works, if these activities are conducted to advance the state of knowledge in the field of encryption technology or to assist in the development of encryption products; and

"(2) The term 'encryption technology' means the scrambling and descrambling of information using mathematical formulas or algorithms.

"(I) LAW ENFORCEMENT, INTELLIGENCE, AND OTHER GOVERNMENT ACTIVITIES.—This section shall not prohibit any investigative, protective, intelligence activity of an officer, agent, or employee of the United States, a State, or a political subdivision of a State, or a person acting pursuant to a contract with the United States, a State, or a political subdivision of a State. For purposes of this subsection, the term 'information security' means activities carried out in order to identify and address the vulnerabilities of a government computer, computer system, or network.

"(J) REVERSE ENGINEERING.—(1) Notwithstanding the provisions of subsection (a)(1)(A), a person who has lawfully obtained the right to use a copy of a computer program may circumvent technological measures on the market for or value of a copyrighted work when an identical copy of that work is not available for use.

"(2) Nothing in this section shall enlarge or diminish vicarious liability for copyright infringement in connection with any technology, product, service, device, component, or part thereof.

"(K) OTHER RIGHTS, ETC., NOT AFFECTED.—(1) Nothing in this section shall affect rights, remedies, limitations, or defenses to copyright infringement, including fair use, under this title.

"(2) Nothing in this section shall enlarge or diminish vicarious liability for copyright infringement in connection with any technology, product, service, device, component, or part thereof.

"(L) Nothing in this section shall require that the design of, or design and selection of parts and components for, a consumer electronics, telecommunications, or computing product provide for a response to any particular technological measure, so long as such part or component, or the product in which such part or component is integrated, does not otherwise fall within the prohibitions of subparagraph (a)(2) or (b)(1).

"(M) Nothing in this section shall enlarge or diminish vicarious liability for copyright infringement in connection with any technology, product, service, device, component, or part thereof.

"(N) Nothing in this section shall require that the design of, or design and selection of parts and components for, a consumer electronics, telecommunications, or computing product provide for a response to any particular technological measure, so long as such part or component, or the product in which such part or component is integrated, does not otherwise fall within the prohibitions of subparagraph (a)(2) or (b)(1).

"(O) Nothing in this section shall enlarge or diminish vicarious liability for copyright infringement in connection with any technology, product, service, device, component, or part thereof.

"(P) Nothing in this section shall require that the design of, or design and selection of parts and components for, a consumer electronics, telecommunications, or computing product provide for a response to any particular technological measure, so long as such part or component, or the product in which such part or component is integrated, does not otherwise fall within the prohibitions of subparagraph (a)(2) or (b)(1).

"(Q) Nothing in this section shall enlarge or diminish vicarious liability for copyright infringement in connection with any technology, product, service, device, component, or part thereof.

"(R) Nothing in this section shall require that the design of, or design and selection of parts and components for, a consumer electronics, telecommunications, or computing product provide for a response to any particular technological measure, so long as such part or component, or the product in which such part or component is integrated, does not otherwise fall within the prohibitions of subparagraph (a)(2) or (b)(1).

"(S) Nothing in this section shall enlarge or diminish vicarious liability for copyright infringement in connection with any technology, product, service, device, component, or part thereof.

"(T) Nothing in this section shall require that the design of, or design and selection of parts and components for, a consumer electronics, telecommunications, or computing product provide for a response to any particular technological measure, so long as such part or component, or the product in which such part or component is integrated, does not otherwise fall within the prohibitions of subparagraph (a)(2) or (b)(1).

"(U) Nothing in this section shall enlarge or diminish vicarious liability for copyright infringement in connection with any technology, product, service, device, component, or part thereof.

"(V) Nothing in this section shall require that the design of, or design and selection of parts and components for, a consumer electronics, telecommunications, or computing product provide for a response to any particular technological measure, so long as such part or component, or the product in which such part or component is integrated, does not otherwise fall within the prohibitions of subparagraph (a)(2) or (b)(1).

"(W) Nothing in this section shall enlarge or diminish vicarious liability for copyright infringement in connection with any technology, product, service, device, component, or part thereof.

"(X) Nothing in this section shall require that the design of, or design and selection of parts and components for, a consumer electronics, telecommunications, or computing product provide for a response to any particular technological measure, so long as such part or component, or the product in which such part or component is integrated, does not otherwise fall within the prohibitions of subparagraph (a)(2) or (b)(1).

"(Y) Nothing in this section shall enlarge or diminish vicarious liability for copyright infringement in connection with any technology, product, service, device, component, or part thereof.

"(Z) Nothing in this section shall require that the design of, or design and selection of parts and components for, a consumer electronics, telecommunications, or computing product provide for a response to any particular technological measure, so long as such part or component, or the product in which such part or component is integrated, does not otherwise fall within the prohibitions of subparagraph (a)(2) or (b)(1)."
subsection for a person to circumvent a technological measure as applied to a copy, phonorecord, performance, or display of a published work in the course of an act of good faith encrypted research if—

"(A) the person lawfully obtained the encrypted copy, phonorecord, performance, or display of the published work;

"(B) such act is necessary to conduct such encryption research;

"(C) the person made a good faith effort to obtain authorization before the circumvention; and

"(D) such act does not constitute infringement under this title or a violation of applicable law other than this subsection or section 1030 of title 18 and those provisions of title 18 amended by the Computer Fraud and Abuse Act of 1986.

(3) FACTORS IN DETERMINING EXEMPTION.—In determining whether a person qualifies for an exemption under paragraph (2), the factors to be considered shall include—

"(A) whether the information derived from the encryption research was disseminated, and if so, whether it was disseminated in a manner reasonably calculated to advance the state of knowledge or development of encryption technology, and thereby facilitates infringement under this title or a violation of applicable law other than this section, including a violation of privacy or breach of security;

"(B) whether the person is engaged in a legitimate course of study, is employed, or is appropriately trained or experienced, in the field of encryption technology; and

"(C) whether the person provides the copyright owner of the work to which the technological measure is applied with notice of the findings and documentation of the research, and the time when such notice is provided.

(4) USE OF TECHNOLOGICAL MEANS FOR RESEARCH ACCORDING TO THE PROVISIONS OF SUBSECTION (A)(2), IT IS NOT A VIOLATION OF THAT SUBSECTION FOR A PERSON TO—

"(A) develop and employ technological means to circumvent a technological measure for the sole purpose of that person performing the acts of good faith encryption research described in paragraph (2); and

"(B) provide the technological means to another person with whom he or she is working collaboratively for the purpose of conducting the acts of good faith encryption research described in subsection (a)(2), or for the purpose of having that other person verify his or her acts of good faith encryption research described in paragraph (2).

(5) REPORT TO CONGRESS.—Not later than 1 year after the date of the enactment of this chapter, the Register of Copyrights and the Assistant Secretary for Communications and Information of the Department of Commerce shall jointly report to the Congress on the effect this subsection has had on—

"(A) the progress of research and the development of encryption technology;

"(B) the adequacy and effectiveness of technological measures designed to protect copyrighted works; and

"(C) protection of copyright owners against the unauthorized access to their encrypted copyrighted works.

The report shall include legislative recommendations.

(ii) VHS format analog video cassette recorder unless such recorder conforms to the automatic gain control copy control technology;

(iii) 8mm format analog video cassette recorder unless such recorder conforms to the automatic gain control copy control technology;

(iv) Beta format analog video cassette recorder unless such recorder conforms to the automatic gain control copy control technology, except that this requirement shall not apply until there are 1,000 Beta format analog video cassette recorders sold in the United States in any one calendar year after the date of the enactment of this chapter;

(v) 8mm format analog video cassette recorder unless such recorder conforms to the automatic gain control copy control technology, except that this requirement shall not apply until there are 20,000 such recorders sold in the United States in any one calendar year after the date of the enactment of this chapter; or

(vi) analog video cassette recorder that records using an NTSC format video input and that is not otherwise covered under clauses (i) through (iv), unless such device conforms to the automatic gain control copy control technology.

(B) Effective on the date of the enactment of this chapter, no person shall manufacture, import, offer to the public, provide or otherwise traffic in—

(ii) any VHS format analog video cassette recorder or any 8mm format analog video cassette recorder if the design of the model of such recorder has not been modified after such date of enactment so that a model of recorder that previously conformed to the automatic gain control copy control technology no longer conforms to such technology; or

(ii) any VHS format analog video cassette recorder, or any 8mm format analog video cassette recorder that is not an 8mm analog video cassette recorder, unless such recorder conforms to the four-line colorstripe copy control technology, except that this requirement shall not apply until there are 20,000 such recorders sold in the United States in any one calendar year after the date of the enactment of this chapter; or

(f) by effective 18 months after the date of the enactment so that a model of recorder that previously conformed to the four-line colorstripe copy control technology no longer conforms to such technology; or

Manufacturers that have not previously manufactured or sold a VHS format analog video cassette recorder, or any 8mm format analog video cassette recorder, shall be required to conform to the four-line colorstripe copy control technology in the initial model of any such recorder manufactured after such date of enactment, and thereafter to continue conforming to the four-line colorstripe copy control technology. For purposes of this subparagraph, an analog video cassette recorder ‘conforms to’ the four-line colorstripe copy control technology if it records a signal that, when played back by the playback function of that recorder in the normal viewing mode, exhibits, on a reference display device, a display containing distracting visible lines through portions of the viewable picture.

(ii) CERTAIN ENCODING RESTRICTIONS.—No person shall apply the automatic gain control copy control technology or colorstripe copy control technology to prevent or limit consumer copying except such as—

(A) of a single transmission, or specified group of transmissions, of live events or of audiovisual works for which a member of the public has exercised choice in selecting the transmissions, including the content of the transmissions or the time of receipt of such transmissions, or both, so that such member is charged a separate fee for each such transmission or specified group of transmissions; or

(B) from a copy of a transmission of a live event, or an audiovisual transmission provided by a channel or service where payment is made by a member of the public for such channel or service in the form of a subscription fee that entitles such member to receive all of the programming contained in such channel or service;
"(C) from a physical medium containing one or more prerecorded audiovisual works; or

(D) from a copy of a transmission described in subparagraph (A) or from a copy made from a physical medium described in subparagraph (C).

In the event that a transmission meets both the conditions set forth in subparagraph (A) and those set forth in subparagraph (B), the transmission shall be treated as a transmission described in subsection (A).

(3) INAPPLICABILITY.—This subsection shall not—

(A) require any analog video cassette recorder to conform to the automatic gain control copy control technology with respect to any video signal received through a camera lens; or

(B) apply to the manufacture, importation, offer for sale, provision of, or other trafficking in, any professional analog video cassette recorder;

(C) apply to the offer for sale or provision of, or other trafficking in, any previously owned analog video cassette recorder, if such recorder was legally manufactured and sold when new and not subsequently modified in violation of paragraph (1)(B).

(4) DEFINITIONS.—For purposes of this subsection:

(A) An ‘analog video cassette recorder’ means a device that records, or a device that includes recording functions, on magnetic tape in an analog format the electronic impulses produced by the video and audio portions of a television program, motion picture, or other audiovisual work.

(B) An ‘analog video cassette camcorder’ means an analog video cassette recorder that contains a recording function that operates through a camera lens and through a video input that may be connected to a television or other video playback device.

(C) A digital video cassette recorder that conforms to the automatic gain control copy control technology if—

(i) detects one or more of the elements of such technology and does not record the motion picture or transmission protected by such technology; or

(ii) records a signal that, when played back, exhibits a meaningfully distorted or degraded display.

(D) The term ‘professional analog video cassette recorder’ means a device designed, manufactured, marketed, and intended for use by a person who regularly employs such a device for a lawful business or educational purpose (in the case of a term ‘organizational use,’ including making, performing, displaying, distributing, or transmitting copies of motion pictures on a commercial scale)."
amended by adding after the item relating to chapter 11 the following:

"12. Copyright Protection and Management Systems .......... 1201".

SEC. 104. EMERGING IMPACT OF COPYRIGHT LAW AND AMENDMENTS ON ELECTRONIC COMMERCE AND TECHNOLOGICAL DEVELOPMENT.

(a) EVALUATION.—The Register of Copyrights and the Assistant Secretary for Communications and Information of the Department of Commerce shall jointly evaluate—

(1) the effects of the amendments made by this title and the development of electronic commerce and associated technologies; and

(2) the relationship between existing and emergent technology and the operation of sections 109 and 117 of title 17, United States Code.

(b) REPORT TO CONGRESS.—The Register of Copyrights and the Assistant Secretary for Communications and Information of the Department of Commerce shall, not later than 24 months after the date of the enactment of this Act, submit to the Committees on Commerce of the Senate and the House of Representatives a report on the evaluation conducted under subsection (a), including any legislative recommendations the Register and the Assistant Secretary may have.

SEC. 305. EFFECTIVE DATE.

(a) IN GENERAL.—Except as otherwise provided in this title, this title and the amendments made by this title shall take effect on the date of the enactment of this Act.

(b) AMENDMENTS RELATING TO CERTAIN INTERNATIONAL AGREEMENTS.—(1) The following amendments relating to certain international agreements shall take effect upon the entry into force of the WIPO Copyright Treaty with respect to the United States:

(A) Paragraph (5) of the definition of "international agreement" contained in section 101 of title 17, United States Code, as amended by section 102(a)(4) of this Act.

(B) The amendment made by section 102(a)(6) of this Act.

(c) Paragraph (C) of section 104A(h)(1) of title 17, United States Code, as amended by section 102(c)(1) of this Act.

(d) Paragraph (C) of section 104A(h)(3) of title 17, United States Code, as amended by section 102(c)(2) of this Act.

(2) The following shall take effect upon the entry into force of the WIPO Phonograms Treaty with respect to the United States:

(A) Paragraph (6) of the definition of "international agreement" contained in section 101 of title 17, United States Code, as amended by section 102(a)(4) of this Act.

(B) The amendment made by section 102(a)(7) of this Act.

(C) The amendment made by section 102(b)(2) of this Act.

(D) Paragraph (D) of section 104A(h)(1) of title 17, United States Code, as amended by section 102(c)(1) of this Act.

(E) Paragraph (D) of section 104A(h)(3) of title 17, United States Code, as amended by section 102(c)(2) of this Act.

(F) The amendments made by section 102(c)(3) of this Act.

TITLE II—ONLINE COPYRIGHT INFRINGEMENT LIABILITY LIMITATION

SEC. 201. SHORT TITLE.

This title may be cited as the Online Copyright Infringement Liability Limitation Act.

SEC. 202. LIMITATIONS ON LIABILITY FOR COPYRIGHT INFRINGEMENT.

(a) IN GENERAL.—Chapter 5 of title 17, United States Code, is amended by adding after section 511 the following new section:

"§ 512. Limitations on liability relating to material online.

(a) TRANSFER DIGITAL NETWORK COMMUNICATIONS.—A service provider shall not be liable for monetary relief, or, except as provided in subsection (j), for injunctive or other equitable relief, for infringement of copyright by reason of its act in providing access to material online to users of the system or network operated by it, by reason of the intermediate and transient storage of that material in the system or network in a manner ordinarily accessible to anyone other than anticipated recipients, and no such copy is maintained on the system or network in a manner ordinarily accessible to anyone other than anticipated recipients for a longer period than is reasonably necessary for the transmission, routing, or provision of connections; and

(b) ACTUAL DAMAGES.—(1) An infringer of the copyright in a work shall be liable for actual damages and profits attributable to the infringement and are not taken into account in computing the actual damages, if the infringer can be held liable under paragraph (a). The infringer shall be liable for the amount of the value of the infringer's pre-infringement good faith investment or, where it is not reasonable to calculate such amount, the value of the infringer's reasonable pre-infringement good faith investment.

(2) The following shall take effect upon the entry into force of the WIPO Copyright Treaty with respect to the United States:

(A) Paragraph (5) of the definition of "international agreement" contained in section 101 of title 17, United States Code, as amended by section 102(a)(4) of this Act.

(B) The amendment made by section 102(a)(6) of this Act.

(c) Paragraph (C) of section 104A(h)(1) of title 17, United States Code, as amended by section 102(c)(1) of this Act.

(d) Paragraph (C) of section 104A(h)(3) of title 17, United States Code, as amended by section 102(c)(2) of this Act.

(e) The amendments made by section 102(c)(3) of this Act.

TITLE III—ONLINE COPYRIGHT INFRINGEMENT LIABILITY LIMITATION

SEC. 301. SHORT TITLE.

This title may be cited as the Online Copyright Infringement Liability Limitation Act.

SEC. 302. LIMITATIONS ON LIABILITY FOR COPYRIGHT INFRINGEMENT.

(a) IN GENERAL.—Chapter 5 of title 17, United States Code, is amended by adding after section 511 the following new section:

"§ 512. Limitations on liability relating to material online. —
"(i) does not significantly interfere with the performance of the provider's system or network; or
(ii) with the intermediate storage of the material;
(iii) is consistent with generally accepted industry standards regarding such activity;
(iv) has in place adequate measures to secure the system or network against unauthorized access by someone other than an agent of the provider, and
(v) is not aware of facts or circumstances from which infringement is apparent.

(2) DESIGNATED AGENT.—The limitations on liability established in this subsection apply to a service provider only if the service provider has designated an agent to receive notifications of claimed infringement described in paragraph (3), by making available through its service, in- cluding on an electronic system or network informational materials that are or were required or recommended, within the preceding 3-year period, for a course taught at the institution by such faculty mem-
ber or graduate student.

(3) INFORMATION RESIDING ON SYSTEMS OR NETWORKS AT DIRECTION OF USER.—

(A) IN GENERAL.—A service provider shall not be liable for material or activity covered by a single notification, a representative list of such works at that site.

(B)(i) Subject to clause (ii), a notification from a copyright owner or from a person au-
thorized to act on behalf of the owner of an exclu-
sive right that is allegedly infringed.

(ii) A statement that the information in the notification is accurate, and that the complaining party is author-
ized to act on behalf of the owner of an exclu-
sive right that is allegedly infringed.

(4) INFORMATION LOCATION TOOLS.—A service
provider shall not be liable for material or activity covered by a single notification, a representa-
tive list of such works at that site.

(5) REPLACEMENT OF REMOVED OR DISABLED MATERIAL AND LIMITATION ON OTHER LIABIL-
ITY.—

(A) takes reasonable steps promptly to notify the service provider that has removed or access to which is to be dis-
able, and information reasonably sufficient to assist the service provider to locate that refer-
ence or link.

(B) pursuant to a notice provided under subsection (3), promptly provides the

(A) name, address, phone number, and other contact information which the
provider to locate the material.

(B)(i) Subject to clause (ii), a notification from a copyright owner or from a
person authorized to act on behalf of the owner of an exclusive
right that is allegedly infringed.

(ii) A statement that the information in the notification is accurate, and that
the complaining party is authorized to act on behalf of the owner of
an exclusive right that is allegedly infringed.

(C) upon obtaining such knowledge or awareness, acts expeditiously to remove, or dis-
able access to, the material.

(3) ELEMENTS OF NOTIFICATION.—

(A) To be effective under this subsection, a notification of claimed infringement must be a
written communication provided to the des-
ignated agent of a service provider that includes
substantially the following information:

(i) A physical or electronic signature of a
person who has a good faith belief that the
material is infringing;

(ii) Identification of the copyright work
claimed to be infringed, or, if multiple
copyrighted works at a single online site are
claimed to be infringing, a representative
list of such works at that site.

(iii) Identification of the material that is
claimed to be infringing or to be the sub-
tax of which it is infringing, and access
access to which is to be disabled, and informa-
tion reasonably sufficient to permit the service
provider to locate the material.

(iv) Information reasonably sufficient to per-
mit the service provider to contact the complai-
ning party, such as an address, telephone num-
ber, and, if available, an electronic mail address at
which the complaining party may be con-
tacted.

(v) A statement that the complaining party
has a good faith belief that use of the material
is infringing, or to be the subject of infringing
activity, and that the material is infringing
or infringing activity is apparent.

(vi) A statement that the information in the
notification is accurate, and that the complaining
party is authorized to act on behalf of the owner
of an exclusive right that is allegedly infringed.

(4) COMMERCIAL DATABASE SYSTEMS OR NETWORKS—

(a) generally prohibited.

(b) the institution has not, within the pre-
ceding 3-year period, received more than 2 noti-
fications of claimed infringement.

(c) the institution provides all users of its
system or network informational materials that
accurately describe, and promote compliance
with, the laws of the United States relating to
copyright.

(5) REPLACEMENT OF REMOVED OR DISABLED
MATERIAL AND LIMITATION ON OTHER LIABIL-
ITY.—

(A) A service provider shall not be liable for
material or activity claimed to be infringing, or
to be the subject of infringing activity, in
a case in which the service provider has the
right and ability to control such activity; and

(B) in the absence of such actual knowledge,

(C) upon obtaining such knowledge or aware-
ness, acts expeditiously to remove, or dis-
able access to, the material.

(2) EXCEPTION.—Paragraph (1) shall not
apply with respect to material residing at the di-
rection of a subscriber of the service provider on
a system or network controlled or operated by or
for the service provider that is removed, or to
which access is disabled by the service provider,
pursuant to a notice provided under subsection
(c)(1)(C), unless the service provider—

(A) takes reasonable steps promptly to notify
the subscriber that it has removed or disabled
access to the material;

(B) upon receipt of a counter notification de-
scribed in paragraph (3), promptly provides the

(H) upon obtaining such knowledge or aware-
ness, acts expeditiously to remove, or dis-
able access to, the material.

(3) ELEMENTS OF NOTIFICATION.—

(A) To be effective under this subsection, a notification of claimed infringement must be a
written communication provided to the des-
ignated agent of a service provider that includes
substantially the following information:

(i) A physical or electronic signature of a
person who has a good faith belief that the
material is infringing;

(ii) Identification of the copyright work
claimed to have been infringed, or, if multiple
copyrighted works at a single online site are
claimed to be infringed, a representative
list of such works at that site.

(iii) Identification of the material that is
claimed to be infringing or to be the sub-
tax of which it is infringing, and access
access to which is to be disabled, and informa-
tion reasonably sufficient to permit the service
provider to locate the material.

(iv) Information reasonably sufficient to per-
mit the service provider to contact the complai-
ning party, such as an address, telephone num-
ber, and, if available, an electronic mail address at
which the complaining party may be con-
tacted.
person who provided the notification under subsection (c)(1)(C) with a copy of the counter notification, and informs that person that it will replace the removed material and cease disabling access to it not less than 10, or more than 14, business days after receiving notice from the person who submitted the notification under subsection (c)(1)(C) that such person has filed an action seeking a court order requiring service provider from engaging in infringing activity relating to the material on the service provider’s system or network.

(3) CONTENTS OF COUNTER NOTIFICATION.—To be effective, a counter notification must be a written communication provided to the service provider’s designated agent that includes substantially the following:

(A) A physical or electronic signature of the subscriber.

(B) Identification of the material that has been removed or disabled and the location at which the material appeared before it was removed or access to it was disabled.

(C) A statement under penalty of perjury that the subscriber has a good faith belief that the material was removed or disabled as a result of mistake or misidentification of the material to be removed or disabled.

(D) The subscriber’s name, address, and telephone number, and a statement that the subscriber consents to the jurisdiction of Federal District Courts located in the judicial districts where the address is located, or if the subscriber’s address is outside of the United States, for any judicial district in which the service provider may be served. If (B) is available and the subscriber is an agent of such person.

(4) ORDER TO REMOVE OR OTHERWISE LIABILITY.—A service provider’s compliance with paragraph (2) shall not subject the service provider to liability for copyright infringement with respect to the material identified in the notice provided under subsection (c)(1)(C).

(h) SUBPOENA TO IDENTIFY INFRINGER.—

(1) REQUEST.—A copyright owner or a person authorized to act on the owner’s behalf may request the clerk of any United States district court to issue a subpoena to a service provider authorized to act on the owner’s behalf may request the clerk of any United States district court to issue a subpoena to a service provider for all material of the user’s choosing, with respect to a service provider only in one or more of the following:

(A) A physical or electronic signature of the subscriber.

(B) Identification of the material that has been removed or disabled and the location at which the material appeared before it was removed or access to it was disabled.

(C) A statement under penalty of perjury that the subscriber has a good faith belief that the material was removed or disabled as a result of mistake or misidentification of the material to be removed or disabled.

(D) The subscriber’s name, address, and telephone number, and a statement that the subscriber consents to the jurisdiction of Federal District Courts located in the judicial districts where the address is located, or if the subscriber’s address is outside of the United States, for any judicial district in which the service provider may be served. If (B) is available and the subscriber is an agent of such person.

(2) CONTENTS OF REQUEST.—The request may be made by filing with the clerk:

(A) A copy of a notification described in subsection (c)(3)(A);

(B) A proposed subpoena; and

(C) A sworn declaration to the effect that the purpose for which the subpoena is sought is to obtain the identity of an alleged infringer and that such information will only be used for the purpose of protecting rights under this title.

(3) CONTENTS OF SUBPOENA.—The subpoena shall authorize and order the service provider receiving the notification and the subpoena to expedite the processing of the copyright owner’s request. The service provider authorized by the copyright owner information sufficient to identify the alleged infringer of the material described in the notification to the extent such information is available to the service provider.

(4) BASIS FOR GRANTING SUBPOENA.—If the notification filed satisfies the provisions of subsection (c)(3)(A), the proposed subpoena is in proper form, and the accompanying declaration is properly executed, the clerk shall expeditiously issue and sign the proposed subpoena and return it to the requestor for delivery to the service provider.

(5) ACTIONS OF SERVICE PROVIDER RECEIVING SUBPOENA.—Upon receipt of the issued subpoena, the service provider may notify the copyright owner or person notified of the request to provide information required by the subpoena, notwithstanding any other provision of law and regardless of whether the service provider responds to the notification.

(b) RULES APPLICABLE TO SUBPOENA.—Unless otherwise provided by this section or by applicable court rules, a subpoena issued under subsection (a) shall require the attendance of the witness at a designated place, the production of the materials identified in the subpoena at a designated place, and delivery of the subpoena, and the remedies for noncompliance with the subpoena, shall be governed to the greatest extent practicable by the Federal Rules of Civil Procedure governing the issuance, service, and enforcement of a subpoena duces tecum.

(i) CONDITIONS FOR ELIGIBILITY.—(A) A physical or electronic signature of the copyright owner or a person authorized to act on the owner’s behalf may request the clerk of any United States district court to issue a subpoena to a service provider authorized to act on the owner’s behalf may request the clerk of any United States district court to issue a subpoena to a service provider for all material of the user’s choosing, with respect to a service provider only in one or more of the following:

(i) An order restraining the service provider from providing access to a subscriber or account holder of the service provider’s system or network who is engaging in infringing activity and is identified in the order, by terminating the accounts of the subscriber or account holder that are specified in the order.

(ii) An order restraining the service provider from providing access to a subscriber or account holder of the service provider’s system or network who is engaging in infringing activity and is identified in the order, by terminating the accounts of the subscriber or account holder that are specified in the order.

(iii) Such other injunctive relief as the court considers appropriate.

(ii) >MONETARY RELIEF.—As used in this section, the term ‘monetary relief’ means damages, costs, attorneys’ fees, and any other form of payment.

(i) OTHER DEFENSES NOT AFFECTED.—The failure of a service provider’s conduct to qualify for limitation of liability under any other such subsection does not bear adversely upon the consideration of a defense by the service provider that the service provider’s conduct is infringing under this title or any other defense.

(m) PROTECTION OF PRIVACY.—Nothing in this section shall be construed to condition the applicability of subsections (a) and (d) upon the operator of facilities thereof, and includes an entity described in subparagraph (A).

(n) CONSTRUCTION.—Subsections (a), (b), (c), and (d) describe separate and distinct functions for purposes of applying this section. Whether a service provider qualifies for the limitation on liability in any one of those subsections shall be based solely on the criteria in that subsection and shall not affect a determination of whether that service provider qualifies for the limitations on liability under any other such subsection.

(2) LIMITATIONS ON LIABILITY RELATING TO MATERIAL ONLINE.

SEC. 203. EFFECTIVE DATE.

This title and the amendments made by this title shall take effect on the date of the enactment of this Act.
TITLE III—COMPUTER MAINTENANCE OR REPAIR COPYRIGHT EXEMPTION

SEC. 301. SHORT TITLE.

This title may be cited as the "Computer Maintenance Competition Assurance Act".

SEC. 302. LIMITATION ON EXCLUSIVE RIGHTS; COMPUTER PROGRAMS.

Section 117 of title 17, United States Code, is amended—

(1) by striking "Notwithstanding" and inserting the following:

``(a) MAKING OF ADDITIONAL COPY OR ADAPTATION BY OWNER OF COPY.—Notwithstanding;''

(2) by striking "Any exact" and inserting the following:

``(b) LEASE, SALE, OR OTHER TRANSFER OF ADDITIONAL COPY OR ADAPTATION.—Any exact;''

(3) by adding at the end the following:

``(c) MACHINE MAINTENANCE OR REPAIR.—Notwithstanding the provisions of section 106, it is not an infringement for the owner or lessee of a machine to make or authorize the making of a copy of a computer program if such copy is made solely by virtue of the activation of a machine that lawfully contains an authorized copy of the computer program, for purposes only of maintenance or repair of that machine, if—

(1) such copy is used in no other manner and is destroyed immediately after the maintenance or repair is completed; and

(2) with respect to any computer program or part thereof that is not necessary for that machine to be activated, such program or part thereof is not accessed or used other than to make such new copy by virtue of the activation of the machine.

(d) Definitions.—For purposes of this section—

(1) the 'maintenance' of a machine is the service performed in order for it to work in accordance with its original specifications and any changes to those specifications authorized for that machine; and

(2) the 'repair' of a machine is the restoring of the machine to the state of working in accordance with its original specifications and any changes to those specifications authorized for that machine.

TITLE IV—MISCELLANEOUS PROVISIONS

SEC. 401. PROVISIONS RELATING TO THE COMMISSIONER OF PATENTS AND TRADEMARKS AND THE REGISTER OF COPYRIGHTS.

(a) COMPENSATION.—(1) Section 3(d) of title 35, United States Code, is amended by striking "prescribed by law for Assistant Secretaries of Commerce" and inserting "in an amount as may be directed by the President or level II of the Executive Schedule under section 5314 of title 5, United States Code;''

(2) Section 301(e) of title 17, United States Code, is amended—

(A) by striking "IV" and inserting "III;''

(B) by striking "5313" and inserting "5314;''

(3) by adding at the end of section 301, other than subsections (b) through (e) as subsections (c) through (f), respectively; and

(2) by inserting after subsection (a) the following:

``(b) In addition to the functions and duties set out elsewhere in this chapter, the Register of Copyrights shall perform the following functions:

(1) Advise Congress on national and international issues relating to copyright, other matters arising under this title, and related matters.

(2) Make assistance and advice to Federal departments and agencies and the judiciary on national and international issues relating to copyright, other matters arising under this title, and related matters.

(3) Participate in meetings of international governmental organizations and meetings with foreign governments relating to copyright, other matters arising under this title, and related matters, including as a member of United States delegations as authorized by the appropriate Executive authority.

(4) Conduct studies and programs regarding copyright, other matters arising under this title, and related matters, the administration of the Copyright Office, and programs invested in the Copyright Office by law, including educational programs conducted cooperatively with foreign intellectual property offices and international intergovernmental organizations.

(5) Perform such other functions as Congress may direct, or as may be appropriate in furtherance of the functions and duties specifically set forth in this title.''

SEC. 402. EPHEMERAL RECORDINGS.

Section 112(a) of title 17, United States Code, is amended—

(1) by redesignating paragraphs (1), (2), and (3) as subparagraphs (A), (B), and (C), respectively;

(2) by inserting after "(a)" the following: "112(a);''

(3) by inserting after "under" the following: "112(a);''

(4) by inserting after "114a;" the following: "or"; and

(5) by adding at the end the following:

``(1) In a case in which a transmitting organization that is a broadcast radio or television station licensed as such by the Federal Communications Commission and that makes a broadcast transmission of a performance of a sound recording in a digital format on a nonsubscription basis, and

(2) in an appropriate case, the Register shall consider—

(a) the need for an exemption from exclusive rights in the copy, in the phonorecord, or in the digital format;

(b) the categories of works to be included under any distance education exemption; and

(c) the extent of appropriate quantitative limitations on the portions of works that may be used under any distance education exemption;''

(6) the extent to which the availability of libraries and archival records, or the use of copies of literary works in distance education through interactive digital networks should be considered in assessing eligibility for any distance education exemption; and

(7) such other issues relating to distance education through interactive digital networks that the Register considers appropriate.

SEC. 404. EXEMPTION FOR LIBRARIES AND ARCHIVES.

Section 108 of title 17, United States Code, is amended—

(1) in subsection (a)—

(A) by striking "Notwithstanding" and inserting "Except as otherwise provided in this title and notwithstanding;''

(B) by inserting after "more than one copy or phonorecord of a work" the following: "; except as otherwise provided in this title; and

(C) by inserting after "copyright" the following: "right;''

(2) in subsection (b)—

(A) by striking a "copy or phonorecord" and inserting "three copies or phonorecords;''

(B) by striking "facsimile form;'' and

(C) by striking "if the copy or phonorecord reproduced is currently in the collections of the library or archives and" inserting "if—

(1) the copy or phonorecord reproduced is currently in the collections of the library or archives;''

(2) any such copy or phonorecord that is reproduced in digital format is not otherwise distributed in that format and is not made available to the public in that format outside the premises of the library or archives;''; and

(3) in subsection (c)—

(A) by striking a "copy or phonorecord" and inserting "three copies or phonorecords;''

(B) by striking "facsimile form;'' and

(C) by inserting after "the work is stored has become obsolete," the following: "after "stolen;" and

(D) by striking "if the library or archives has, after a reasonable effort, determined that an unused replacement cannot be obtained at a fair price, and" inserting "the library or archives has, after a reasonable effort, determined that an unused replacement cannot be obtained at a fair price; and"

(2) any such copy or phonorecord that is reproduced in digital format is not made available to the public in that format outside the premises of the library or archives in lawful possession of such copy;''; and

(E) by adding at the end the following:

``For purposes of this subsection, a format shall be considered obsolete if the machine or device necessary to render perceptible a work stored in that format is no longer reasonably available in the commercial marketplace.''

"H10056 CONGRESSIONAL RECORD—HOUSE October 8, 1998
SEC. 405. SCOPE OF EXCLUSIVE RIGHTS IN SOUND RECORDINGS; EPHEMERAL RECORDINGS.

(a) SCOPE OF EXCLUSIVE RIGHTS IN SOUND RECORDINGS.—Section 114 of title 17, United States Code, is amended as follows:

(1) Subsection (d) is amended by striking subparagraph (A) and inserting the following:

"(A) a nonsubscription broadcast transmission;"; and

(2) by amending paragraph (2) to read as follows:

"(2) STATUTORY LICENSING OF CERTAIN TRANSMISSIONS.—The performance of a sound recording embodied in a phonorecord not exempt under paragraph (1), or a sound recording not exempt under paragraph (1), as a broadcast transmission by a transmitting entity other than the performance of the sound recording copyright owner or featured recording artist of the activities of the transmitting entity, shall be subject to statutory licensing, in accordance with subsection (f) if—

"(A)(i) the transmission is not part of an interactive service;

"(ii) except in the case of a transmission to a business establishment, the transmitting entity does not automatically and intentionally cause any device receiving the transmission to switch from one program channel to another; and

"(iii) subsection (d) is not applicable by reason of a statute which, on a weekly basis, exceeds the sound recording performance complement as the copyright owner's sound recordings exceed the performance complement as the copyright owner's sound recordings exceed the broadcasting capacity of the broadcast station, if the retransmission is made by a transmitting entity that does not have the right or ability to control the programming of the broadcast station or the transmission recipient; and

"(B) in the case of a subscription transmission not exempt under paragraph (1) that is made by a preexisting subscription service in the same transmission medium used by such service on July 31, 1998, or in the case of a transmission not exempt under paragraph (1) that is made by a preexisting satellite digital audio service;

"(i) the transmission does not exceed the sound recording performance complement, and

"(ii) the transmitting entity does not cause to be published, or induce or facilitate the publication, by means of an advance program schedule or prior announcement, the titles of the specific sound recordings to be transmitted, the phonorecords embodying such sound recordings, or, otherwise, the names of the featured recording artists, except that this clause does not disqualify a transmitting entity that makes a prior announcement that a particular sound recording will be transmitted within an unspecified future time period, and in the case of a retransmission of a broadcast transmission by a transmitting entity that does not have the right to control the programming of the broadcast transmission, the requirement of this clause shall not apply to a prior oral announcement by the broadcast station, or in the case of an advertisement, notice in writing by the copyright owner of the sound recording, that the transmission entity does not have actual knowledge and has not received written notice that the broadcast station publishes or induces or facilitates the publication of such advance program schedule, or if such advance program schedule shall not apply to a retransmission of a broadcast transmission by a preexisting satellite digital audio service if the transmission entity does not have the right or ability to control the programming of the broadcast transmission, unless the transmission entity is given notice in writing by the copyright owner of the sound recording that the transmission entity does not have the right or ability to control the programming of the broadcast transmission, or in the case in which devices or technology intended for receiving the transmission service provided by the transmission entity that have the capability to display such textual data are not common in the marketplace.

"(ii) the transmission is not part of an archived program of less than 5 hours duration;

"(iii) the transmission does not exceed the sound recording performance complement, and

"(iv) the transmitting entity does not cause to be published, or induce or facilitate the publication, of technical data that are not common in the marketplace, including information concerning the sound recording during, but not prior to, broadcast transmission of the sound recording, by means of an advance program schedule or prior announcement, the titles of the specific sound recordings to be transmitted, the phonorecords embodying such sound recordings, or, otherwise, the names of the featured recording artists, except that this clause does not disqualify a transmitting entity that makes a prior announcement that a particular sound recording will be transmitted within an unspecified future time period, and in the case of a retransmission of a broadcast transmission by a transmitting entity that does not have the right to control the programming of the broadcast station or the transmission recipient; and

"(B) in paragraph (1)—

"(I) is not part of an archived program which is of less than 3 hours duration;

"(II) is not part of an identifiable program in which performances of sound recordings are rendered in a predetermined order, other than an archived or continuous program, that is transmitted at—

"(aa) more than 3 times in any 2-week period that have been publicly announced in advance, in the case of a program of less than 1 hour in duration, or

"(bb) more than 4 times in any 2-week period that have been publicly announced in advance, in the case of a program of 1 hour or more in duration, except that the requirement of this subclause shall not apply in the case of a retransmission of a broadcast transmission by a transmitting entity that does not have the right or ability to control the programming of the broadcast station if the transmitting entity makes the transmission from a device or technology in which the ability to control the programming of the broadcast station is not available to the transmitting entity without imposing substantial costs on the transmitting entity or resulting in perceptible aural or visual degradation of the digital signal, except that the requirement of this clause shall not apply to a satellite digital audio service that is in operation, or that is licensed under the authority of the Federal Communications Commission, on or before July 31, 1998, to the extent that such service has designed, developed, or made commitments to purchase equipment or technology compatible with such technical measures before such technical measures are widely adopted by sound recording copyright owners; and

"(iii) the transmission is not part of an archived program of less than 5 hours duration;

...(continued)
covering such subscription transmissions with respect to such sound recordings; and

(C) by striking paragraphs (2), (3), (4), and (5) and inserting the following:

"(2) License agreements voluntarily negotiated under subparagraph (A), during the 60-day period commencing 6 months after publication of the notice specified in subparagraph (A), and upon the filing of a petition in accordance with section 803(a)(1), the Librarian of Congress shall, pursuant to chapter 8, convene a copyright arbitration royalty panel to determine and publish the rates and terms which, subject to paragraph (3), shall be binding on all copyright owners of sound recordings and entities performing sound recordings affected by this paragraph, in establishing rates and terms for preexisting subscription services and new subscription services then in operation and shall include a recorded event or broadcast transmission licensed by any copyright owner and performing sound recordings.

(A) Any royalty payments in arrears shall be made on or before the twentieth day of the month next succeeding the month in which the royalty fees are set.

(3) Subsection (g) is amended—

(A) in the subsection heading by striking "SUBSCRIPTION"; and

(B) in paragraph (1) by inserting the following after "copyrighted work and the service made available to the public with respect to which the sound recording is or is about to become operational; and"

"(3) License agreements voluntarily negotiated under this section, and 1 or more entities providing sound recordings, for which no determination has been made, may receive reasonable notice of the use of their sound recordings under this section, and under which records of such use shall be kept available by entities performing sound recordings.

(B) Any person who wishes to perform a sound recording publicly by means of a transmission service or technology licensing under this subsection may do so without infringing the exclusive right of the copyright owner of the sound recording.

(C) Any royalty agreements voluntarily negotiated under this section shall include a recorded event or broadcast transmission licensed by any copyright owner and performing sound recordings.

(D) by striking paragraphs (4) and (9) and redesignating paragraphs (2), (3), (5), (6), (7), and (8) as paragraphs (3), (5), (9), (12), (13), and (14), respectively.

(B) by inserting after paragraph (1) the following:

"(2) An "archived program" is a predetermined program that is available repeatedly on the demand of the transmission recipient and that is performed in the same order from the beginning, except that an archived program shall not include any recorded event of a transmission that makes no more than an incidental use of sound recordings, as long as such recorded event or broadcast transmission does not contain an entire sound recording or feature a particular sound recording;"

(C) by inserting after paragraph (3), as so redesignated, the following:

"(4) A "continuous program" is a predetermined program that is continuously performed in the same order and that is accessed at a point in time that is beyond the control of the transmission recipient.

(D) by inserting after paragraph (5), as so redesignated, the following:

"(5) "Eligible nonsubscription transmission" is a noninteractive nonsubscription digital audio transmission not exempt under subsection (d)(1) that is made as part of a service that provides audio programming consisting, in whole or in part, of performances of sound recordings, including retransmissions of broadcast transmissions, if the primary purpose of the service is to provide to the public audio or other entertainment programming, and the primary purpose of the service is not to sell, advertise, or promote particular products or services other than the sound recordings, live concerts, or other music-related events.

(7) An "interactive service" is one that enables a member of the public to receive a transmission on the request of the recipient, or on request, a transmission of a particular sound recording, whether or not as part
of a program, which is selected by or on behalf of the recipient. The ability of individuals to request that particular sound recordings be performed for reception by the public at large, or in the case of noninteractive broadcasts, by the public at large, is limited by the availability of phonorecords that are not made and no further phonorecords are reproduced from it.

"(B) The phonorecord is used solely for the transmitting organization's own transmissions originating in the United States under a statutory license, including by means of satellite digital audio radio service; or

"(C) The phonorecord is used solely for the transmitting organization's own transmissions originating in the United States under a statutory license, including by means of satellite digital audio radio service; or

803(a)(1), the Librarian of Congress shall, upon the enactment of the Digital Millennium Copyright Act, the Librarian of Congress shall cause the enactment of the Digital Millennium Copyright Act, the Librarian of Congress shall cause

"(A) the relative roles of the copyright owner and the public with respect to relative creative contribution, technological contribution, capital investment, cost, and risk. In establishing such rates and terms, the copyright owner shall be free to negotiate and agree, pay, or receive such royalty payments, and the rate or term for the use of such sound recording and may designate common agents to negotiate, agree to, pay, or receive such royalty payments.

"(B) Any royalty payments in arrears shall be determined for each type of service offered by transmitting organizations entitled to a statutory license under this subsection, under this section and the proportionate division of fees paid among copyright owners, and may designate common agents to negotiate, agree to, pay, or receive such royalty payments. The Librarian of Congress shall set rates that most clearly represent the fees that would have been negotiated in the marketplace between a buyer and a willing seller. In determining such rates and terms, the copyright arbitration royalty panel shall base its decision on economic, competitive, and programming information presented by the parties, including:

"(A) the ability of the copyright owner to negotiate and agree upon royalty rates and terms under voluntary license agreements negotiated as provided in paragraphs (3) and (4). The Librarian of Congress shall also establish procedures for the collection and distribution of such fees.

"(A) whether use of the service may substitute or enhance the copyright owner's traditional streams of revenue; and

"(B) whether use of the service may substitute or enhance the copyright owner's traditional streams of revenue; and

"(C) unless preserved exclusively for purposes of archiving, reproduction of the phonorecord is de

"(D) The phonorecord or musical work, including the exclusive distribution, technological contribution, capital investment, cost, and risk. In establishing such rates and terms, the copyright owner shall be free to negotiate and agree

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"(E) by inserting after paragraph (9), as so re

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"(11) A preexisting subscription service is a service that performs sound recordings by means of noninteractive subscription digital audio transmissions and that is not a preexisting subscription service or a preexisting satellite digital audio radio service.

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a digital phonorecord delivery, under section 106(1), 106(3), and 115, and the right to perform publicly a sound recording or musical work, including by means of a digital audio transmission, under sections 106(4) and 106(6)."

(c) Section 112(a) of Title 17 Not Affected.—Nothing in this section or the amendments made by this section shall affect the validity of any copyright claimed under sections 102(a) or 103 of Title 17, United States Code, or the entitlement of any person to an exemption thereunder.

(d) Procedural Amendments to Chapter 8.—Section 802 of title 17, United States Code, is amended—

(1) in subsection (f)—

(A) in the first sentence by striking "60" and inserting "360";

(B) in the third sentence by striking "that 60-day period" and inserting "an additional 30-day period"; and

(2) in subsection (g) by inserting after the second sentence the following: "When this title provides that the royalty rates or terms that were previously in effect are to expire on a specified date, any adjustment by the Librarian of those rates or terms shall be effective as of the day following the date of expiration of the rates or terms that were previously in effect, even if the Librarian's decision is rendered on a later date.

(e) Conforming Amendments.—(1) Section 801(b)(1) of title 17, United States Code, is amended by striking "section 111, 114, 115, and 116" and inserting "sections 114(f)(1)(B), 115, and 116".

(2) Section 802(a)(1) of title 17, United States Code, is amended by striking "section 111, 114, 116, or 119, any person entitled to a compulsory license" and inserting "section 111, 112, 114, 116, or 119, any transmitting organization entitled to a compulsory license".

(3) Section 802(g) of title 17, United States Code, is amended by striking "sections 111, 114, and 116" and inserting "sections 111, 112, 114, and 116".

(4) Section 802(h)(2) of title 17, United States Code, is amended by striking "section 111, 114, and 116" and inserting "section 111, 112, 114".

(5) Section 808(a)(1) of title 17, United States Code, is amended by striking "sections 111, 114, and 115" and inserting "sections 112, 114, and 115".

(6) Section 808(a)(5) of title 17, United States Code, is amended—

(A) by striking "section 114" and inserting "section 112 or 114"; and

(B) by striking "that section" and inserting "those sections".

Sec. 406. Assumption of Contractual Obligations Related to Transfers of Rights in Motion Pictures.

(a) in General.—Part VI of title 28, United States Code, is amended by adding at the end the following new chapter:

"CHAPTER 180—ASSUMPTION OF CERTAIN CONTRACTUAL OBLIGATIONS RELATED TO TRANSFERS OF RIGHTS IN MOTION PICTURES"

"Sec. 4001. Assumption of contractual obligations related to transfers of rights in motion pictures.

"§ 4001. Assumption of contractual obligations related to transfers of rights in motion pictures.

"(a) Assumption of Obligations.—(1) In the case of a transfer of copyright ownership under United States law in a motion picture (as the term 'copyright ownership' and 'motion pictures' are defined in section 101 of title 17) that is produced subject to 1 or more collective bargaining agreements negotiated under the laws of the United States, if the transfer is executed on or after the effective date of this chapter and is not limited to public performance rights, the transfer instrument shall be deemed to incorporate the assumption agreements applicable to the copyright ownership being transferred that are required by the applicable collective bargaining agreement, and the transferee shall be subject to the obligations under each such assumption agreement to make residual payments and provide related notices, accruing after the effective date of the transfer and applicable to the rights transferred, and any remedies under each such assumption agreement for breach of those obligations, as those obligations and remedies are set forth in the applicable collective bargaining agreement, if—

"(A) the transferee knows or has reason to know at the time of the transfer that such collective bargaining agreement was or will be applicable to the motion picture; or

"(B) in the event of a court order confirming an arbitration award against the transferee, if the arbitrator's decision is not void or not unenforceable, the transferee does not have the financial ability to satisfy the award within a specified period of time.

(2) For purposes of paragraph (1)(A), 'knows or has reason to know' means any of the following:

"(A) Actual knowledge that the collective bargaining agreement was or will be applicable to the motion picture.

"(B)(i) Constructive knowledge that the collective bargaining agreement will or may be applicable to the motion picture, arising from recordation of a document pertaining to copyright in the motion picture under section 105 of title 17, or from a public performance of the motion picture as subject to a collective bargaining agreement that permits a commercially reasonable verification of the date on which the information was available for access.

"(ii) Clause (i) applies only if the transfer referred to in subsection (a)(1) occurs—

"(I) after the motion picture is completed, or

"(II) before the motion picture is completed and

"(i) within 18 months before the filing of an application for copyright registration for the motion picture under section 408 of title 17, or

"(ii) if no such application is filed, within 18 months before the first publication of the motion picture in the United States.

"(C) Awareness of other facts and circumstances pertaining to a particular transfer from which it is apparent that the collective bargaining agreement was or will be applicable to the motion picture.

"(d) Deferral Pending Resolution of Bonafide Dispute.—When a transfer is made to a bona fide dispute between a union and a prior transferor until that dispute is resolved, except that such deferral shall not stay accrual of any union claims due under an applicable collective bargaining agreement.

"(e) Scope of Obligations Determined by Private Agreement.—Nothing in this section shall expand or diminish the rights, obligations, or remedies of any person under the collective bargaining agreements or assumption agreements referred to in this section.

"(f) Failure to Notify.—If the transferee under subsection (a) fails to notify the transferee under subsection (a) of applicable collective bargaining obligations before the execution of the transfer instrument, and subsection (a) is made applicable to the transfer solely by virtue of subsection (a)(1)(B), the transferee shall be liable to the transferee for any damages suffered by the transferee as a result of the failure to notify.

"(g) Determination of Disputes and Claims.—Any dispute concerning the application of the provisions of this section is to be determined by an action in a United States district court, and the court in its discretion may allow the recovery of full costs by or against any party, which may also award a reasonable attorney's fee to the prevailing party as part of the costs.

"(h) Study.—The Comptroller General, in consultation with the Register of Copyrights, shall conduct a study of the conditions in the motion picture industry that gave rise to this section, and the impact of this section on the motion picture industry. The Comptroller General shall report the findings of the study to the Congress within 2 years after the effective date of this chapter.

"(i) Conforming Amendment.—The table of chapters for part VI of title 28, United States Code, is amended by adding at the end the following:

"180. Assumption of Certain Contractual Obligations

"4001."

"SEC. 407. Effective Date.

Except as otherwise provided in this title, this title and the amendments made by this title shall take effect on the date of the enactment of this Act.

Title V—Protection of Certain Original Designs

Sec. 501. Short Title.

This Act may be referred to as the "Vessel Hull Design Protection Act".

Sec. 502. Protection of Certain Original Designs.

Title 17, United States Code, is amended by adding at the end the following new chapter:

"CHAPTER 15—PROTECTION OF ORIGINAL DESIGNS

"Sec.

1301. Designs protected.

1302. Designs not subject to protection.

1303. Revisions, adaptations, and rearrangements.

1304. Commencement of protection.


1307. Effect of omission of notice.

1308. Exclusive rights.

1309. Enforcement.

1310. Application for registration.

1311. Benefit of earlier filing date in foreign country.

1312. Oaths and acknowledgments.

1313. Examination of application and issue or refusal of registration."
§ 1301. Designs protected

(a) Designs protected.—

(1) In general.—The designer or other owner of an original design of a useful article which makes the article attractive or distinctive in appearance in the course of business, or which makes the article attractive or distinctive in trade, or which makes the article attractive or distinctive in advertising, shall be entitled to full legal protection against the infringement of that design, as hereinafter provided.

(2) Vessel hulls.—The design of a vessel hull, including a plug or mold, which is part of a useful article shall be deemed to be a design protected under this chapter.

(b) Definitions.—For the purpose of this section—

(1) A design is original if it is the result of the designer's creative endeavor that provides a distinguishable variation over prior work pertaining to similar articles which is more than merely trivial and has not been copied from another source.

(2) A useful article is a vessel hull, including a plug or mold, which in normal use has an intrinsic utilitarian function that is not merely to portray the appearance of the article or to convey information. An article which normally is a part of a useful article shall be deemed to be a useful article.

(3) A vessel is a craft, especially one larger than a rowboat, designed to navigate on water, but does not include any such craft that exceeds 200 feet in length.

(4) A hull is the frame or body of a vessel, including the deck of a vessel, exclusive of the deck of a vessel, exclusive of a vessel the design of which has been copied from a protected design in an advertisement, or to convey information.

(a) CONTENTS OF DESIGN NOTICE.—(1) Whenever any design for which protection is sought under this chapter is made public as defined by section 1310(b), the owner of the design shall, subject to the provisions of section 1307, mark it or have it marked legibly with a design notice consisting of—

(A) the words 'Protected Design,' the abbreviation 'Prot,' the word 'Design,' or the symbol '®';

(B) the year in which the design was first made public as defined by section 1310(b); and

(C) the name of the owner, an abbreviation by which the name can be recognized, or a generally accepted alternative designation of the owner.

Any distinctive identification of the owner may be used for purposes of subparagraph (C) if it has been recorded by the Administrator before the design marked with such identification is registered.

(2) After registration, the registration number may be used instead of the elements specified in subparagraphs (B) and (C) of paragraph (1).

(b) LOCATION OF NOTICE.—The design notice shall be located so and applied as to give reasonable notice of design protection while the useful article embodying the design is passing through its normal channels of commerce.

(c) SUBSEQUENT REMOVAL OF NOTICE. —When the owner of a design has complied with the provisions of this section, protection under this chapter shall not be affected by the removal, destruction, or obliteration by others of the design notice embodied in the design marking. An action for use in trade, any infringing article as defined in subsection (a) or (b) sell or distribute for sale or for use in trade any infringing article.

(d) ACTS IN ORDINARY COURSE OF BUSINESS. —As used in this section, an infringing article is any article the design of which has been copied from a protected design in an advertisement, or to convey information.

§ 1302. Designs not subject to protection

Protection under this chapter shall not be available for a design that is—

(1) not original;

(2) staple in commonplace, such as a standard geometric figure, a familiar symbol, an emblem, or a motif, or another shape, pattern, or configuration which has become standard, common, or conventional;

(3) different from a design excluded by paragraph (2) only in insignificant details or in elements which are variants commonly used in the relevant trade or ordinary course of business, or who, without knowledge of the protected design embodied in an infringing article, makes or processes the infringing article for the ordinary course of business, shall not be deemed to have infringed the rights in that design under this chapter except under a condition contained in paragraph (2).

(4) specified as a design not to be protected by the Register of Copyrights under the authority granted by section 1310(b).

§ 1303. Revisions, adaptations, and re-arrangements

Protection for a design under this chapter shall be available notwithstanding the employment in the design or any substantial part of the design of subject matter which is less than original if such employment is made in good faith for a design that is—

(a) the result of an editorial or typographical revision of a design which was originally made for use in trade, for use in trade, or to convey information.

(b) the result of an arrangement of elements included in a design which was previously recorded by the Register of Copyrights.

(c) the result of a minor change in the appearance of a design which was previously recorded by the Register of Copyrights.

§ 1304. Commencement of protection

The protection provided for a design under this chapter shall commence upon the earlier of the date of publication of the registration under section 1311(a) or the date the design is first made public as defined by section 1310(b).

§ 1305. Term of protection

(a) In general.—Subject to subsection (b), the protection provided under this chapter for a design shall continue for a term of 10 years beginning on the date of the commencement of protection under section 1304.

(b) Expiration.—All terms of protection provided in this section shall expire at the end of the calendar year in which they would otherwise expire.

§ 1306. Design notice

(a) CONTENTS OF DESIGN NOTICE.—(1) Whenever any design for which protection is sought under this chapter is made public as defined by section 1310(b), the owner of the design shall, subject to the provisions of section 1307, mark it or have it marked legibly with a design notice consisting of—

(A) the words 'Protected Design,' the abbreviation 'Prot,' the word 'Design,' or the symbol '®';

(B) the year in which the design was first made public as defined by section 1310(b); and

(C) the name of the owner, an abbreviation by which the name can be recognized, or a generally accepted alternative designation of the owner.

Any distinctive identification of the owner may be used for purposes of subparagraph (C) if it has been recorded by the Administrator before the design marked with such identification is registered.

(2) After registration, the registration number may be used instead of the elements specified in subparagraphs (B) and (C) of paragraph (1).

(b) LOCATION OF NOTICE.—The design notice shall be so located and applied as to give reasonable notice of design protection while the useful article embodying the design is passing through its normal channels of commerce.

(c) SUBSEQUENT REMOVAL OF NOTICE.—When the owner of a design has complied with the provisions of this section, protection under this chapter shall not be affected by the removal, destruction, or obliteration by others of the design notice embodied in the design marking. An action for use in trade, any infringing article as defined in subsection (a) or (b) sell or distribute for sale or for use in trade any infringing article.

(d) ACTS IN ORDINARY COURSE OF BUSINESS. —As used in this section, an infringing article is any article the design of which has been copied from a protected design in an advertisement, or to convey information.

§ 1307. Effect of omission of notice

(a) ACTIONS WITH NOTICE. —Except as provided in subsection (b), the omission of the notice prescribed in section 1306 shall not cause loss of the right to protection under this chapter.

(b) INFRINGEMENT OF NOTICE. —In the ordinary course of business, shall not be deemed to have infringed the rights in that design under this chapter except under a condition contained in paragraph (2).

§ 1308. Exclusive rights

The owner of a design protected under this chapter has the exclusive right to—

(1) make, have made, or import, for sale or for use in trade, any useful article embodying that design;

(2) sell or distribute for sale or for use in trade any useful article embodying that design.

§ 1309. Infringement

(a) ACTS OF INFRINGEMENT. —Except as provided in subsection (b), it shall be infringement of a design protected under this chapter for any person, without the consent of the owner of the design, within the United States and during the term of such protection, to—

(1) make, have made, or import, for sale or for use in trade, any infringing article as defined in subsection (a); or

(2) sell or distribute for sale or for use in trade any such infringing article.

(b) ACTS OF SELLERS AND DISTRIBUTORS. —A seller or distributor of a protected design shall not be deemed to have infringed a design protected under this chapter only if that person—

(1) induced or acted in concert with a manufacturer to make, or an importer to import such article, except that merely purchasing or giving an order to purchase such article in the ordinary course of business shall not of itself constitute such inducement or collusion; or

(2) refused or failed, upon the request of the owner of the design, to make a prompt and full disclosure of that person’s source of such article, and that person orders or reordered such article after receiving notice by registered or certified mail of the protection subsisting in the design.

(c) ACTS WITHOUT KNOWLEDGE. —It shall not be infringement under this section to make, have made, import, sell, or distribute, any article embodying a design which was created without knowledge that a design was protected under this chapter and was copied from such protected design.

(d) ACTS IN ORDINARY COURSE OF BUSINESS. —A person who incorporates into that person’s product of manufacture an infringing article, whether or not the infringing article is the product of another business, or who, without knowledge of the protected design embodied in an infringing article, makes or processes the infringing article for the ordinary course of another business, shall not be deemed to have infringed the rights in that design under this chapter except under a condition contained in paragraph (2).

(e) INFRINGEMENT DEFENSES. —As used in this section, an ‘infringing article’ is any article the design of which has been copied from a protected design in an advertisement, or to convey information.
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book, periodical, newspaper, photograph, broadcast, motion picture, or similar medium. A design shall not be deemed to have been copied from a protected design if it is original and not subservient in appearance to a protected design.

(f) Establishing Originality.—The party to any action or proceeding under this chapter who establishes by publication in a design shall have the burden of establishing the design’s originality whenever the opposing party introduces an earlier work which is identical to or so similar as to make prima facie showing that such design was copied from such work.

(g) Reproduction for Teaching or Analy.

(h) Pictorial Representation of Design.—The application for registration shall be accompanied by the salient features of the useful article embodying the design, adequate to show the design, in a form and style suitable for reproduction, which shall be deemed a part of the application.

(i) Design in More Than One Useful Art.

§ 1311. Beneficial earlier filing date in foreign country.

“An application for registration of a design filed in the United States by any person who has, or is to have, in a scope of employment and individual authorship of the design, but the absence of such a description shall not prevent registration under this chapter.

(e) Slogan Statement.—The application for registration shall be accompanied by a statement that the design is original and was created by the designer or designers named in the application.

(f) Effect of Errors.—[1] Error in any statement as to the utility of the useful article named in the application under this section, the design of which is sought to be registered, shall not affect the protection secured under this chapter.

(2) Errors in omitting a joint designer or in naming an alleged joint designer shall not affect the validity of the registration, or the actual ownership or the protection of the design, unless it is shown that the error occurred with deceptive intent.

§ 1312. Oaths and acknowledgments.

(a) In General.—Oaths and acknowledgments required by this chapter—

(1) may be made—

(A) before any person in the United States authorized to administer oaths, or before any diplomatic or consular officer of the United States authorized to administer oaths, or before any such foreign application was filed.

(b) Written Declaration in Lieu of Oath.—[1] The Administrator may by rule prescribe the manner in which a written declaration shall be made, and shall prescribe the manner in which a registration resulting from a registration application executed under this chapter in the Office of the Administrator and shall be reproduced in the certificate of a certificate of registration issued under section 1316, the Administrator shall also have the authority to establish, by regulation, conditions under which the opposition parties may appear and be heard in support of their arguments.

(c) Application to Cancel Registration.—Any person who believes he or she is or will be damaged by a registration under this chapter may, upon payment of the prescribed fee, apply to the Administrator at any time to cancel the registration on the ground that the design is not subject to protection under this chapter, and, after the application has been published, if the interest of the Administrator is not impaired by the publication of the registration, and if so, the Register shall register the design.

§ 1314. Certification of registration.

Certificates of registration shall be issued in the name of the United States under the seal of the Office of the Administrator and shall be recorded in the official records of the Office. The certificate shall state the date of filing the application, the date of registration, and the date the design was made public, if earlier than the date of filing of the application, and shall contain the reproduction of the drawing or other pictorial representation of the design. If a description of the salient features of the design appears in the application, the description shall be admitted in the certificate. A certificate of registration shall be admitted in any court as prima facie evidence of the facts stated in the certificate.

§ 1315. Publication of announcements and indexes.

(a) Publications of the Administrator.—The Administrator shall publish lists and indexes of registered designs and may also publish the drawings or other pictorial representations of registered designs for sale or other distribution.

(b) File of Registered Designs.—The Administrator shall establish and maintain a file of the drawings or other pictorial representations of registered designs. The file shall be available for public use under such conditions as the Administrator may prescribe.
§ 1316. Fees

The Administrator shall by regulation establish reasonable fees for the filing of applications to register designs under this chapter and for other services relating to the administration of this chapter. Said fees shall be reasonable in consideration of the cost of providing these services and the benefit of a public record.

§ 1317. Regulations

The Administrator may establish regulations for the administration of this chapter.

§ 1318. Copies of records

Upon payment of the prescribed fee, any person may obtain a certified copy of any official record of the Office of the Administrator that relates to a design registered or which is otherwise filed in the Office. Such record, together with the certificate, shall thereafter have the same effect as if it had been originally issued in such corrected form.

§ 1320. Ownership and transfer

(a) Property Right in Design. The property right in a design subject to protection under this chapter shall vest in the designer, the legal representatives of a deceased designer or one of the signatories to the design notice specified in section 1306, the employer for whom the designer created the design in the case of a design made within the regular scope of the designer’s employment, or a person to whom the rights of the designer or of such employer have been transferred.

(b) Transfer of Property Right. The property right in a registered design, or a design for which an application for registration has been or may be filed, may be assigned, granted, conveyed, or mortgaged by an instrument in writing, signed by the owner, or may be conveyed by will.

(c) Acknowledgement of Transfer. An oath or acknowledgment under section 1312 shall be prima facie evidence of the execution of an assignment, grant, conveyance, or mortgage under subsection (b).

(d) Recordation of Transfer. An assignment, grant, conveyance, or mortgage under subsection (b) shall be void as against any subsequent purchaser or mortgagee for a valuable consideration, unless it is recorded in the Office of the Administrator within 3 months after its date of execution or before the date of such subsequent purchase or mortgage.

§ 1321. Remedy for infringement

(a) In General. The owner of a design is entitled, after issuance of a certificate of registration of the design under this chapter, to institute an action for any infringement of the design.

(b) Review of Refusal to Register. Subject to paragraph (2), the owner of a design may seek a judicial review of a refusal by the Administrator to register a design under this chapter by bringing a civil action, and may in the same action, if the court deems it appropriate, file an application for a preliminary injunction to enforce the rights in that design under this chapter.

(2) The owner of a design may seek judicial review under this section if—

(A) the design has been previously duly filed and prosecuted to final refusal an application in proper form for registration of the design;

(B) the owner causes a copy of the complaint in said action to be served on the Administrator within 10 days after the commencement of the action; and

(c) the defendant has committed acts in respect to the design which would constitute infringement with respect to a design protected under this chapter.

(d) Administrator as Party to Action. The Administrator may, at the Administrator’s option, become a party to the action with respect to the issue of registrability of the design claim by being a party to the action within 60 days after being served with the complaint, but the failure of the Administrator to become a party shall not deprive the court of jurisdiction to determine that issue.

(4) Use of Arbitration to Resolve Dispute. The parties to an infringement dispute under this chapter may, at the time or times specified by the Administrator by regulation, may determine the dispute, or any aspect of the dispute, by arbitration. Arbitration shall be governed by title 9. The parties shall give notice of any arbitration award to the Administrator, and such award shall, as between the parties to the arbitration, be dispositive of the issues to which it relates.

(e) Arbitration Award Sanction. An arbitration award shall be unenforceable until such notice is given. Nothing in this subsection shall preclude the Administrator from determining whether a design is subject to registration in a cancellation proceeding under section 1313(c).

§ 1322. Injunctions

(a) In General. A court having jurisdiction over actions under this chapter may grant injunctions in such cases that are necessary to suspend the enforcement of the rights set forth in section 1308 or to restrain violations of articles from the United States, that the court determines to be just. The damages to such amount, not exceeding $50,000, as the court finds will be sufficient to compensate the owner of a design for all loss resulting from the sale of infringing articles, and any plates, molds, patterns, or other materials so derived, and punitive damages in instances where the injunctive relief was sought in bad faith, and, unless the court finds extenuating circumstances, reasonable attorney’s fees.

(b) Damages for Injunctive Relief Wrongfully Obtained. A seller or distributor who suffers damage by reason of injunctive relief wrongfully obtained under this section has a cause of action against the applicant for such injunctive relief and may recover such relief as may be appropriate, including damages for lost profits, the injury to goodwill, and punitive damages in instances where the injunctive relief was sought in bad faith, and, unless the court finds extenuating circumstances, reasonable attorney’s fees.

(c) Recovery for Infringement

(a) Damages. Upon a finding for the claimant in an action for infringement under this chapter, the court shall award the claimant damages adequate to compensate for the infringement. In addition, the court may assess costs against the defendant as may be assessed by the court. The court shall award the claimant damages adequate to compensate the defendant and shall be charged fees.

(b) Infringer’s Profits. As an alternative to the remedies provided in subsection (a), the court may award the claimant the infringer’s profits resulting from the sale of the copies if the court finds that the infringer’s sales are reasonably related to the use of the claimant’s design. In such a case, the claimant shall be required to prove on the defendant’s sales and the infringer shall be required to prove its expenses against such sales.

(c) Statute of Limitations. No recovery under subsection (a) or (b) shall be had for any infringement committed more than 3 years before the date on which the complaint is filed.

(d) Attorney’s Fees. In an action for infringement under this chapter, the court may award attorney’s fees to the prevailing party.

(e) Disposition of Infringing and Other Articles. The court may order that all infringing articles, and any plates, molds, patterns, models, or other materials specifically adapted or designed for use for the manufacture of infringing articles, shall be subject to destruction or other disposition as the court may direct.

§ 1324. Power of court over registration

In any action involving the protection of a design under this chapter, the court, when appropriate, may order registration of a design under this chapter or the cancellation of such a registration. Any such order shall be reviewed by the court, and the court may direct that the registration be cancelled or new registration be issued, as the case may be, except that the court may not order the cancelation of the registered design that is protected under this chapter.

§ 1325. Liability for action on registration fraudulently obtained

Any person who brings an action for infringement knowing that registration of the design was obtained by a false or fraudulent representation materially affecting the rights obtainable under this chapter, shall be liable in the sum of $1,000, or $5,000, whichever is appropriate, as a court fine payable to the United States in civil causes and proceedings brought under this chapter, unless such representation was obtained under this chapter.

§ 1326. Penalty for false marking

(a) In General. Whoever, for the purpose of deceiving the public, marks upon, applies to, or uses in advertising in connection with an article sold or distributed, or in a design record or register protected under this chapter, or the presentation of a design notice specified in section 1306, or any other word, name, symbol, or other representation of the design, knowing that the design is not protected under this chapter, knowing that the design is not protected under this chapter, shall be liable in the sum of $1,000, or $5,000, whichever is appropriate, as a court fine payable to the United States in civil causes and proceedings brought under this chapter.

§ 1327. Penalty for false representation

Whoever knowingly makes a false representation materially affecting the rights obtainable under this chapter for the purpose of obtaining registration of a design under this chapter shall pay a penalty of not less than $500 and not more than $1,000, and any rights or privileges that individual may have in the design under this chapter shall be forfeited.

§ 1328. Enforcement by Treasury and Postal Service

(a) Regulations. The Secretary of the Treasury and the United States Postal Service shall separately or jointly issue regulations for the enforcement of the rights set forth in section 1308 with respect to importation. Such regulations may require, as a condition for the exclusion of articles from the United States, that the person seeking exclusion take any one or more of the following actions:

(1) Obtain a court order enjoining, or an order of the International Trade Commission under section 337 of the Tariff Act of 1930 excluding, importation of the articles.

(2) Furnish proof that the design involved is protected under this chapter and that the importation of the articles would infringe the rights in the design under this chapter.

(3) Post a surety bond for any injury that may result if the defendant is held in contempt of court.

(b) Seizure and Forfeiture. Articles imported in violation of the rights set forth in section 1308 may be subject to seizure and forfeiture in the same manner as property imported in violation of the customs laws. Any such forfeited articles shall be destroyed as directed by the Secretary of the Treasury or the court, as the case may be, except that the articles may be returned to the country of export whenever it is shown to the satisfaction of the Secretary of the Treasury or the court that the article was not so imported.
§ 1329. Relation to design patent law

The issuance of a design patent under title 35 for an original design for an article of manufacture shall terminate any protection of the original design under this chapter.

§ 1330. Common law and other rights unaffected

Nothing in this chapter shall annul or limit—

(1) common law or other rights or remedies, if any, available to or held by any person with respect to a design which has not been registered under this chapter; or

(2) any right under the trademark laws or any right of unfair competition.

§ 1331. Administrator; Office of the Administrator

In this chapter, the ‘Administrator’ is the Register of Copyrights, and the ‘Office of the Administrator’ and the ‘Office’ refer to the Copyright Office of the Library of Congress.

§ 1332. No retroactive effect

Protection under this chapter shall not be available for any design that has been made public under section 1310(b) before the effective date of this chapter.

SEC. 503. CONFORMING AMENDMENTS.

(a) TABLE OF CHAPTERS.—The table of chapters for title 17, United States Code, is amended by adding after the end of title 13, the following: “13. Protection of Original Designs... 1301.”

(b) JURISDICTION OF DISTRICT COURTS OVER DESIGN ACTIONS.—(1) Section 338(b)(1) of title 28, United States Code, is amended by inserting “‘designs’ after ‘mask works,’” and to exclusive rights in designs under chapter 13 of title 13, of the Act, as added by title 17,” after “title 17.”

(2)(A) The section heading for section 1338 of title 28, United States Code, is amended by inserting “designs,” after “mask works,”

(B) The item relating to section 1338 in the tables of sections at the beginning of chapter 85 of title 28, United States Code, is amended by inserting “‘designs’ after ‘mask works’,”

(c) PLACE FOR BRINGING DESIGN ACTIONS.—(1) Section 1400(a)(2) of title 28, United States Code, is amended by inserting “or designs” after “mask works.”

(2) The section heading for section 1400 of title 28, United States Code is amended to read as follows:

§ Patents and copyrights, mask works, and designs.

(3) The item relating to section 1400 in the table of sections at the beginning of chapter 87 of title 28, United States Code, is amended to read as follows:

1400. Patents, copyrights, mask works, and designs.

(d) ACTIONS AGAINST THE UNITED STATES.—Section 1498(e) of title 28, United States Code, is amended by inserting “designs,” after “copy of a work,’

SEC. 504. JOINT STUDY OF THE EFFECT OF THIS TITLE.

(a) IN GENERAL.—Not later than 1 year after the date of the enactment of this Act, and not later than 2 years after such date of enactment, the Register of Copyrights and the Commissioner of Patents and Trademarks shall submit to the Committees on the Judiciary of the Senate and the House of Representatives a joint report evaluating the effect of the amendments made by this title.

(b) ELEMENTS FOR CONSIDERATION.—In carrying out subsection (a), the Register of Copyrights and the Commissioner of Patents and Trademarks shall consider—

(1) the extent to which the amendments made by this title has been effective in suppressing infringement of the design of vessel hulls;

(2) the extent to which the registration provided for in chapter 13 of title 17, United States Code, as added by this title, has been utilized;

(3) the extent to which the creation of new designs of vessel hulls have been encouraged by the amendments made by this title;

(4) the effect, if any, of the amendments made by this title on the price of vessels with hulls protected under such amendments;

(5) such other considerations as the Register and the Commissioner may deem relevant to accomplish the purposes of the joint evaluation conducted under subsection (a).

SEC. 505. EFFECTIVE DATE.

The amendments made by sections 502 and 503 shall take effect as of the enactment of this Act and shall remain in effect until the end of the 2-year period beginning on such date of enactment. No cause of action based on chapter 13 of title 17, as added by this title, may be filed after the end of that 2-year period.

Amend the title so as to read: “A bill to amend title 17, United States Code, to implement the World Intellectual Property Organization Copyright Treaty and Performances and Phonograms Treaty, and for other purposes.”

And the Senate agree to the same.

F. From the Committee on Commerce, for consideration of the House bill, and the Senate amendment, and modifications committed to conference:

Tom Bliley,

Billy Tauzin,

John D. Dingell,

from the Committee on the Judiciary, for consideration of the House bill, and the Senate amendment, and modifications committed to conference:

Henry J. Hyde,

Howard Coble,

Bob Goodlatte,

John Conyers, Jr.,

Pat Leahy,

Managers on the Part of the House.

Orrin Hatch,

Thurmond,

Patrice Leh.

Managers on the Part of the Senate.

J. JOINT EXPLANATORY STATEMENT OF THE COMMITTEE OF CONFERENCE

The managers on the part of the House and the Senate at the conference on the disagreeing votes of the two Houses on the amendment in the conference report in House Report 104-756 to amend title 17, United States Code, to implement the World Intellectual Property Organization Copyright Treaty and Performances and Phonograms Treaty, do submit the following joint statement to the House and the Senate in explanation of the effect of the action agreed upon by the managers and recommended in the accompanying conference report:

The Senate amendment struck all of the House bill after the enacting clause and inserted a substitute text.

The House recedes from its disagreement with the Senate amendment to the effect that the Senate amendment be struck and the House bill in effect to be the Senate bill and the Senate amendment. The differences between the House bill, the Senate amendment, and the substitute agreed to in conference, except for clerical corrections, conforming changes made necessary by agreements reached by the conferes, and minor drafting and clerical changes.

T I T L E I—WIPO TREATIES IMPLEMENTATION

This title implements two new intellectual property treaty, the WIPO Copyright Treaty and the WIPO Performances and Phonograms Treaty.

SEC. 101. SHORT TITLE

The House recedes to the Senate section 101. This title sets forth the short title of the Act. As between the short titles in the House bill and the Senate amendment, it is believed that the title in Section 101 of the Senate amendment more accurately reflects the effect of the Act.

SEC. 102. TECHNICAL AMENDMENTS

The Senate recedes to House section 102. This title makes technical and conforming amendments to the U.S. Copyright Act to comply with the obligations of the two WIPO treaties.

SEC. 103. COPYRIGHT PROTECTION SYSTEMS AND COPYRIGHT MANAGEMENT INFORMATION SYSTEMS

The Senate recedes to House section 103 with amendments. These treaties include substantively identical provisions on technological measures of protection and enforcement of common rights, such as the “black box” or “anticircumvention” provisions. These provisions require contracting parties to provide “adequate legal protection and effective legal remedies against the circumvention of effective technological measures that are used by authors in connection with the exercise of their rights under this Treaty or the Berne Convention and that restrict acts, in respect of their works, which are not authorized by the authors concerned or permitted by law.”

The new WIPO treaties also include substantively identical provisions requiring contracting parties to provide the integrity of copyright management information. The treaties define copyright management information as information which identifies the work, the author of the work, the owner of any right in the work, or information about the terms and conditions of use of the work, and any numbers or codes that represent such information, when any of these items of information is attached to a copy of a work or appears in connection with the communication of a work to the public.”

Legislation is required to comply with both these provisions. To accomplish this, both the House bill and the Senate amendment, in section 103, would add a new chapter (chapter twelve) to title 17 of the United States Code. This new chapter twelve includes five sections—(1) section 1201, which prohibits the circumvention of technological measures of protection; (2) section 1202, which protects the integrity of copyright management information; (3) section 1203, which provides for civil remedies for violations of sections 1201 and 1203; (4) section 1204, which provides for civil remedies for violations of sections 1201 and 1203; and (5) section 1205, which provides a savings clause to preserve the effectiveness of federal and state laws in protecting individual privacy on the Internet. The House bill and the Senate amendment differ in several respects, primarily related to the scope and availability of exemptions from the prohibitions under section 1201.

Section 1201(a)(1)—Rulemaking by the Librarian of Congress. Section 1201(a)(1)(C) provides that the determination of affected classes of works described in subparagraph (A) shall be made by the Librarian of Congress “upon the recommendation of the Register of Copyrights, the Assistant Secretaries for Communications and Information of the Department of Commerce and report and comment on his or her views in making such recommendation. Determination will be made in a rulemaking proceeding on the record. It is the intention of the conference that, as is typical with other rulemakings, the determination of the expertise of the Copyright Office, the Register of Copyrights shall conduct the rulemaking, including providing notice of the registration, seeking input from the public, consulting with the Assistant Secretary for Communications and Information
of the Department of Commerce and any other agencies that are deemed appropriate, and recommending final regulations in the report to the Librarian.

Section 1202—technological measures. It is the understanding of the conferees that technological measures will most often be developed in response to the unique sector efforts by content owners, and maker of computers, consumer electronics and telecommunications devices. The conferees expect this approach to be viewed as a constructive and positive method. One of the benefits of such consultation is to allow testing of proposed technologies to determine if they are adverse to the ordinary performance of playback and display equipment in the marketplace, and to take steps to eliminate or substantially mitigate such effects before such technologies are introduced. The public interest is well-served by such activities.

Persons may also choose to implement a technological measure without vetting it through an inter-industry consultative process, or without regard to the input of affected parties. Under such circumstances, such a technological measure or component may actually degrade or otherwise cause recurring appreciable adverse effects on the authorized performance or display of works. Such effects may be caused by the makers or servicers of consumer electronics, telecommunications or computing products used for such authorized performances or displays, or to mitigate such adverse effects on product performance (whether or not taken in combination with other lawful product modifications) shall not be deemed a violation of sections 1201(a) or (b).

However, this construction is not meant to afford manufacturers or servicers an opportunity to give persons unauthorized access to works, or to exercise the rights under the Copyright Act of copyright owners in such works, under the guise of "correcting" a performance problem that results from the implementation of a particular technological measure. Thus, it would violate sections 1201(a) or (b) for a manufacturer or servicer to take remedial measures if they are held out for or undertaken with, or result in equipment with only limited commercially significant use other than, the prohibited purpose of allowing users to gain unauthorized access to the ordinary performance or display of works caused by copyright management information that will not be deem a violation of section 1202 unless such steps are held out for or undertaken with a prohibited purpose, or the requisite knowledge of inducing, enabling, facilitating or concealing infringement of rights of copyright owners under the Copyright Act.

Section 1201(e) and 1202(d)—Law enforcement, intelligence, protective, or security activities. Sections 1201(e) and 1202(d) create and exception to the prohibitions of sections 1201 and 1202 for the lawfully authorized investigative, intelligence, protective, or security activities of an officer, agent, or employee of the United States, a State, or a political subdivision of a State, or of persons acting pursuant to a contract or subcontract for an entity described in the preceding sentence. The anticircumvention provisions of this legislation might be read to prohibit some aspects of the information security testing that is critical to cyber attacks against our nation's economic and security interests. For example, the lock making and sales business is a critical sector of our economic security. If the lock were to be effectively defeated in the market today the security of one's property is protected by the lock.

At the same time, this change is narrowly drafted so that it does not open the door to the Internet equivalent of "hacking" the lock and prevent. For example, the term "information security" activities is intended to include presidential directives and executive orders concerning, the construction of a computer, computer system, or computer network. By this, the conferees include the recently-issued Presidential Decision Directive 63 (PDD-63) on Critical Infrastructure Protection. PDD-63 contains a number of initiatives to ensure that the United States takes all necessary measures to swiftly eliminate any significant vulnerabilities to both physical and cyber attacks on the nation's critical infrastructures, including especially our cyber systems.

The term "computer system" has the same definition for purposes of this section as that term is defined in the Computer Security Act of 1987 (15 U.S.C. 7101 et seq.).

Subsection (g)—Encryption Research. Subsection (g) permits the circumvention of access control technologies in certain circumstances in which considered to be in the national interest or from adopting measures that are determined to be the public interest.

Section 1201(g), it is the understanding of the conferees that the general circumvention law does not constitute infringement or violate any other applicable law. Section 1201(g)(3)(A) provides a non-exclusive list of factors that a court shall consider in determining whether a person benefits from this exception.

Section 1201(g)(4) permits an individual, notwithstanding the prohibition contained in section 1201(a)(2), to develop, produce, distribute, or employ technological means for the sole purpose of performing acts of good faith faith research and testing under section 1201(a)(2). Such technological means does not constitute infringement or violate any other applicable law.

Section 1201(g)(3)(A) does not imply that the conferees included a provision in the final legislation to allow the public to engage in so-called "security testing" as obtaining access to a computer, computer system, or computer network for the sole purpose of testing, investigating, or correcting a security flaw or vulnerability, that the person engaging in such testing is doing so with the consent of the owner or operator of the computer, computer system, or computer network. Section 1201(g)(3)(B) provides that, notwithstanding the provisions of section 1201(a), a person may not use a technological measure to protect the performance or display of works. Section 1201(g)(3)(B) provides that, notwithstanding the provisions of section 1201(a), a person does not constitute infringement or violation any other applicable law. Section 1201(g)(3)(B) provides that, notwithstanding the provisions of section 1201(a), a person does not constitute infringement or violation any other applicable law. Section 1201(g)(3)(C) provides that, notwithstanding the provisions of section 1201(a), a person does not constitute infringement or violation any other applicable law.

Section 1201(g)(3)(D) provides that, notwithstanding the provisions of section 1201(a), a person does not constitute infringement or violation any other applicable law.

Section 1201(g)(3)(E) provides that, notwithstanding the provisions of section 1201(a), a person does not constitute infringement or violation any other applicable law. Section 1201(g)(3)(F) provides that, notwithstanding the provisions of section 1201(a), a person does not constitute infringement or violation any other applicable law.

Section 1201(g)(3)(G) provides that, notwithstanding the provisions of section 1201(a), a person does not constitute infringement or violation any other applicable law.

Section 1201(g)(3)(H) provides that, notwithstanding the provisions of section 1201(a), a person does not constitute infringement or violation any other applicable law.

Section 1201(g)(3)(I) provides that, notwithstanding the provisions of section 1201(a), a person does not constitute infringement or violation any other applicable law.

Section 1201(g)(3)(J) provides that, notwithstanding the provisions of section 1201(a), a person does not constitute infringement or violation any other applicable law.

Section 1201(g)(3)(K) provides that, notwithstanding the provisions of section 1201(a), a person does not constitute infringement or violation any other applicable law.

Section 1201(g)(3)(L) provides that, notwithstanding the provisions of section 1201(a), a person does not constitute infringement or violation any other applicable law.

Section 1201(g)(3)(M) provides that, notwithstanding the provisions of section 1201(a), a person does not constitute infringement or violation any other applicable law.

Section 1201(g)(3)(N) provides that, notwithstanding the provisions of section 1201(a), a person does not constitute infringement or violation any other applicable law.

Section 1201(g)(3)(O) provides that, notwithstanding the provisions of section 1201(a), a person does not constitute infringement or violation any other applicable law.

Section 1201(g)(3)(P) provides that, notwithstanding the provisions of section 1201(a), a person does not constitute infringement or violation any other applicable law.

Section 1201(g)(3)(Q) provides that, notwithstanding the provisions of section 1201(a), a person does not constitute infringement or violation any other applicable law.
type, and that such "hacks" are equally prohibited by the general circumvention provision. Devices have been marketed that claim to "fix" television picture disruptions allegedly caused by analog technologies, as described in more detail below, there is no justification for the existence of any inter- 
vention device to "fix" such problems allegedly caused by analog technologies, unless the "fixes" are not used to create a new display device. Secondly, the con- 
ference recognizes that the analog TV signal is composed of the original 
transmission and a set of "passive" signals. The conference has concluded that the technologies do not create "playability" problems on normal consumer electronics products and that the intellectual property necessary for the operation of these tech- 
ologies will be available on reasonable and non-discriminatory terms.

In relation to the playability issue, the conference authorized the adoption of the term "playability issues." The conference understands that the technologies do not create "playability" problems on normal consumer electronics products and that the intellectual property necessary for the operation of these tech- 
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tionally the effectiveness of the two-line version. The legislation also applies the "encoding rules" in paragraph (2) to either the two-line or four-line version of this technology. 

The Senate recedes to House section 105 with modification.

SECTION 105. EFFECITIVE DATE

The Senate recedes to House section 106. This section sets forth the effective date of the amendments made by this title. The conferees recognize that the Senate and the House amendment are substantively identical.

TITLE II—ONLINE COPYRIGHT INFRINGEMENT

Title II preserves strong incentives for service providers and copyright owners to cooperate to detect and deal with copyright infringements that take place in the digital networked environment. At the same time, it provides greater certainty to service providers concerning their legal exposure for infringements that may occur in the course of their activities.

SECTION 201. SHORT TITLE

The Senate recedes to House section 201. This section sets forth the short title of the Act. The Senate accepts the House formulation.

SECTION 202. LIMITATIONS ON LIABILITY FOR COPYRIGHT INFRINGEMENT

The Senate recedes to House section 202 with modification. This section amends section 512 (17 U.S.C. 512, et seq.) to create a new section 512, titled "Limitations on liability relating to material online." New Section 512 contains limitations on liability for five general categories of activity set forth in subsections (a) through (d) and subsection (g). As provided in subsection (i), Section 512 is not intended to imply that a service provider is or is not liable as an infringer either for conduct that qualifies for a limitation of liability or for conduct that fails to so qualify. Rather, the liability analysis applies only if the provider is found to be liable under existing principles of law. This legislation is not intended to discourage the service provider from taking infringing material. Courts should not conclude that the service provider loses eligibility for limitations on liability under section 512 solely because it engaged in a monitoring program.

The limitations in subsections (a) through (d) protect qualifying service providers from liability for all monetary relief for direct, vicarious and contributory infringement. Monetary relief is defined in subsection (k)(2) as encompassing damages, costs, attorneys' fees, and any other form of monetary payment. These subsections also limit injunctive relief against qualifying service providers to the extent specified in subsection (j). To qualify for these protections, service providers must meet the conditions set forth in subsection (i), and service providers' activities at issue must involve a function described in paragraphs (a), (b), (c), or (g), respectively. The liability limitations apply to networks "operated by or for the service provider," thereby protecting both service providers and contractors. The protection extends to contractors who may operate parts of, or an entire, system or network for another service provider.

Subsection (e) provides for a limitation on liability with respect to certain acts of "system caching." Paragraphs (5) and (6) of this subsection refer to industry standard communications protocols and technologies that are now only in the initial stages of development and deployment. The conferences expect that the Senate and the House may place, in their respective legislation, similar exceptions for technologies that reduce materially the effectiveness of the four-line version relative to the two-line version.

Subsection (e) is included by the conferences in order to clarify the boundaries of the bill with respect to the liability of nonprofit institutions of higher learning that act as service providers. This provision serves as a substitute for section 512(b) of the Senate bill and for the study proposed by section 204 of the Senate amendment.

In general, Title II provides that a university or other public or nonprofit institution of higher education which is also a "service provider" (as that term is defined in title II) is eligible for the limitations on liability provided in title II to the same extent as any other service provider.

However, the conferences recognize that the university environment is unique. Ordinarily, a service provider may fail to qualify for the liability limitations in Title II simply because the knowledge or actions of one of its employees might not satisfy the basic principles of respondent superior and agency law. The special relationship which exists between universities and their faculty members (and their student employees) when they are engaged in teaching or research is different from the ordinary employer-employee relationship. Since independence of thought, word and action—is at the core of academic freedom, the actions of university faculty and graduate student teachers and researchers warrant different consideration under this legislation. This special consideration is embodied in new subsection (e), which provides special rules for determining whether universities, in their capacity as a service provider, may or may not be liable for acts of copyright infringement by faculty members or graduate students in certain circumstances.

Subsection (e)(1) provides that the online infringing actions of faculty members or graduate student employees, which occur solely because it engaged in a teaching or research function, will not be attributed to an institution of higher education in its capacity as its employer for purposes of section 512. In certain conditions met. For the purposes of subsections (a) and (b) of section 512, such faculty member or graduate student shall be considered to be a person other than the institution, and for the purposes of subsections (c) and (d) of section 512 the faculty member's or graduate student's knowledge or awareness of his or her infringing activities will not be attributed to the institution, when they are performing a teaching or research function and the conditions specified in paragraphs (A) and (B) are met.

When the faculty member or the graduate student employee is performing a function other than teaching or research, this subsection will not protect the institution if infringement occurs. For example, a faculty member or graduate student is serving as a function other than teaching or research. In this capacity, a faculty member or graduate student is exercising institutional administrative responsibilities, or is carrying out operational responsibilities that may relate to the institution but have nothing to do with the institution as a service provider. Further, for the exemption to apply on the basis of research activity, the research must be a genuine academic research program, e.g. a legitimate scientific investigation or inquiry—rather than an activity which is claimed to be research
but is undertaken as a pretext for engaging in infringing activity.

In addition to the "teaching or research function" test, the additional liability protection provided by subsection (e) does not apply unless the conditions in paragraphs (A) through (C) are satisfied. First, paragraph (A) requires that the infringing activity does not involve providing online access to instructional materials that are "required or recommended" for a course taught by the infringing faculty member or graduate student. Second, paragraph (B) states that the institution must provide to the users of its system or network—whether they are administrative employees, faculty, or students—material substantially identical to the one discovered by the Register of Copyrights under her general administrative authority. Where more than two notifications have been received with regard to a particular faculty member or graduate student, the institution will only become potentially liable for the infringing actions of that faculty member or that graduate student. Where more than two notifications have previously been received with regard to a particular faculty member or graduate student, the institution will only become potentially liable for the infringing actions of that faculty member or that graduate student. Any notification of infringement that gives rise to a cause of action for misrepresentation under subsection (f) does not count for purposes of paragraph (B).

Second, paragraph (C) states that the institution must provide to the users of its system or network—whether they are administrative employees, faculty, or students—material substantially identical to the one discovered by the Register of Copyrights under her general administrative authority. Where more than two notifications have been received with regard to a particular faculty member or graduate student, the institution will only become potentially liable for the infringing actions of that faculty member or that graduate student. Any notification of infringement that gives rise to a cause of action for misrepresentation under subsection (f) does not count for purposes of paragraph (B).

Finally, subsection (e)(2) defines the terms and conditions under which an injunction may be issued against an institution of higher education, including as part of U.S. delegations as substantive experts on matters within the Copyright Office's competence. Recent examples of the Copyright Office acting in the capacity of an independent service provider are the two new WIPO treaties at the 1996 Diplomatic Conference on International Copyright Treaties and the 2001 Treaty on Enforcement of Copyright Treaty Provisions, the TRIPS Council of the World Trade Organization and the Register's role as a featured speaker at numerous WIPO conferences. Paragraph (4) describes the studies and programs that the Copyright Office has long carried out as the agency responsible for administering the copyright law and other chapters of Title 17. Among the most important of these studies historically was a series of comprehensive reports on various issues produced in the 1960's as the foundation of the last general revision of U.S. copyright law, enacted as the 1976 Copyright Act. Most recently the Copyright Office has completed reports on the cable and satellite compulsory licenses, legal protection for databases, and the economic and policy implications of expansion. Contrary to some reports, the Copyright Office's role as a legislative branch agency, these studies have often included specific policy recommendations to Congress. The reference to "programs" includes such projects as the conferences the Copyright Office cosponsored in 1996-97 on the subject of technology-based intellectual property management, and the International Copyright Institutes that the Copyright Office has conducted for foreign governments over the last decade, often in cooperation with WIPO.

Paragraph (5) makes clear that the functions and duties set forth in this subsection are in addition to, not a replacement for, the Register of Copyrights. In particular, the Register of Copyrights would continue to be able to carry out other functions under her general authority under section 702(a), or as Constitutional officer, including as part of U.S. delegations as substantive experts on matters within the Copyright Office's competence. In particular, the Register of Copyrights would be able to carry out other functions under her general authority under section 702(a), or as Constitutional officer, including as part of U.S. delegations as substantive experts on matters within the Copyright Office's competence. In particular, the Register of Copyrights would be able to carry out other functions under her general authority under section 702(a), or as Constitutional officer, including as part of U.S. delegations as substantive experts on matters within the Copyright Office's competence. In particular, the Register of Copyrights would be able to carry out other functions under her general authority under section 702(a), or as Constitutional officer, including as part of U.S. delegations as substantive experts on matters within the Copyright Office's competence. In particular, the Register of Copyrights would be able to carry out other functions under her general authority under section 702(a), or as Constitutional officer, including as part of U.S. delegations as substantive experts on matters within the Copyright Office's competence. In particular, the Register of Copyrights would be able to carry out other functions under her general authority under section 702(a), or as Constitutional officer, including as part of U.S. delegations as substantive experts on matters within the Copyright Office's competence. In particular, the Register of Copyrights would be able to carry out other functions under her general authority under section 702(a), or as Constitutional officer, including as part of U.S. delegations as substantive experts on matters within the Copyright Office's competence. In particular, the Register of Copyrights would be able to carry out other functions under her general authority under section 702(a), or as Constitutional officer, including as part of U.S. delegations as substantive experts on matters within the Copyright Office's competence.
to address two issues concerning the application of the ephemeral recording exemption in the digital age. The first of these issues is the relationship between the ephemeral recording exemption of the Digital Millennium Copyright Act ("DMCA") and the sound recordings they transmit.

The second issue is the relationship of the ephemeral recording exemption of the Copyright Act to FCC-licensed broad-
broadcast transmissions are in digital format and regularly exceed the sound recording performance complement. Second, the retransmissions are not eligible for statutory licensing. Thus, transmitted by the entity to which the retransmission is provided, either directly or indirectly, such retransmission is not qualified from making its transmissions under a statutory license only if the sound recording performance complement is the sound recording performance complement. Once this is overcome, the transmitting entity making the retransmissions must cease retransmitting those broadcast transmissions that exceed the sound recording performance complement.

Subparagraph (C)(ii) imposes limitations on the types of prior announcements, in text, video or audio, that may be made by a service under the statutory license. Services may not publish advance program schedules or make prior announcements of the titles of specific songs or the featured artists to be performed on the service. Moreover, services may not facilitate the advance publication of schedules or the making of prior announcements, services may provide a third party the list of songs or artists to be performed by the transmitting entity for publication or announcement by the third party. The conferees do not intend that the term “prior announcement” preclude a transmitting entity from identifying specific sound recordings immediately before they are performed.

However, services generally use the names of several featured recording artists to identify a broadcast transmission, or where devices or technology used by the transmitting entity to prevent such scanning, provided that the identifying information can easily be seen by the transmission recipient in visual form. For example, a transmitting entity does not render the program eligible for statutory licensing if the program is (a) transmitted in a single two-week period, which times have been publicly announced in advance, if the program is of less than one hour duration, and (b) more than four times in any two-week period, which times have been publicly announced in advance, if the program is one hour or more. It is the conferee’s intention in subclause (IV) to be applied in a reasonable manner consistent with its purpose so that, for example, a transmitting entity does not regularly mark a specific sound recording for performance only within a small number of the performances within several days.

Subparagraph (C)(iv) states that the transmission of a statutory license if it commonly performs a sound recording, as part of a service that offers transmissions of visual images contemplated by subsections (j)(2) and (j)(4), respectively. Subparts (I) and (II) address archived programs. Archived programs often are available to listeners indefinitely or for a substantial period of time, thus permitting listeners to hear the same songs on demand any time the visitor wishes. Transmissions that are part of archived programs that are more than five hours long are eligible for a statutory license. Transmissions that are part of archived programs more than five hours long are eligible only if the archived program is available for either the webcaster’s site or a related site for two weeks or less. The two-week limitation is to be applied in a reasonable manner to achieve the objectives of subsections (j)(2) and (j)(4), respectively. For example, archived programs that have been available for two weeks are not removed from a site for a short period of time, because they are available elsewhere. Furthermore, altering an archived program only in insignificant respects, such as by replacing or reordering only a small number of the songs in the program, does not render the program eligible for statutory licensing.

Subparagraph (C)(vii) also limits eligibility for a statutory license to transmissions that are not part of a continuous program of less than three hours duration (subparagraph (C)(iii)(I)). A listener to a continuous program hears that portion of the program that is being transmitted to all listeners at the particular time that the listener accesses the program, much like a person who tunes in to an over-the-air broadcast radio station.

Finally, subparagraph (C)(iii)(IV) limits eligibility for a statutory license to transmissions of an interactive program in which performances of sound recordings are rendered in a predetermined order that is transmitted at (a) more than three times in any two week period, which times have been publicly announced in advance, if the program is of less than one hour duration, and (b) more than four times in any two-week period, which times have been publicly announced in advance, if the program is one hour or more. It is the conferee’s intention in subclause (IV) to be applied in a reasonable manner consistent with its purpose so that, for example, a transmitting entity does not regularly mark a specific sound recording for performance only within a small number of the performances within several days.

Subparagraph (C)(vii) requires that each transmission of broadcast transmissions by a transmitting entity that does not have the right or ability to control the programming of the broadcast station making the broad-
set forth procedures for determining reasonable rates and terms for those transmissions that qualify for statutory licensing under section 114(d)(2), Section 114(f) is divided into two parts. The first, subsection (f)(1), relates to preexisting subscription services and preexisting satellite digital audio radio services (subscription (f)(2)), and the other applying to broadcast transmission services (including subscription transmissions made by a preexisting subscription service other than those that qualify under subsection (f)(1)) as well as eligible nonsubscription transmissions (subsection (f)(2)).

Subsection (f)(1) provides for procedures applicable to broadcast transmission services including preexisting subscription services and preexisting satellite digital audio radio services. The procedures in this subsection remain the same as those applicable before the amendment. In other words, for qualifying transmissions under this subsection, consistent with existing law, a copyright arbitration royalty panel should consider the objectives set forth in section 801(b)(1) as well as rates and terms for comparable types of subscription services.

Subsection (f)(2) addresses procedures applicable to eligible nonsubscription transmissions and subscription transmissions by new subscription services. The first such voluntary negotiation proceeding is to commence and, if negotiations are unsuccessful, this amendment upon publication by the Librarian of Congress in a notice in the Federal Register. The terms and rates established will become effective between the effective date of this amendment and December 31, 2000, or such other date as the parties agree.

Subsection (f)(2) directs that rates and terms must distinguish between the different types of eligible nonsubscription transmissions and new subscription services then in operation. The conferences recognize that the nature of qualified transmissions may differ significantly based on a variety of factors including but not limited to, the quantity and nature of the use of sound recordings, and the degree to which use of the services substitutes for or promotes the purchase of phonorecords by consumers may account for differences in rates and terms between different types of transmissions.

Subsection (f)(2) also directs that a minimum fee should be established for each type of service. A minimum fee should ensure that copyright owners are fairly compensated. For example, setting rates might deny copyright owners an adequate royalty. For example, a copyright arbitration royalty panel should set a reasonable royalty rate that is not diminished by different types of marketing practices or contractual relationships. For example, if the base royalty for a service were a percentage of revenues, the minimum fee might be a flat rate per year (or a flat rate per subscriber per year for a new subscription service).

Also, although subsection (f)(1) remains silent on the issue of rates and terms for preexisting subscription services and preexisting satellite digital audio radio services, the Conferences do not intend that silence to mean that rates and terms can not be established in appropriate circumstances when setting rates under subsection (f)(1) for preexisting subscription services and preexisting audio broadcast transmission services. Likewise, the absence of criteria that should be taken into account for distinguishing rates and terms for different services in subsection (f)(1) relating to such criteria may not be considered when adjusting rates and terms for preexisting subscription services and preexisting satellite digital audio radio services in the future.

Subsection (f)(2)(B) sets forth procedures in the absence of a negotiated license agreement, except that the procedures for qualifying transmissions under this subsection. Consistent with existing law, a copyright arbitration royalty panel should determine reasonable rates and terms. The test applicable to establishing rates and terms is what a willing buyer and willing seller would have agreed to after arms-length negotiations. In making that determination, the copyright arbitration royalty panel shall consider economic, competitive and programming information presented by the parties including, but not limited to, the factors set forth in clauses (i) and (ii).

Subsection (f)(2)(C) specifies that rates and terms for eligible nonsubscription transmissions should be adjusted every two years, unless the parties agree as to another schedule. These two-year intervals are based upon the conferences’ recognition that the types of transmission services in existence and the media in which they are delivered can change significantly in a short period of time.

Subsection (j)(2) "archived program." A program is considered an "archived program" if it is prerecorded or preprogrammed, available for a large number of recipients of the service's transmissions, and the recipient of the transmissions requests the sound recording in the program for it to be considered interactive. The recipient of the archived program may promote itself or an affiliated entertainment service. The site’s background music transmission would need to be licensed through voluntary negotiations with the copyright owners. Furthermore, the sale or promotion of sound recordings, live concerts or other musical events does not qualify a service making a nonsubscription transmission. The site’s background music transmissions would not qualify as a service that makes eligible nonsubscription transmissions. The site’s background music transmissions would need to be licensed through voluntary negotiations with the copyright owners. Moreover, the sale or promotion of sound recordings, live concerts or other musical events does not qualify as a service making a nonsubscription transmission.
backward between songs in a program, the transmission is interactive. It is not necessary that the transmission recipient be able to select the actual songs that comprise the program, so long as the program is transmitted via both cable and satellite media; the DISH Network was available only via satellite.

The last sentence of the definition is intended to make clear that if a transmitting entity offers both interactive and noninteractive services then the noninteractive component should be treated as a noninteractive service, and thus is eligible for statutory licensing (assuming the other requirements of the statutory license are met). For example, an interactive service that was transmitted to all listeners who chose to receive it at the same time and also offered certain sound recordings to all listeners simultaneously, where the requests made by listeners would not be considered interactive, so long as the programming did not substantially consist of requests fulfilled with respect to any of the request, or at a time that the transmitting entity informs the recipient it will be performed.

The conditions listed in section 112(e)(4) and (5) address the prohibition on making of an ephemeral recording under a license or transfer of the copyright. The conditions listed in section 112(e)(1), mandatory terms for securing noninteractive service, must be met under section 112(a) or section 112(a)(1) as revised by the Digital Millennium Copyright Act, and, pursuant to 37 C.F.R. 201.10 and 201.11, the making of an ephemeral recording is conditioned in part on the transmission organization being entitled to transmit to the public performance of a sound recording under a license or transfer of the copyright.

The conditions listed in section 112(e)(1)(A) require a transmission organization to secure a noninteractive statutory license for each new transmission of an existing sound recording. The conditions listed in section 112(e)(1)(B) require that each transmission organization be granted (i) a noninteractive statutory license for each new transmission of an existing sound recording, or (ii) a new section 112(e)(1)(B) statutory license for each new transmission of an existing sound recording.

The conditions listed in section 112(e)(1)(C) require each transmission organization to secure a noninteractive statutory license for each new transmission of an existing sound recording. The conditions listed in section 112(e)(1)(D) require each transmission organization to secure a noninteractive statutory license for each new transmission of an existing sound recording.

The conditions listed in section 112(e)(1)(E) require each transmission organization to secure a noninteractive statutory license for each new transmission of an existing sound recording. The conditions listed in section 112(e)(1)(F) require each transmission organization to secure a noninteractive statutory license for each new transmission of an existing sound recording.

The conditions listed in section 112(e)(1)(G) require each transmission organization to secure a noninteractive statutory license for each new transmission of an existing sound recording. The conditions listed in section 112(e)(1)(H) require each transmission organization to secure a noninteractive statutory license for each new transmission of an existing sound recording.

The conditions listed in section 112(e)(1)(I) require each transmission organization to secure a noninteractive statutory license for each new transmission of an existing sound recording. The conditions listed in section 112(e)(1)(J) require each transmission organization to secure a noninteractive statutory license for each new transmission of an existing sound recording.

The conditions listed in section 112(e)(1)(K) require each transmission organization to secure a noninteractive statutory license for each new transmission of an existing sound recording. The conditions listed in section 112(e)(1)(L) require each transmission organization to secure a noninteractive statutory license for each new transmission of an existing sound recording.

The conditions listed in section 112(e)(1)(M) require each transmission organization to secure a noninteractive statutory license for each new transmission of an existing sound recording. The conditions listed in section 112(e)(1)(N) require each transmission organization to secure a noninteractive statutory license for each new transmission of an existing sound recording.

The conditions listed in section 112(e)(1)(O) require each transmission organization to secure a noninteractive statutory license for each new transmission of an existing sound recording. The conditions listed in section 112(e)(1)(P) require each transmission organization to secure a noninteractive statutory license for each new transmission of an existing sound recording.

The conditions listed in section 112(e)(1)(Q) require each transmission organization to secure a noninteractive statutory license for each new transmission of an existing sound recording. The conditions listed in section 112(e)(1)(R) require each transmission organization to secure a noninteractive statutory license for each new transmission of an existing sound recording.

The conditions listed in section 112(e)(1)(S) require each transmission organization to secure a noninteractive statutory license for each new transmission of an existing sound recording. The conditions listed in section 112(e)(1)(T) require each transmission organization to secure a noninteractive statutory license for each new transmission of an existing sound recording.

The conditions listed in section 112(e)(1)(U) require each transmission organization to secure a noninteractive statutory license for each new transmission of an existing sound recording. The conditions listed in section 112(e)(1)(V) require each transmission organization to secure a noninteractive statutory license for each new transmission of an existing sound recording.

The conditions listed in section 112(e)(1)(W) require each transmission organization to secure a noninteractive statutory license for each new transmission of an existing sound recording. The conditions listed in section 112(e)(1)(X) require each transmission organization to secure a noninteractive statutory license for each new transmission of an existing sound recording.

The conditions listed in section 112(e)(1)(Y) require each transmission organization to secure a noninteractive statutory license for each new transmission of an existing sound recording. The conditions listed in section 112(e)(1)(Z) require each transmission organization to secure a noninteractive statutory license for each new transmission of an existing sound recording.

The conditions listed in section 112(e)(1)(AA) require each transmission organization to secure a noninteractive statutory license for each new transmission of an existing sound recording. The conditions listed in section 112(e)(1)(BB) require each transmission organization to secure a noninteractive statutory license for each new transmission of an existing sound recording.

The conditions listed in section 112(e)(1)(CC) require each transmission organization to secure a noninteractive statutory license for each new transmission of an existing sound recording. The conditions listed in section 112(e)(1)(DD) require each transmission organization to secure a noninteractive statutory license for each new transmission of an existing sound recording.

The conditions listed in section 112(e)(1)(EE) require each transmission organization to secure a noninteractive statutory license for each new transmission of an existing sound recording. The conditions listed in section 112(e)(1)(FF) require each transmission organization to secure a noninteractive statutory license for each new transmission of an existing sound recording.

The conditions listed in section 112(e)(1)(GG) require each transmission organization to secure a noninteractive statutory license for each new transmission of an existing sound recording. The conditions listed in section 112(e)(1)(HH) require each transmission organization to secure a noninteractive statutory license for each new transmission of an existing sound recording.

The conditions listed in section 112(e)(1)(II) require each transmission organization to secure a noninteractive statutory license for each new transmission of an existing sound recording. The conditions listed in section 112(e)(1)(JJ) require each transmission organization to secure a noninteractive statutory license for each new transmission of an existing sound recording.

The conditions listed in section 112(e)(1)(KK) require each transmission organization to secure a noninteractive statutory license for each new transmission of an existing sound recording. The conditions listed in section 112(e)(1)(LL) require each transmission organization to secure a noninteractive statutory license for each new transmission of an existing sound recording.

The conditions listed in section 112(e)(1)(MM) require each transmission organization to secure a noninteractive statutory license for each new transmission of an existing sound recording. The conditions listed in section 112(e)(1)(NN) require each transmission organization to secure a noninteractive statutory license for each new transmission of an existing sound recording.

The conditions listed in section 112(e)(1)(OO) require each transmission organization to secure a noninteractive statutory license for each new transmission of an existing sound recording. The conditions listed in section 112(e)(1)(PP) require each transmission organization to secure a noninteractive statutory license for each new transmission of an existing sound recording.

The conditions listed in section 112(e)(1)(QQ) require each transmission organization to secure a noninteractive statutory license for each new transmission of an existing sound recording. The conditions listed in section 112(e)(1)(RR) require each transmission organization to secure a noninteractive statutory license for each new transmission of an existing sound recording.

The conditions listed in section 112(e)(1)(SS) require each transmission organization to secure a noninteractive statutory license for each new transmission of an existing sound recording. The conditions listed in section 112(e)(1)(TT) require each transmission organization to secure a noninteractive statutory license for each new transmission of an existing sound recording.

The conditions listed in section 112(e)(1)(UU) require each transmission organization to secure a noninteractive statutory license for each new transmission of an existing sound recording. The conditions listed in section 112(e)(1)(VV) require each transmission organization to secure a noninteractive statutory license for each new transmission of an existing sound recording.

The conditions listed in section 112(e)(1)(WW) require each transmission organization to secure a noninteractive statutory license for each new transmission of an existing sound recording. The conditions listed in section 112(e)(1)(XX) require each transmission organization to secure a noninteractive statutory license for each new transmission of an existing sound recording.

The conditions listed in section 112(e)(1)(YY) require each transmission organization to secure a noninteractive statutory license for each new transmission of an existing sound recording. The conditions listed in section 112(e)(1)(ZZ) require each transmission organization to secure a noninteractive statutory license for each new transmission of an existing sound recording.
the transfer that make it apparent that the motion picture is subject to a collective bargaining agreement. Such facts and information might include, for example, budget, location of principal photography, the identity of the talent associated with a project, or the existence of a personal service contract that references terms or conditions of collective bargaining agreements. Paragraph (b)—Scope of exclusion of transfer of public performance rights. New paragraph (b) clarifies that the public performance exclusion from the operation of paragraph (a) is intended to include performances described in paragraph (b) that reach viewers through transmission of programming or program services via satellite, MMDS, cable, and other means of carriage. This paragraph does not expand or restrict in any way what constitutes a "public performance" for any other purpose. The public performance exclusion would not be rendered inoperable simply because a transfer of public performance rights is accompanied by a transfer of limited, incidental other rights necessary to implement or facilitate the exercise of the performance rights. Paragraph (c)—Exclusion for grants of security interests. The purpose of this paragraph is to ensure that banks and others providing financing for motion pictures will not be subject to the assumption of obligations required by this section merely because they obtain a security interest in the motion picture. Because the term "transfer of copyright ownership" is defined in section 101 of the Copyright Act, to include a "mortgage or hypothecation" of any exclusive copyright right, this could be the unintended result of the statutory language. Under this exclusion, a bank or other party would not be subject to this section if it can demonstrate (whether through application of this section or otherwise) from transferring any such obligations to a subsequent transferee downstream from the initial secured party subject to paragraph (a). The exclusion would apply irrespective of the form or language used to grant or create the security interest. It should be clear that the only agreements whose terms are enforced by this section are those that are collected in, established in, the applicable assumption agreements. Neither would any subsequent transferee down the line have an obligation under the assumption agreement to the extent permitted by, and under the conditions established in, the applicable assumption agreements.


Sections 501-505. The Senate recedes to House sections 601-602 with modification. From the Committee on the Judiciary for consideration of the House bill, and the Senate amendment, and modifications committed to conference:

T O M B I L L E Y, B I L L Y T A U Z I N, J O H N D. D I N G E L L, From the Committee on the Judiciary for consideration of the House bill, and the Senate amendment, and modifications committed to conference:


CONGRESSIONAL RECORD – HOUSE
October 8, 1998

Mr. LEACH. Mr. Speaker, I move that the House do now adjourn. The motion was agreed to; accordingly, at 10 o'clock and 40 minutes a.m., the House adjourned until 9 a.m. today.

LEAVE OF ABSENCE

By unanimous consent, leave of absence was granted to:

Mr. YATES (at the request of Mr. GEPHARDT) for after 6 p.m. on Thursday, October 8, on account of wife’s illness.

SPECIAL ORDERS GRANTED

By unanimous consent, permission to address the House, following the legislative program and any special orders heretofore entered, was granted to:

(The following Members (at the request of Mr. LAFALCE) to revise and extend their remarks and include extraneous material:)

Mr. BLUMENAUER, for 5 minutes, today.
Mr. HINCHEY, for 5 minutes, today.
Mr. SKAGGS, for 5 minutes, today.
Mr. CONYERS, for 5 minutes, today.
Mr. FILNER, for 5 minutes, today.
Ms. JACKSON LEE of Texas, for 5 minutes, today.
Mr. FALEOMAVAEGA, for 5 minutes, today.
Ms. CARSON, for 5 minutes today.
(The following Members (at the request of Mr. LEACH) to revise and extend their remarks and include extraneous material:)

Mr. PAUL, for 5 minutes, today.
Mr. FOX of Pennsylvania.

EXTENSION OF REMARKS

By unanimous consent, permission to revise and extend remarks was granted to:

(The following Members (at the request of Mr. LAFALCE) to include extraneous material:)

Mr. KIND.
Mr. MATSU.
Mr. DINIC.
Ms. MEEK of Florida.
Mr. PAYNE.
Mr. LEVIN.
Mr. MILLER of California.
Mr. GUTIERREZ.
Mr. HAMILTON.
Mr. HINOJOSA.
Mr. STARK.
Mr. KUCINICH.
Mrs. CAPPS.
Ms. JACKSON LEE of Texas.
Ms. EDDIE BERNICE JOHNSON of Texas.
Mr. DEUTSCH.
Ms. PELOSI.
Mr. LANTOS.
Mr. VISCOSKY.
Mr. EVANS.
Mr. MARTINEZ.
Mr. SANDERS.
Ms. KAPTUR.

BILLS PRESENTED TO THE PRESIDENT

Mr. THOMAS, from the Committee on House Oversight, reported that that committee did on this day present to the President, for his approval, bills of the House of the following titles:

H.R. 449. To provide for the orderly disposal of certain Federal lands in Clark County, Nevada, and to provide for the acquisition of environmentally sensitive lands in the State of Nevada.

H.R. 930. To require Federal employees to use Federal travel charge cards for all payments of expenses of official Government travel, to amend title 31, United States Code, to establish requirements for prepayment audits of Federal agency transportation expenses, to authorize reimbursement of Federal agency employees for taxes incurred on travel or transportation reimbursements, and to authorize test programs for the payment of Federal employee travel expenses and relocation expenses.

H.R. 1481. To amend the Great Lakes Fish and Wildlife Restoration Act of 1990 to provide for implementation of recommendations of the United States Fish and Wildlife Service contained in the Great Lakes Fishery Resources Restoration Study.

H.R. 1836. To amend chapter 89 of title 5, United States Code, to improve administration of sanctions against unift health care providers under the Federal Employees Health Benefits Program, and for other purposes.

H.R. 2381. To direct the Secretary of the Interior to exchange land and other assets with Big Sky Lumber Co, and other entities.

S. 744. An act to authorize the construction of the Fall River Water Users District Rural Water System and authorize financial assistance to the Fall River Water Users District, a nonprofit corporation, in the planning and construction of the water supply system, and for other purposes; to the Committee on Resources.

S. 736. An act to convey certain real property within the Carlsbad Project in New Mexico to the Carlsbad Irrigation District; to the Committee on Resources.

S. 1175. An act to reauthorize the Delaware Water Gap National Recreation Area Citizen Advisory Commission for 10 additional years; to the Committee on Resources.

S. 1637. An act to expedite review of criminal records of applicants for bail enforcement officer employment, and for other purposes; to the Committee on Judiciary.

S. 2086. An act to revise the boundaries of the George Washington Birthplace National Monument; to the Committee on Resources.

S. 2117. An act to authorize the construction of the Perkins County Rural Water System and authorize financial assistance to the Perkins County Rural Water System, Inc., a nonprofit corporation, in the planning and construction of the water supply system, and for other purposes; to the Committee on Resources.

S. 2140. An act to amend the Reclamation Projects Authorization and Adjustment Act of 1992 to authorize the Secretary of the Interior to participate in the design, planning, and construction of the Willow Lake National Wildlife Refuge Project for the reclamation and reuse of water, and for other purposes; to the Committee on Resources.

S. 2255. An act to amend part Q of the Omnibus Crime Control and Safe Streets Act of 1968 to encourage the use of school resource officers; to the Committee on the Judiciary and Education and the Workforce.

S. 2279. An act to revise the boundary of Fort Matanzas National Monument, and for other purposes; to the Committee on Resources.

S. 2340. An act to establish the Adams National Historical Park in the Commonwealth of Massachusetts, and for other purposes; to the Committee on Resources.

S. 2441. An act to provide for the acquisition of lands formerly occupied by the Franklin D. Roosevelt family at Hyde Park, New York, and for other purposes; to the Committee on Resources.

S. 2455. An act to amend the Act which established the Frederick Law Olmsted National Historic Site, in the Commonwealth of Massachusetts, by modifying the boundaries, and for other purposes; to the Committee on Resources.

S. 2215. An act to permit the payment of medical expenses incurred by the United States Park Police in the performance of

SENATE BILLSREFERRED

Bills of the Senate of the following titles were taken from the Speaker’s table and, under the rule, referred as follows:
duty to be made directly by the National Park Service, and for other purposes; to the Committee on Government Reform and Oversight.

S. 2280. A bill to allow for waiver and indemnification in mutual law enforcement agreements between the National Park Service and a State or political subdivision, when required by the workload, and for other purposes; to the Committee on Resources.

S. 2281. An act to establish the Minturn Meadow National Historic Site in the State of South Dakota for other purposes; to the Committee on Resources and National Security.

S. 2282. An act to establish a commission, in honor of the 50th Anniversary of the Geneva Conventions, to further protect sites of importance in the historic efforts to secure equal rights for women, to the Committee on Resources.

S. 2309. An act to authorize the Secretary of the Interior to enter into an agreement for the construction and operation of the Gateway Visitor Center at Independence National Historical Park; to the Committee on Resources.

S. 2465. An act to designate the Bascom National Park Visitor Center as the Dante Fascell Visitor Center; to the Committee on Resources.

S. 2884. An act to provide aviator continuation pay for military members killed in Operation Desert Shield; to the Committee on National Security.

REPORTS OF COMMITTEES ON PUBLIC BILLS AND RESOLUTIONS

Under clause 2 of rule XIII, reports of committees were delivered to the Clerk for printing and reference to the proper calendar, as follows:


Mr. HANSEN: Committee on Standards of Official Conduct. Report in the matter of Representative Jay Kim (Rept. 105-797). Referred to the House Calendar.

Mr. DREIER: Committee of Rules. House Resolution 585. Resolution making further provision for consideration of the bill (H.R. 4274) making appropriations for the Department of Labor, Health and Human Services, and Education, and related agencies, for the fiscal year ending September 30, 1999, and for other purposes (Rept. 105-798). Referred to the House Calendar.

Mr. LINDER: Committee on Rules. House Resolution 596. Resolution waiving points of order against the conference report to accompany the bill (H.R. 3150) to amend title 11 of the United States Code, and for other purposes (Rept. 105-799). Referred to the House Calendar.

Mr. GOODLING: Committee of Conference. Conference report on H.R. 1953. A bill to amend the Carl D. Perkins Vocational and Applied Technology Education Act (Rept. 105-800). Ordered to be printed.

Mr. BLILEY: Committee on Commerce. H.R. 3888. A bill to amend the Communications Act of 1934 to improve the protection of consumers against "slamming" by telecommunications carriers, and for other purposes; with an amendment (Rept. 105-801). Referred to the Committee of the Whole House on the State of the Union.

Mr. HANSEN: Committee on Commerce. H.R. 4332. A bill to amend the Securities Exchange Act of 1934 and the Foreign Corrupt Practices Act of 1977 to improve the competitiveness of American business and promote foreign commerce, and for other purposes (Rept. 105-802). Referred to the Committee of the Whole House on the State of the Union.

REPORTED BILL SEQUENTIALLY REFERRED

Under clause 5 of rule X, bills and reports were delivered to the Clerk for printing, and bills referred as follows:

By Mr. BLILEY: Committee of Commerce. H.R. 3610. A bill to authorize and facilitate a program to enhance training, research, and development of international export promotion and efficiency, and consumer education in the oilheat industry for the benefit of oilheat consumers and the public, and for other purposes; with an amendment; referred to the Committee on Science for a period ending not later than October 7, 1998, for consideration of such provisions of the bill and amendment; as fall within the jurisdiction of that committee pursuant to clause 1(n), rule X. (Rept. 105-787, Pt. 1). Ordered to be printed.

PUBLIC BILLS AND RESOLUTIONS

Under clause 5 of Rule X and clause 4 of Rule XXII, public bills and resolutions were introduced and severally referred, as follows:

By Mr. MATSUI (for himself and Mr. NEAL of Massachusetts): H.R. 4732. A bill to amend the Internal Revenue Code of 1986 to provide for the treatment of bonds issued to finance electric output facilities, and for other purposes; to the Committee on Ways and Means.

By Mr. MATSUI (for himself and Mr. BONIOR): H.R. 4733. A bill to amend the Trade Act of 1974 to consolidate and enhance the trade adjustment assistance and NAFTA transitional adjustment assistance programs under that Act, and for other purposes; to the Committee on Ways and Means.

By Mr. MATSUI (for himself and Mr. BONIOR): H.R. 4734. A bill to amend part Q of the Omnibus Crime Control and Safe Streets Act of 1968 to reduce the local matching amount to ensure that local communities can qualify for a grant to hire additional police officers; to the Committee on the Judiciary.

By Mr. HANSEN: H.R. 4735. A bill to make technical corrections to the Omnibus Parks and Public Lands Management Act of 1996 to the Committee on Resources.

By Mr. MCDANIEL (for himself, Mr. CRANE, Mr. GANSKE, Mr. CARDIN, Mr. RANGEL, Mr. STARK, and Mr. JEFFERSON): H.R. 4738. A bill to amend the Internal Revenue Code of 1986 to provide for the settlement of a tax dispute with the Internal Revenue Service, and for other purposes; to the Committee on Ways and Means.

By Mr. CRANE: H.R. 4739. A bill to amend the Internal Revenue Code of 1986 to provide for the settlement of a tax dispute with the Internal Revenue Service, and for other purposes; to the Committee on Ways and Means.

By Mr. CHARLES: H.R. 4740. A bill to amend the Internal Revenue Code of 1986 to provide for higher education expenses and first-time homebuyer purchases; to the Committee on Education and the Workforce, and in addition to the Committee on Ways and Means.

By Mr. CARDIN (for himself, Mr. STARK, and Mr. JEFFERSON): H.R. 4741. A bill to amend the Internal Revenue Code of 1986 to permit 401(k) contributions that would otherwise be limited by employer contributions to employee stock ownership plans; to the Committee on Ways and Means.

By Mr. DEFazio (for himself, Mr. SANDERS, and Ms. KAPTUR): H.R. 4742. A bill to improve consumers' access to airline industry information, to promote competition in the aviation industry, and for other purposes; to the Committee on Transportation and Infrastructure.

By Mr. FRANK of Massachusetts (for himself and Mr. NEAL of Massachusetts): H.R. 4743. A bill to reauthorize the Public Safety and Community Policing Grants, and for other purposes; to the Committee on the Judiciary.

By Mr. GREENWOOD (for himself and Mr. GINGRICH): H.R. 4744. A bill to amend the Public Health Service Act to provide for a system of sanctions for chimpanzees that have been designated as no longer needed in research conducted or supported by the Public Health Service, and for other purposes; to the Committee on Commerce.

By Mr. GUTIERREZ: H.R. 4745. A bill to establish a program to assist condominium owners experiencing temporary difficulty making payments on mortgages insured under the National Housing Act; to the Committee on Banking and Financial Services.

By Mr. HANSEN: H.R. 4746. A bill to provide for the settlement of a tax dispute with the Internal Revenue Service, and for other purposes; to the Committee on Ways and Means.

By Mr. HANSEN: H.R. 4747. A bill to provide for the settlement of a tax dispute with the Internal Revenue Service, and for other purposes; to the Committee on Ways and Means.

By Mr. MINGE (for himself and Mr. POMEROY): H.R. 4748. A bill to respond to the needs of United States farmers experiencing exceptional crop failures; to the Committee on Agriculture, and in addition to the Committee on
the Budget, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned.

By Mr. QUINN:
H.R. 4749. A bill to amend title XVIII of the Social Security Act to provide for the collection and interpretation of state of the art, non-intrusive 3-dimensional seismic data on certain federal lands in Alaska, and for other purposes; to the Committee on Resources.

By Mr. GILMAN:
H. Con. Res. 336. Concurrent resolution condemning the Taliban regime and supporting a broad-based government in Afghanistan; to the Committee on International Relations.

By Mr. CAMPBELL (for himself and Mr. PAYNE):
H. Con. Res. 337. Concurrent resolution expressing the sense of Congress that the total debt owed by 31 Heavily Indebted Poor Countries (HIPC) to the United States should be forgiven; to the Committee on Banking and Financial Services.

By Mr. CAMPBELL:
H. Con. Res. 338. Concurrent resolution expressing the sense of the Congress that the people of Taiwan are represented internationally in international institutions; to the Committee on International Relations.

By Mr. CAMPBELL (for himself and Mr. PAYNE):
H. Con. Res. 339. Concurrent resolution concerning economic, humanitarian, and other assistance to the northern part of Somalia; to the Committee on International Relations.

By Mr. DELAY (for himself, Mr. ROHR-ABACHER, Mr. HELFLEY, Mr. WELDON of Pennsylvania, Mr. FORBES, Mr. BACHUS, Mr. ADERHOLT, Mr. GIBBONS, Mr. TALENT, Mr. SESSIONS, Mr. WATTS of Oklahoma, Mr. MILLER of Florida, Mr. HAYWORTH, Mr. CRANE, Mr. SALMON, Mr. J. ENKINS, and Mr. PETERSON of Pennsylvania):
H. Con. Res. 340. Concurrent resolution expressing the sense of the Congress that Iraq is in unacceptable and material breach of its international obligations, that the United States should take all necessary co-operation, or otherwise rendering harmless of Iraq's programs for biological, chemical, and nuclear weapons, and that the United States should fully support of inspectors, with the United Nations Special Commission on Iraq to unfeathered and unannounced inspections of suspected weapons facilities, to the Committee on International Relations.

By Mr. DELAY (for himself, Mr. ROHR-ABACHER, Mr. HELFLEY, Mr. WELDON of Pennsylvania, Mr. FORBES, Mr. BACHUS, Mr. ADERHOLT, Mr. GIBBONS, Mr. TALENT, Mr. SESSIONS, Mr. WATTS of Oklahoma, Mr. MILLER of Florida, Mr. HAYWORTH, Mr. CRANE, Mr. SALMON, Mr. J. ENKINS, and Mr. PETERSON of Pennsylvania):
H. Res. 583. A resolution expressing the sense of the House with respect to barriers between the United States and Canada with respect to the heath care financing system.

By Mr. PAYNE:
H. Con. Res. 344. Concurrent resolution to express the sense of the Congress that the President should reassert the traditional opposition of the United States to the unilateral declaration of a Palestinian State; to the Committee on International Relations.

By Mr. SMITH of Oregon (for himself, Mr. BARRETT of Nebraska, Mr. THUNE, and Mr. HILL):
H. Res. 587. A resolution expressing the sense of the House with respect to barriers between the United States and Canada with regard to certain agriculture products; referred to the Committee on Ways and Means, and in additonal to the Committee on Agriculture, for a period to be determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned.

By Mr. SESSIONS (for himself, Mr. BONILLA, Mr. COMBEST, Mr. THORN-BERRY, Mr. SMITH of Texas, Mr. GINGRER, Mr. BRADY of Texas, Mr. BARTON of Texas, and Mr. PAUL):
H. Res. 585. A resolution expressing the sense of the House of Representatives that the Office of the Health Care Financing Administration should adhere to the statutory deadlines for implementation of the prospective payment system for home health services furnished under the Medicare program; referred to the Committee on Ways and Means, and in addition to the Committee on Commerce, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned.

By Mrs. ROUKEMA (for herself and Ms. MOLNAR):
H. Res. 587. A resolution expressing the sense of the House of Representatives with respect to the seriousness of the national problems associated with mental illness and with respect to congressional intent to establish a Mental Illness Task Force; to the Committee on Commerce.
DELETIONS OF SPONSORS FROM PUBLIC BILLS AND RESOLUTIONS

Under clause 4 of rule XXII, sponsors were deleted from public bills and resolutions as follows:

H. R. 4567: Mr. ALLEN, Mr. STUPAK, and Mr. OBERSTAR.

AMENDMENTS

Under clause 6 of rule XXIII, proposed amendments were submitted as follows:

October 8, 1998

H. Res. 561: Mr. GOODLING and Mr. WOOD.

OFCERRED BY: Mr. THOMAS

(AMENDMENTS IN THE NATURE OF A SUBSTITUTE)

H. Res. 213: Ms. KILPATRICK.

H. Con. Res. 328: Mr. KANJORSKI, Mr. EFTAL and Mr. MASCARA.

H. Con. Res. 290: Mr. MECALF, Mr. MASCARA, Mr. BERRY, Mr. THORNBERRY, Mr. HICKLON, and Mr. CONDIT.

H. Con. Res. 219: Mr. ADAMS SMITH of Washington, Mr. BERRY, Mr. CHAMBER, Mr. MASCARA, and Mr. BAKER.

H. Con. Res. 210: Mr. KANJORSKI and Mr. WATSON.

H. Con. Res. 197: Mr. OLIVER and Mr. CAPPS.

H. Con. Res. 175: Mr. WATSON of Florida, Mr. MCLINTON, Mr. BURTON of Indiana, Mr. BUYER, Mr. SHADE and Mr. GIBBONS.

H. Con. Res. 213: Ms. KILPATRICK.

H. Con. Res. 238: Mr. KANJORSKI, Mr. SHIMKUIS, Ms. CARSON, Mr. ACKERMAN, Mr. Houghton, Mr. SANDERS, Mr. MCINTYRE, and Mr. PRICE of North Carolina.

H. Con. Res. 209: Mr. METCALF, Mr. MASCARA, Mr. BOYD, Mr. GEKAS, Mr. ADAM SMITH of Washington, Mr. McINTOSH, Mr. BURTON of Indiana, Mr. BUYER, Mr. SHADE and Mr. GIBBONS.

H. Con. Res. 213: Ms. KILPATRICK.

H. Con. Res. 238: Mr. KANJORSKI, Mr. SHIMKUIS, Ms. CARSON, Mr. ACKERMAN, Mr. Houghton, Mr. SANDERS, Mr. MCINTYRE, and Mr. PRICE of North Carolina.

H. Con. Res. 209: Mr. METCALF, Mr. MASCARA, Mr. BOYD, Mr. GEKAS, Mr. ADAM SMITH of Washington, Mr. McINTOSH, Mr. BURTON of Indiana, Mr. BUYER, Mr. SHADE and Mr. GIBBONS.
medicare care program under title XVIII of the Social Security Act, and a summary of the results of such research.

(2) SCHEDULE FOR IMPLEMENTATION OF SYSTEM.—The Secretary's schedule for the implementation of the prospective payment system for home health services under section 1861(q) of the Social Security Act (42 U.S.C. 1395q) is amended by adding at the end the following:

``IMPROVING VETERANS' ACCESS TO SERVICES'' SEC. 1897. (a) DEFINITIONS.—In this section:

(1) ADMINISTERING SECRETARIES.—The terms 'administering Secretaries' means the Secretary of Health and Human Services and the Secretary of Veterans Affairs acting jointly.

(2) PROGRAM.—The term 'program' means the program established under this section with respect to category A medicare-eligible veterans.

(3) DEMONSTRATION PROJECT; PROJECT.—The terms 'demonstration project' and 'project' mean the demonstration project carried out under this section with respect to category C medicare-eligible veterans.

(4) MEDICARE-ELIGIBLE VETERANS.—

(A) CATEGORY A MEDICARE-ELIGIBLE VETERAN.—The term 'category A medicare-eligible veteran' means an individual—

(i) who is a veteran (as defined in section 101(2) of title 38, United States Code and is described in paragraph (1) or (2) of section 1710(a) of title 38, United States Code;

(ii) who is entitled to hospital insurance benefits under part A of the medicare program and is enrolled in the supplementary medical insurance program under part B of the medicare program; and

(iii) for whom the medical center of the Department of Veterans Affairs that is closest to the individual's place of residence is geographically remote or inaccessible from such place.

(B) CATEGORY C MEDICARE-ELIGIBLE VETERAN.—The term 'category C medicare-eligible veteran' means an individual who—

(i) is a veteran (as defined in section 101(2) of title 38, United States Code and is described in section 1710(a)(3) of title 38, United States Code; and

(ii) is entitled to hospital insurance benefits under part A of the medicare program and is enrolled in the supplementary medical insurance program under part B of the medicare program.

(5) MEDICARE HEALTH CARE SERVICES.—The term 'medicare health care services' means items or services covered under part A or B of this title.

(6) TRUST FUNDS.—(i) The term 'trust funds' means the Federal Hospital Insurance Trust Fund established in section 1817 and the Federal Supplementary Medical Insurance Trust Fund established in section 1841.

(b) PROGRAM AND DEMONSTRATION PROJECT.—

(1) IN GENERAL.—

(A) ESTABLISHMENT.—The administering Secretaries are authorized to establish—

(i) a program (under an agreement entered into by the administering Secretaries under which the Secretary of Health and Human Services shall reimburse the Secretary of Veterans Affairs, from the trust funds, for medicare health care services furnished to category A medicare-eligible veterans; and

(ii) a demonstration project (under such an agreement) under which the Secretary of Health and Human Services shall reimburse the Secretary of Veterans Affairs, from the trust funds, for medicare health care services furnished to category C medicare-eligible veterans.

(B) AGREEMENT.—The agreement entered into under subparagraph (A) shall include at a minimum—

(i) a description of the benefits to be provided to the participants of the program and the demonstration project established under this section;

(ii) a description of the eligibility rules for participation in the program and demonstration project, including any cost sharing requirements;

(iii) a description of the process for enrolling veterans for participation in the program, which process may, to the extent practicable, be administered in the same or similar manner to the registration process established to implement section 1705 of title 38, United States Code; and

(iv) a description of how the program and the demonstration project will satisfy the requirements under this title;

(v) a description of the sites selected under paragraph (2);

(vi) a description of how reimbursement requirements under subsection (g) and maintenance of effort requirements under subsection (h) will be imposed on the program and in the demonstration project;

(vii) a statement that all data of the Department of Veterans Affairs and of the Department of Health and Human Services that the administering Secretaries determine is necessary to conduct independent estimates and audits of the maintenance of effort requirement, the athwartship, any, and related matters required under the program and the demonstration project shall be available to the administering Secretaries;

(viii) a statement that the Health and Human Services waivers pursuant to subsection (d);

(ix) a requirement that the Secretary of Veterans Affairs shall conduct a data matching program under subparagraph (F), including the frequency of updates to the comparisons performed under subparagraph (F); and

(x) a statement by the Department of Veterans Affairs that the type or amount of health care services furnished under chapter 17 of title 38, United States Code, to veterans who are entitled to benefits under part A or enrolled under part B, or both, shall not be reduced by reason of the program or project.

(C) COST-SHARING UNDER DEMONSTRATION PROJECT.—Notwithstanding any provision of title 38, United States Code, in order—

(i) to maintain and broaden access to services;

(ii) to encourage appropriate use of services, and

(iii) to control costs, the Secretary of Veterans Affairs may establish reimbursement agreements and arrangements with entities (such as private practitioners, providers of services, preferred provider organizations, and health care plans) for the furnishing of services for which the Secretary of Health and Human Services is responsible.
under the program or project under this section and shall take into account the existence of qualified practitioners and providers in the areas in which the program or project is being conducted. Under such contracts or arrangements, such Secretary of Health and Human Services may require the entities to furnish such information as such Secretary may require to carry out this section.

"(F) DATA MATCH.—

"(i) ESTABLISHMENT OF DATA MATCHING PROGRAM.ÐThe administering Secretary shall establish a data matching program under which there is an exchange of information of the Department of Veterans Affairs and of the Department of Health and Human Services as is necessary to identify veterans who are entitled to benefits under part A or enrolled under part B, or both, in order to carry out this section. The provisions of section 552a of title 5, United States Code, shall apply with respect to such matching program only to the extent the administering Secretary finds it feasible and appropriate in carrying out this section in a timely and efficient manner.

"(ii) PERFORMANCE OF DATA MATCH.—The administering Secretaries, using the data matching program established under clause (i), shall perform a comparison in order to identify veterans who are entitled to benefits under part A or enrolled under part B, or both. To the extent such Secretaries deem appropriate to carry out this section, the comparison of information may distinguish among such veterans by category of veterans, by entitlement to benefits under this title, or by other characteristics.

"(iii) DEADLINE FOR FIRST DATA MATCH.—The administering Secretaries shall first perform a comparison under clause (ii) by not later than October 31, 1998.

"(iv) CERTIFICATION BY INSPECTOR GENERAL.—

"(i) IN GENERAL.—The administering Secretaries may not conduct the program unless the Inspector General of the Department of Health and Human Services certifies to Congress that the administering Secretaries have established the data matching program under clause (i) and have performed a comparison under clause (ii).

"(ii) DEADLINE FOR CERTIFICATION.—Not later than December 13, 1998, the Inspector General of the Department of Health and Human Services shall submit a report to Congress containing the certification under subclause (i) or the denial of such certification.

"(2) NUMBER OF SITES.—The program and demonstration project shall be conducted in geographic service areas of the Department of Veterans Affairs, designated jointly by the administering Secretaries after review of all such areas, as follows:

"(A) PROGRAM.Ð

"(i) IN GENERAL.—By not later than September 1, 1999, the administering Secretaries shall submit a copy of the agreement entered into under paragraph (1) with respect to the program to Congress.

"(B) PROJECT.ÐBy not later than November 1, 1998, the administering Secretaries shall submit a copy of the agreement entered into under paragraph (1) with respect to the project to Congress.

"(C) IMPLEMENTATION.—The administering Secretaries may implement the program and demonstration project through the publication of regulations that take effect on an interim basis and pending opportunity for public comment.

"(D) REPORTS.—

"(i) PROGRAM.—By not later than September 1, 1999, the administering Secretaries shall submit a copy of the agreement entered into under paragraph (1) with respect to the program to Congress.

"(ii) PROJECT.—By not later than November 1, 1998, the administering Secretaries shall submit a copy of the agreement entered into under paragraph (1) with respect to the project to Congress.

"(E) REPORT ON MAINTENANCE OF LEVEL OF HEALTH CARE SERVICES.—

"(i) IN GENERAL.—The Secretary of Veterans Affairs shall submit the program to Congress and to the Comptroller General of the United States a report that contains the information described in subparagraph (B).

"(ii) INFORMATION DESCRIBED.—For purposes of subparagraph (A), the information described in this subparagraph is a description of the operation of the program at the site and of the steps to be taken by the Secretary of Veterans Affairs to reduce the quantity of health care services furnished under chapter 17 of title 38, United States Code, to veterans who are entitled to benefits under part A or enrolled under part B, or both, within the geographic service area of the Department of Veterans Affairs in which the site is located by reason of the program or project.

"(F) CREDITING OF PAYMENTS.—A payment received by the Secretary of Veterans Affairs shall be credited to the applicable Department of Veterans Affairs medical care appropriation (and within that appropriation). Any such payment received during a fiscal year for services provided during a prior fiscal year may be obligated by the Secretary of Veterans Affairs during the fiscal year during which the payment is received.

"(G) APPLICATION OF CERTAIN MEDICARE REQUIREMENTS.Ð

"(i) AUTHORITY.—

"(A) IN GENERAL.—Except as provided in subparagraph (B), the program and the demonstration project under this section shall be conducted in such additional sites designated under paragraph (1), the following shall be excluded:

"(1) Number of sites.ÐThe program and demonstration project shall be conducted in not more than 3 such areas with respect to category C medicare-eligible veterans.

"(2) Medicare coverage.ÐThe program and demonstration project shall be conducted in not more than 3 such areas with respect to category C medicare-eligible veterans.

"(3) Medicare services.ÐThe program and demonstration project shall be conducted in not more than 3 such areas with respect to category C medicare-eligible veterans.
(A) SPECIAL PAYMENTS.—Any amount attributable to an adjustment under subparagraphs (B) and (F) of section 1886(d)(5) and subsection (h) of such section.

(B) PERIODIC PAYMENTS TO MEDICARE BENEFICIARIES.—An amount determined by the Secretary of Veterans Affairs to be available to Medicare-eligible veterans for purposes of this paragraph.

(C) DISCRIMINATION.—Notwithstanding any other provision of law, the Secretary of Veterans Affairs shall, in the case of a veteran described in subsection (b)(1)(B), make payments under paragraph (1) to such veteran for purposes of this paragraph.

(D) MEASUREMENT OF EFFORT.—The Secretary of Veterans Affairs shall, in the case of a veteran described in subsection (b)(1)(B), make payments under paragraph (1) to such veteran for purposes of this paragraph.

(E) DETERMINATION OF MEASURE.—The Secretary of Veterans Affairs shall, in the case of a veteran described in subsection (b)(1)(B), make payments under paragraph (1) to such veteran for purposes of this paragraph.

(F) PAYMENT AGGREGATE.—The amount provided under paragraph (1) shall be limited to $50,000,000 for each of fiscal years 1999 through 2001.

(G) CAP ON REPLACEMENT OF MEDICARE BENEFICIARIES.—The Secretary of Veterans Affairs shall, in the case of a veteran described in subsection (b)(1)(B), make payments under paragraph (1) to such veteran for purposes of this paragraph.

(H) MAINTENANCE OF EFFORT.—The Secretary of Veterans Affairs shall, in the case of a veteran described in subsection (b)(1)(B), make payments under paragraph (1) to such veteran for purposes of this paragraph.

(I) REIMBURSEMENT OF PAYMENTS.—Notwithstanding any other provision of law, the Secretary of Veterans Affairs shall, in the case of a veteran described in subsection (b)(1)(B), make payments under paragraph (1) to such veteran for purposes of this paragraph.

(J) PAYMENT OF AMOUNT.—The Secretary of Veterans Affairs shall, in the case of a veteran described in subsection (b)(1)(B), make payments under paragraph (1) to such veteran for purposes of this paragraph.

(K) CLOSURE OF PROGRAM.—The Secretary of Veterans Affairs shall, in the case of a veteran described in subsection (b)(1)(B), make payments under paragraph (1) to such veteran for purposes of this paragraph.

(L) CLOSURE OF PROGRAM.—The Secretary of Veterans Affairs shall, in the case of a veteran described in subsection (b)(1)(B), make payments under paragraph (1) to such veteran for purposes of this paragraph.

(M) CLOSURE OF PROGRAM.—The Secretary of Veterans Affairs shall, in the case of a veteran described in subsection (b)(1)(B), make payments under paragraph (1) to such veteran for purposes of this paragraph.

(N) CLOSURE OF PROGRAM.—The Secretary of Veterans Affairs shall, in the case of a veteran described in subsection (b)(1)(B), make payments under paragraph (1) to such veteran for purposes of this paragraph.

(O) CLOSURE OF PROGRAM.—The Secretary of Veterans Affairs shall, in the case of a veteran described in subsection (b)(1)(B), make payments under paragraph (1) to such veteran for purposes of this paragraph.

(P) CLOSURE OF PROGRAM.—The Secretary of Veterans Affairs shall, in the case of a veteran described in subsection (b)(1)(B), make payments under paragraph (1) to such veteran for purposes of this paragraph.
did not enroll in the program or project and for other individuals entitled to benefits under this title.

(xii) A description of the difficulties (if any) experienced by the Department of Veterans Affairs in managing the program or project, respectively.

(xiii) Any additional elements specified in the agreement entered into under subsection (b).

(xiv) Any additional elements that the Comptroller General of the United States determines is appropriate to assess regarding the demonstration project under this title in conducting their recommendation as to—

(i) whether there is a cost to the health care program under this title in conducting the demonstration project;

(ii) whether to extend the demonstration project or make the project permanent; and

(iii) whether the terms and conditions of the project should otherwise be continued (or modified) with respect to medicare-eligible veterans.

(B) PROGRAM.—Not later than 6 months after the date of the submission of the report by the Comptroller General of the United States on the third year of the operation of the program, the administering Secretaries shall submit to Congress a report containing their recommendation as to—

(i) whether there is a cost to the health care program under this title in conducting the program under this section;

(ii) whether to discontinue the program with respect to category A medicare-eligible veterans;

(iii) whether the terms and conditions of the program should otherwise be continued (or modified) with respect to medicare-eligible veterans.

(j) APPLICATION OF MEDIGAP PROTECTIONS TO DEMONSTRATION PROJECT ENROLLEES.—(1) Subject to paragraph (2), the provisions of section 1822(s)(3)(B) through (iv) of subparagraph (B) and 1822(s)(4) shall apply to enrollment (and termination of enrollment) in the demonstration project, in the same manner as they apply to enrollment (and termination of enrollment) with a Medicare+Choice organization in a Medicare+Choice plan.

(2) COMMENCEMENT OF TERMS.ÐSuch terms shall begin on May 1, 1999.

(3) APPLICATION OF MEDICARE+CHOICE PENALTIES FOR CERTAIN INDUCEMENTS TO BENEFICIARIES.ÐThe Secretary of Health and Human Services shall report to the Congress by not later than January 1, 2001, on a method to phase-in the costs of military facility services furnished by the Department of Veterans Affairs or the Department of Defense to medicare-eligible beneficiaries in the calculation of an area’s Medicare+Choice capitation payment rate in counties where the payment rate has been affected due to the inclusion of military facility services in the calculation of an area’s Medicare+Choice capitation payment rates if such costs are included in the calculation of payment rates;

(4) a system to ensure that when a Medicare+Choice enrollee receives covered services through a facility of the Department of Veterans Affairs or the Department of Defense there is an appropriate payment recovery to the medicare program.

TITLE III—AUTHORIZATION OF ADDITIONAL EXCEPTIONS TO IMPOSITION OF PENALTIES FOR CERTAIN INDUCEMENTS

SEC. 301. AUTHORIZATION OF ADDITIONAL EXCEPTIONS TO IMPOSITION OF PENALTIES FOR PROVIDING INDUCEMENTS TO BENEFICIARIES.

(a) IN GENERAL.—Subparagraph (B) of section 1128A(i)(6) of the Social Security Act (42 U.S.C. 1320a-7a(i)(6)) is amended to read as follows:

“(B) any permissible practice described in any subparagraph of section 1128B(b)(3) or in regulations issued by the Secretary;’’.

(b) EXTENSION OF ADVISORY OPINION AUTHORITY.—Section 1128B(b)(2)(A) of such Act (42 U.S.C. 1320a-7d(b)(2)(A)) is amended by inserting “or section 1128A(i)(6)” after “1128B(b)(5)”.

(c) EFFECTIVE DATE.—The amendments made by this section shall take effect on the date of the enactment of this Act.

(d) INTERIM FINAL RULEMAKING AUTHORITY.—The Secretary of Health and Human Services may promulgate regulations that take effect on an interim basis, after notice and pending opportunity for public comment, in order to implement the amendments made by this section in a timely manner.

TITLE IV—EXPANSION OF MEMBERSHIP OF THE MEDICARE PAYMENT ADVISORY COMMITTEE

SEC. 401. EXPANSION OF MEMBERSHIP OF THE MEDPAC TO 17.

(a) IN GENERAL.—Section 1805(c)(1) of the Social Security Act (42 U.S.C. 1395b-6(c)(1)), as added by section 4022 of the Balanced Budget Act of 1997 (relating to an implementation plan for Veterans subvention) is amended by striking “15” and inserting “17”.

(b) INITIAL TERMS OF ADDITIONAL MEMBERS.—(1) IN GENERAL.—For purposes of staggering the initial terms of members of the Medicare Payment Advisory Commission (under section 1805(c)(3) of such Act (42 U.S.C. 1395b-6(c)(3)), the initial terms of the two additional members of the Commission provided for by the amendment under subsection (a) are as follows:

(A) One member shall be appointed for one year.

(B) One member shall be appointed for two years.

(2) COMMENCEMENT OF TERMS.—Such terms shall begin on May 1, 1999.

TITLE V—REVENUE OFFSET

SEC. 501. REVENUE OFFSET.

(a) IN GENERAL.—Subparagraph (B) of section 408A(c)(3) of the Internal Revenue Code of 1986 is amended by striking “relates” and all that follows and inserting “relates, the taxpayer’s adjusted gross income exceeds $145,000 ($290,000 in the case of a joint return).”.

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply to distributions after December 31, 1998.
Prayer

The guest Chaplain, Dr. William Hawkins, of Graves Memorial Presbyterian Church, Clinton, NC, offered the following prayer:

Gracious God, whose compassion fails not and whose mercies are fresh and new every morning, hear our prayer as we look to You in spirit and in truth. We thank You for our Nation’s leaders, who in times past found in You their stay in trouble, their strength in conflict, their guide and deep resource. May it please You heavenly Father that today this gathered company will find in You the same.

As the Psalmist has exclaimed, “Blessed is the nation whose God is the Lord” (33:12), so may Your lordship be affirmed in our Nation and cherished always among the Members of this body. Grant unto these Senators the knowledge that they will serve our Nation best as they serve You first. Make them strong in Your strength, wise in Your wisdom, and compassionate in Your Spirit, that the legislation they propose will accomplish the greater purpose, that they know themselves here not by chance but by design. Fulfill Your intentions for them in this high office, that they will be found working together, doing that which is pleasing in Your sight and in accord with Your holy will. In Your great name we pray. Amen.

Appointment of Acting President Pro Tempore

The clerk will read a communication to the Senate.

The legislative clerk read as follows:


To the Senate: Under the provisions of rule 1, section 3, of the Standing Rules of the Senate, I hereby appoint the Honorable Mike DeWine, a Senator from the State of Ohio, to perform the duties of the Chair.

STROM THURMOND, President pro tempore.

Mr. DeWine thereupon assumed the chair as Acting President pro tempore.

Recognition of the Majority Leader

The acting President pro tempore. The distinguished majority leader is recognized.

Mr. Lott. Mr. President, I will yield to the distinguished Senator from North Carolina who will welcome our guest Chaplain for the day.

The acting President pro tempore. The Senator from North Carolina is recognized.

Welcome to Dr. William Hawkins, Guest Chaplain

Mr. Faircloth. Mr. President, I am indeed honored and happy to be here this morning with my home church preacher. Bill Hawkins has been pastor of my church for 10 years now and he has made an outstanding impression and done a great job not only for the church membership but for the city that we live in as well. He has a wife and two daughters and they mean so much to me personally and to the community we live in. He is a Virginian, but we do not intend to allow him to leave. We plan to keep him in North Carolina and we are honored that he is there. He brings the youth and vigor to our church that we so much need. We are proud to have him there.

Bill, thank you.

I yield the floor.

Mr. Lott. Mr. President, I add my welcome to the guest Chaplain. He did a beautiful job this morning. I know he is going to be very dedicated to tending to the needs of the Senator from North Carolina, Senator Faircloth.

We are delighted to have you here.

Schedule

Mr. Lott. Mr. President, the Senate will be in a period of morning business until 10 a.m. Following morning business, under a previous order, the Senate will begin 1 hour of final debate on the conference report to accompany the VA-HUD appropriations bill. At the expiration of debate time, at approximately 11 a.m., the Senate will vote on adoption of that conference report. Following that vote, the Senate may resume consideration of the Internet tax bill. I believe we are about ready to complete action on that. We have been saying that for a week, but I think that the opposition really is minimal. When we finally get to a vote, it is going to be overwhelming. I hope those obstructing and delaying the bill will give it up and let us get to the final passage of this important legislation before we leave. I understand there is one outstanding issue remaining on that legislation. Hopefully, it can be resolved by the managers early this afternoon.

In addition to the Internet bill, the Senate may consider the intelligence reauthorization bill, the human services reauthorization bill, under a 30-minute time agreement, and, possibly, the Treasury-Postal Service appropriations bill. The Senate may also begin
Mr. HARKIN. Mr. President, last evening, President Clinton did the right thing, did the right thing for this country and did the right thing for our farmers and for people who live all through this country and did the right thing for farmers who are suffering because of a drastic drop in prices. He did the right thing for farmers who are suffering because of a loss of crop in disaster areas in the South and Upper Midwest. The President did the right thing by vetoing the woefully inadequate farm disaster bill that this Congress passed and sent to him for his signature. Now it is up to us to see what we can do to make that bill better and get it back to the President for his signature.

Rural America needs help. Farmers need assistance. Disaster-hit areas need help. And yet they do not need the woefully inadequate bill that was passed here. I likened the bill that was passed by the Congress as giving a thimbleful of water to a person dying of thirst. It may assuage their thirst momentarily, but it is not going to keep them alive. We need to give those farmers who are dying of thirst out there the adequate water they need to get them through this year and the next to keep them alive.

Mr. President, I was encouraged by what I read in Congress Daily, that the chairman of the House Appropriations Committee, Congressman LIVINGSTON, has said that they expected a veto and that after the veto comes negotiations. I do not have the exact quote, but that is about what he said. I think that gives us some hope that we can work together here, we can negotiate out some differences, and we can come up with a bill that the President will sign and that will, indeed, benefit our producers.

There are some principles that we must maintain, however. First of all, there must be disaster assistance. There needs to be equitable treatment regionally within the distribution of the disaster assistance and within the overall package of disaster-related, commodity-based assistance. That means it has to be equitable, and it has to be adequate. It does not necessarily mean the dollars have to be spread around evenly. Equitable treatment is the key for farmers who have suffered from natural disasters.

A second principle is that assistance must go to producers who need it. Assistance based on low commodity prices should be delivered to producers suffering from low commodity prices. That is the advantage of the marketing loan in the current predicament in large measure because the safety net feature of previous farm bills was abandoned in the 1996 farm bill. A set cash payment does nothing to restore the safety net because it is not responsive to market conditions. By contrast, the marketing loan rate caps would help restore a safety net responsive to market conditions.

Two last and final principles. Some linkage to actual production. The marketing assistance loan is tied directly to actual production. The Republican plan in the vetoed bill would have provided an additional $6 billion, even though no crop had been produced on the land. Why would we want to do that? Let’s have assistance out to farmers who actually produced a crop.

And last, let’s have a major measure of fiscal responsibility. This idea of just throwing out another payment to farmers is not fiscally responsible. If commodity prices should rise next year, which we all hope will happen, our plan would cost less than expected. But if the commodity prices rise next year, after the Republican plan pays out, we will capture any of that money. It would be gone. That is why raising the marketing loan caps is, indeed, more fiscally responsible than just giving out a payment.

Mr. President, I believe within those principles there is room for negotiation. I look forward to the negotiations. I hope we can very rapidly come up with a bill that will meet these principles and that the President will sign into law, because our farmers need the assistance, and the disaster areas also need that assistance.

I will yield the floor.
October 8, 1998

CONCLUSION OF MORNING BUSINESS

The ACTING PRESIDENT pro tempore. The time for morning business has expired.

DEPARTMENT OF VETERANS AFFAIRS AND HOUSING AND URBAN DEVELOPMENT, AND INDEPENDENT AGENCIES APPROPRIATIONS ACT, 1999—CONFERENCE REPORT

The ACTING PRESIDENT pro tempore. The Chair lays before the Senate the VA-HUD conference report. There are 60 minutes for debate to be equally divided.

The report will be stated.

The assistant legislative clerk read as follows:

The committee on conference on the disagreeing votes of the two Houses on the amendment of the Senate to the bill (H.R. 4194), have agreed to recommend and do recommend to their respective Houses this report, signed by all of the conferences.

The Senate proceeded to consider the conference report.

(The conference report is printed in the House proceedings of the RECORD of October 5, 1998.)

The ACTING PRESIDENT pro tempore. The Senator from Missouri.

Mr. BOND. I yield to my distinguished colleague from Maryland for a request.

Mr. MIKULSKI. Mr. President, I ask unanimous consent that during consideration of the report 105-769, that Ms. Bertha Lopez, a detailee from HUD serving with the VA-HUD committee, be afforded floor privileges.

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

Ms. MIKULSKI. Thank you. I yield the floor and look forward to proceeding on our conference.

PRIVILEGE OF THE FLOOR

Ms. MIKULSKI. Mr. President, I ask unanimous consent that during consideration of the report 105-769, that Ms. Bertha Lopez, a detailee from HUD serving with the VA-HUD committee, be afforded floor privileges.

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

Ms. MIKULSKI. Thank you. I yield the floor and look forward to proceeding on our conference.

The PRESIDING OFFICER (Mr. SANTORUM). The Senator from Missouri is recognized.

Mr. BOND. I thank our distinguished ranking member, Senator Mikulski. Before I get into the bill, let me say Senator Mikulski and her staff have given us tremendous cooperation, guidance and support. The process is always very difficult in this bill, but it runs much more smoothly because of her leadership, her guidance, and her deep concern for all of the programs covered.

Mr. President, I am pleased to present to the Senate the conference report on the fiscal year 1999 VA-HUD and independent agencies appropriations bill. The conference report provides $93.4 billion, including $23.3 billion in mandatory veterans' benefits. I believe this represents a fair and balanced approach to meeting the many compelling needs that are afforded this Subcommittee in particular in the face of a very tight budget allocation.

The conference report accords the highest priority to veterans' needs, providing $439 million more than the President's request for veterans' programs. Other priorities include elderly housing, protecting environmental spending, and ensuring sufficient funding for space and science.

We did our best to satisfy priorities of Senators who made special requests for such items as economic development grants, water infrastructure improvements, and similar vitally important infrastructure investments. Such requests numbered over 1,000 individual items, illustrating the level of interest and the demand for assistance provided in this bill.

We also attempted to address the administration's top concerns wherever possible, including funding for 50,000 new incremental housing vouchers, funding for the National Service Program at the current year rate, additional funding for the cleanup of Boston Harbor, and $650 million in advance funding for Superfund, contingent upon authorization reform of the Superfund Program by August 1, 1999.

For the Department of Veterans Affairs, the conference report provides a total of $42.6 billion. This includes $17.3 billion for veterans medical care. The President's request was $27.5 billion more than the President's request, and $249 million more than the 1998 level. Thus, we have increased by just about a quarter of a billion dollars the amount of money going to veterans health care above what was available for the past fiscal year. There was a strong consensus in this body, on a bipartisan basis, that the President's request for veterans medical care was inadequate, and that additional funds were needed to ensure the highest quality care to all eligible veterans seeking care.

Funds above the President's request also provided for construction, research, State veterans nursing homes, and the processing of veterans claims. I am pleased to report that incremental additional funds will be spent to honor and care for our Nation's veterans.

In HUD, the conference report provides for the Department of Housing and Urban Development a total of $26 billion. Again, this is $1 billion over the President's request. We were able to provide this significant increase in funding because of additional savings from excess section 8 project-based funds as well as savings from our reform of the Superfund program.

Because of these savings and reforms, we have been able to increase funding for a number of important HUD programs, including increasing critically needed funding for public housing modernization from $2.55 billion to $3 billion; increasing HOPE VI to eliminate distressed public housing from $550 million to $625 million; increasing the very important local government top priority, Community Development Block Grants from $4.675 billion to $4.750 billion.

We increased HOME funds, providing the flexibility for local governments to make improvements in providing needed housing for low-income and needy residents, from $1.5 billion to $1.6 billion, and we increased funding for homeless assistance from $283 million to over $1 billion, including requirements for HUD, recapitalizing and repairing remaining unused units.

We also included $854 million for section 6 housing for the elderly, and section 811 disabled housing. This is an increase of some $550 million over the President's request for the section 202 program.

This reflects the sense of this body, expressed in a resolution jointly sponsored by my ranking member and myself, saying that we could not afford an 80-percent cut in assistance for elderly housing as proposed by the Office of Management and Budget.

I want to be clear that these funding decisions for HUD do not reflect a vote of confidence for HUD. HUD remains a top agency in terms of efficiency, capacity and responsiveness.

Ms. Kirk; the Senator from Missouri.

Mr. President, I yield back my time.

Mr. Kirk. I thank the Senator from Missouri.

Let me call our colleagues' attention to this. It shows an explosion. To be specific, in fiscal year 1997 we had to appropriate $3.6 billion in budget authority for the renewal of existing section 8 vouchers. These are the renewals for people who are now receiving section 8 assistance. Because in prior years we had multiyear authorizations, those authorizations are expiring, and we have to maintain the section 8 assistance we are providing we had to go up to $8.2 billion this year. We will go up next year to $11.1 billion, the year after $12.8 billion, and by 2004 we will have to find budget authority of $18.2 billion, just to maintain the section 8 certificates, the vouchers for assisted housing for those in need that we already provide.

So, this is a budgetary problem of huge magnitude and it is something we are coming. Unfortunately, we are not able to stop providing assistance for those who need section 8, we are going to have to find in the budget room for that much budget authority. I have asked HUD repeatedly, in hearings before our committee, to address this fiscal crisis. Yet HUD has repeatedly failed to fulfill these responsibilities. This is something this body and the House are going to have to work on next year and the year after and the year after. The problem grows significantly more severe every year, and I warn my colleagues that this is a high-risk area by the General Accounting Office to the self, saying that we could not afford an 80 percent cut in assistance for elderly housing. This is an increase of some $550 million over the President's request for the section 202 program.

This reflects the sense of this body, expressed in a resolution jointly sponsored by my ranking member and myself, saying that we could not afford an 80 percent cut in assistance for elderly housing as proposed by the Office of Management and Budget.

I want to be clear that these funding decisions for HUD do not reflect a vote of confidence for HUD. HUD remains a top agency in terms of efficiency, capacity and responsiveness.

Ms. Kirk; the Senator from Missouri.

Mr. President, I yield back my time.

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the Senate—the distinguished chairman of that subcommittee, Senator Mack, will be addressing this later—including a public housing reform bill entitled the “Quality Housing and Work Responsibility Act of 1998.” I congratulate both the author of the legislation and the committee for making significant and positive reforms to public and assisted housing programs. I believe that, given the legislative calendar and the situation, it was appropriate, with the advice, counsel and direction of the leadership, that we added it.

There are some issues I want to flag now because I think we may want to come back and readress them, as we do in so many things that we pass in the housing area in this body.

I am concerned that the requirements on targeting might adversely impact the elderly poor. I am concerned about a provision that could allow HUD to micromanage housing choices of public housing families on a building-by-building basis, and I do not agree with the provision that would provide the HUD Secretary with a slush fund of some $110 million.

Most of my concerns, however, relate to provisions that are expected to become effective in fiscal year 2000. I expect that we will continue to review these areas and will work, as we have in the past, in full cooperation with our distinguished colleagues on the authorizing committees in both the House and the Senate and discuss these further in future bills.

Finally, this appropriations bill provides a significant increase for FHA mortgage insurance. We raised the floor from $86,000 to $109,000 and the ceiling for high-cost areas from $170,000 to $197,000. This is a critical provision. It means that families will have new and important opportunities to become homeowners.

With respect to the Environmental Protection Agency, the conference report provides $7.650 billion for EPA. That is about $200 million more than current year funding. Included in this is the President’s full request for the clean water action plan which totals $3.150 million in new funding, principally for State grants aimed at controlling polluted runoff or nonpoint source pollution. The conference report also provides $2.125 billion for State clean water and safe drinking water revolving funds, an increase of $276 million over the President’s request and $50 million over the current year.

Mr. President, I am very proud that we were able to provide this, because I think in every State, if you talk with the people who are actually doing the hard work of making sure that wastewater is cleaned up and that we have safe drinking water, they will tell you that these State revolving funds, which provide low-cost loans and enable communities to take vital steps necessary to ensure that they clean up their wastewater and they have safe drinking water, they will tell you that these State revolving funds are absolutely critical for meeting the long-term needs of our communities.

Back to the rest of the bill, for Superfund, the conference report provides $1.5 billion, the same as the current year funding. In addition, there is an increase of $210 million from the President’s request, contingent upon authorization by August 1, 1999.

Other high priorities in EPA, which we have funded, include particulate matter research, funding for the brownfields at the full request level, providing to the States the tools they need to prevent pollution, cleanup of waste sites and enforcing environmental laws. Almost half of the funds provided in this bill will go directly to the States for these purposes.

For FEMA, the Federal Emergency Management Agency, there is a total of $827 million, approximately the same amount as current year funding, with emphasis on preparing for both natural and man-made disasters.

The conference report includes the President’s request of $306 million for disaster relief spending. While there are not new funds above the President’s request for disaster relief, let me assure everyone that the current balances in the disaster relief fund are sufficient to meet all the needs at this time, including those stemming from Hurricane Georges, as well as the flooding that hit my State over the weekend and resulted in tragic deaths in the Kansas City area, as well as severe damage to homes and businesses.

We all appreciate the good work FEMA has been doing for the victims struggling to recover from recent devastation, whether it is hurricanes, floods or tornadoes. Our thoughts and prayers are with the many people who suffered severe losses because of natural disasters.

In order to support efforts aimed at mitigating against future disasters, the conference report provides $25 million for predisaster mitigation grants. These funds are provided to ensure communities will be better prepared and that losses will be minimized when the next disaster strikes. We hope these funds will be well spent to strengthen the Nation’s preparedness for natural disasters.

Finally, within FEMA, the conference agreement provides the full budget amount requested by the administration in July for antiterrorism activities. My ranking member and I believe this is vitally important preparation. It is something we need to be looking at in every area, and we are very proud to be able to provide this assistance for FEMA, because this is critical as part of an interagency effort aimed at preparing States and local governments for possible terrorists incidents.

For the National Aeronautics and Space Administration, NASA, the conference report provides a total of $13.665 billion. This is $200 million over the President’s request, including $5.480 billion for the international space station and shuttle activities.

We remain very concerned over cost overruns, and the failure of the Russian Government to meet its obligations as a partner in the development and operation of the space station. As a result, this conference report includes requirements for NASA to address Russian noncompliance and includes a provision addressing the need for NASA to explore alternative ways of doing business with the Russians. Again, I thank my distinguished ranking member for her leadership on this issue.

For the National Science Foundation, the conference agreement provides $3.6 billion for NSF. This is $242 million above the enacted level for the past year. Included in this is $50 million for the plant genome program. Mapping the significant crop genomes is vitally important to the future of agriculture and to feeding our country and to feeding the hungry people of the world. This is an increase of $10 million over last year’s level and the initial phases of what I believe will be a significant scientific breakthrough.

Before I yield to my colleague from Maryland, I do want to take this opportunity to talk about a crisis that is wreaking havoc throughout our country. That crisis is in Medicare home health benefits. They are in severe jeopardy.

The Health Care Financing Administration implemented a home health interim payment system, the IPS, which hits hundreds of home health agencies, many of which are small, freestanding providers, and has been forcing them out of business.

In Missouri alone where we had last year 230 home health care agencies, 50 agencies have already shut their doors entirely or have stopped accepting Medicare patients. One of them is the largest program in the State, the St. Louis Visiting Nurses Association, but many of them are small businesses that provide vitally needed health care services. It may be rural areas or it may be in the inner cities, but they are serving some of the most deserving, poor elderly and disabled in our country.

The agencies that are being hit are those that serve the most complex cases, the ones with the most difficult challenges. Some parts of Missouri are losing their only source of home health care.

My hometown of Mexico, MO, has a small rural hospital. It is the Audrain Medical Center. We are very proud of it. But recently I received a letter from Duke Neundorf, that hospital’s chief financial officer, describing the difficulties they are facing. He stated the following:

In Mexico the HealthCor, Beacon of Hope, and Homecare Connections agencies have closed. Other firms headquartered elsewhere have closed their Missouri office. Those who need home care in this area are simply not going to be able to get it in the future. When
Mr. President, in Missouri we have a well known phrase: “Show me.” Mr. President, people in Missouri have shown us recently that the integrity of the system is denying access to critical home health services. The IPS is the worst case of false economy I have ever seen. If the elderly and disabled cannot get care in the home, what is going to happen? They either eat or a sink in the emergency room very sick or they will go into institutionalized care, going into expensive nursing homes or even hospitals, or the patients simply will not get care at all.

One agency chief officer who testified before the Small Business Committee exemplifies the problem. She tells me she provides care to the most complex cases, the most difficult ones to serve in a central city area. And if this system is not working well or she cannot go through she could go out of business, and of the 350 patients she has, almost half of them would have to go immediately into nursing homes.

This means that not only will Medicare care costs rise but there will be an expropriation of State and Federal Medicaid budgets. We are going to have to pay for these poor, elderly, and disabled who are very sick. If we do not take care of them in the home health setting, we are going to take care of them in less convenient, less comfortable ways for them but far more expensive ways for us.

We must demand this insane, inequitable, and punitive system be corrected before we adjourn. And there are many proposals floating around. I believe Members on both sides of the aisle of this body know stories about how serious this crisis is. Some of them provide needed relief to home health agencies, those whom they serve. Some of them merely add to the debts of a sink in the ship. But it is clear one important consideration is missing. It is imperative we restore access to home health care for medically complex patients, especially those in center cities and rural areas. We cannot just restuff the deck and cause losses to vulnerable patients.

Mr. President, I would have addressed this under the VA-HUD bill, under the FEMA’s emergency budget. Unfortunately, home health care does not qualify for disaster relief. But let me assure my colleagues, that the human disaster of failing to address this home health care problem is going to be as severe, if not more severe, than many of the tragic natural disasters we address in FEMA.

Mr. President, to sum up, I am very proud of the work that we have been able to accomplish. I appreciate once again the work of my distinguished colleague. I recognize others who have worked on this later, but now it is my pleasure to defer to the distinguished Senator from Maryland. I thank the Chair.
funding for critical science and research at the National Science Foundation and the National Space Agency. This legislation will provide $3.6 billion in the National Science Foundation account. This is an 8 percent overall increase for the agency.

The NSF has peer review programs focusing on developing cutting-edge science and technology. We want to again work to make sure that this money is used wisely. We believe that the National Science Foundation is on track.

In addition to that, this appropriation provides $13.6 billion for the National Space Agency. It will spur technology development, as well as look for the origins of the universe.

To my colleagues in the Senate and to those also watching, while we were working on the funding for NASA we recognized a great American hero, Senator JOHN GLENN. At the request of his colleague from Ohio, Senator JAMES INOUYE, we had a hearing on the NASA Lewis Research Center in Cleveland the "John Glenn Research Center," which I think is an appropriate recognition. We thank the junior Senator from Ohio for making that request.

While we are working on NASA, we have been troubled about the funding for the space station and also the failure of the Russian Government to deliver its promises. We have instructed NASA to take a look at how we are going to get value for taxpayers' dollars and how we are going to get technology for taxpayers' dollars. After further conversations with the National Security Advisor of the United States, as well as the Administrator, we believe we have language in our appropriations that will help us get both value and technology for our cooperation in this effort.

We are also working on a safe world. We have funded the Environmental Protection Agency to clean up our environment and also take those steps that are necessary to prevent increased environmental degradation. One of the efforts, of course, is in brownfields, which we hope will be a new tool to be able to clean up those contaminated areas and turn a brownfield into a "green field" for economic development.

We continue to be troubled about the lack of an authorization for Superfund. We will fund Superfund at last year's level but we encourage the authorizers to be able to move ahead and pass an authorization. We have an additional $650 million included, contingent on a reauthorization by August 1. Those are the things we believe will truly be able to help clean up our environment and do preventive work.

Certain aspects in this legislation regarding EPA are important to my home State of Maryland. In Maryland, we cannot operate without an absolutely good business. That is why we thank, once again, Senator BOND for work in continuing the funding for the cleanup and revitalization of the Chesapeake Bay. The bay is important because it provides tremendous jobs in our State, from the watermen who harvest the different species, including the crabs and oysters of the bay, to other small businesses that work on the bay. We know that we have been hit by the terrible situation of pfiesteria—this "X-like" organism that sits in the mud, mutates 24 times, and then wrecks havoc with our fish. What our legislation provides is important for Maryland. We hope to be able to come up with solutions that will be important not only for Maryland and the causes of it, but also that will help other parts of the country, like North Carolina, and rivers that are affected by animal wastes, with dire consequences.

We are also very pleased the Federal Emergency Management Administration has been funded. We will meet, of course, the 9-1-1 request of the United States of America. In FEMA we provided the three "R's." We have funded readiness; we have funded response; and we have also funded both rehabilitation, but more importantly, prevention. This has been the hallmark, I think, of the last 5 years, to do training at the local community and throughout this Nation, to be ready for those disasters that normally would affect a particular region, but at the same time the readiness helps lead to a quick response. Often after a disaster we ask ourselves how do we restore it to its old condition or even better, and, therefore, we need to look at ways to prevent disasters.

There is also another disaster that threatens the United States that is very deeply troubling to me. That is the whole issue of threats of terror attacks on our own United States of America. I know at the highest level there are coordinated task forces, particularly from our military, but within our legislative framework and FEMA's effort to do the training necessary to deal with attacks, particularly of bacteriorium and chemical weapons. We regard this as a very important effort.

I want to mention before I close the very close cooperation we have had in this bill with the authorizers on Housing and Banking. I particularly acknowledge the role of my senior Senator, Senator PAUL SARBANES, and Senator BOBBY GIVENS and David Bowers, and Bertha Givens and David Bowers, and Bertha. They have worked hard this year to come up with a new authorizing framework for public housing. I believe that they did it. They worked on economic integration of public housing so it doesn't remain ZIP Codes of pathology. We have worked together in our legislation. We are taking their authorization and incorporating it here to make sure that there are new housing resources. In our bill there will be 50,000 new vouchers designed with a mission to make sure that welfare is not a way of life but a tool to a better life, and that public housing is not a way of life but a tool to a better life. We have worked cooperatively with them, and we have worked long and hard on our bill to eliminate outdated public housing rules that only hold people in place, and often have kept people in poverty. Also, this legislation will extend the life of the Superfund Program that I helped develop that not only tried to eliminate the concentrations of poverty and bring down the old walls of public housing, but to create new hope and new opportunity. I am so pleased the authorizers have spent over 2 years looking at this to come up with a new framework.

I know my own colleague, Senator SARBANES, is trying to get here to speak on this bill. If he doesn't, I know he will speak later. We were both due at a breakfast meeting in Baltimore and he covered that so I could be here to move my bill. How I like working as a team. It is really a great pleasure to me to have my senior colleague, PAUL SARBANES, on the Budget Committee, and working on the Housing Act, talking where we have worked as a team to look at the day-to-day needs of people.

He took this concept of what was happening in public housing and delved into it to come up with new ideas and a framework to support the effort of Senator MACK, who I know has gone into public housing, talked with residents, listened to the best ideas of foundations and think tanks and also the needs of residents, as did my own senior colleague. And I believe my colleagues could enjoy the relationship with their colleague within my State as I do. Senator SARBANES and Senator MACK have come up with a new framework. They pushed us to the wall to come up with new funding. We had to forage for the funds, but we were able to do it. We truly hope this will create hope and opportunity.

In addition to that, we are particularly appreciative of the conference reports to maintain the funding for national service, which others had wanted to eliminate.

We want to thank them for that because that is also another tool for creating hope and opportunity. So that is my perspective on the VA-HUD bill. Once again, working on a bipartisan basis, we show that we can meet the day-to-day needs of our American people, as well as the long-range needs of the United States of America. I thank my senior colleague, and once again, the cooperative and bipartisan way that they have worked with my staff and myself. Senator BOND, I thank you for all of the courtesies, the collegiality, and the consultation in which we engaged on this bill. I thank you for really the professionalism of your staff, J on Kamarck and Carrie Apostolou, who really helped me in many ways to come up with good ideas and worked with you for good solutions.

I also thank my own staff, Andy Givens and David Bowers, and Bertha Lopez, a detailer from HUD who has been with us, who has worked hard to...
make sure I could fill my responsibilities. I thank them for their hard work and effort.

In closing, I also want to say that over on the House side, another member of VA-HUD is retiring. We pay our respects to Congressman Louis Stokes, who has done so much to really move this bill forward.

So, Mr. President, that is my perspective on the bill. In a few minutes, I know we will be moving toward a vote. I urge every single Senator on my side of the aisle to support this bipartisan effort to move the appropriations and really encourage all others with outstanding appropriations to act in the same bipartisan fashion that we have.

Mr. President, I yield the floor.

Mr. BOND addressed the Chair.

The PRESIDING OFFICER. The Senator from Missouri is recognized.

Mr. BOND. Mr. President, I join with my colleague from Maryland in expressing our appreciation to the House authorizing committee. She mentioned Senator Sarbanes. I want to express my sincere appreciation to Senator Mack. They spent 4 years in "legislative purgatory" attempting to come up with legislation on these very difficult and important issues.

Mr. ALLARD. Mr. President, I wish to thank the conference committee members, and in particular the chairman of the VA/HUD Appropriations Committee, Senator Bond, and the Chairman of the Housing Subcommittee, Senator Mack. I appreciate their working with me to include two provisions in public housing reform language which I feel are important.

We have worked together to include a provision to allow vouchers for crime victims. This would create an opportunity for individuals who are living in public housing units the chance to leave a bad situation if they are a victim of a crime.

Public housing residents could receive a housing voucher if they were the victim of a crime of violence that has been reported to law enforcement.

These individuals would be empowered with the choice of where they want to live and are given the freedom to determine what surroundings they desire. I strongly believe that people should have the option of vouchers when their housing is unsafe.

We also included what I hope will be a thorough study by the General Accounting Office of the full costs of each federal housing programs. I have been dismayed by the lack of data on the cost and benefits of public housing, section 8, and voucher programs. We need better data.

We have also included what I hope has received grants from the Department of Housing and Urban Development for housing and other initiatives which are geared toward improving the quality of life for low-income families. In January of this year, I had the opportunity to visit Universal Community Homes. Members of the media and community leaders were present to bring to my attention that the South Central Philadelphia sections of the city are in critical need of a job training and business center.

I take this opportunity to clarify with Chairman Bond that it is the conferences' intent that Universal Community Homes is the appropriate applicant for the EDI grant for Central and South Philadelphia.

Mr. BOND. I thank my colleague for his comments and have appreciated his interest in worthwhile projects in Pennsylvania. I agree with his understanding that the conferences intend that Universal Community Homes is the appropriate applicant for the funds provided for a job training and business center Central and South Philadelphia.

NEW ENGLAND HEALTH SYSTEM

Mr. LIEBERMAN. Mr. President, I rise with my colleague from Connecticut for the purpose of a colloquy with the Chairman and the Senator from Pennsylvania on the financial constraints facing the veterans health system in New England's VISN 1?

Mr. BOND. Yes, the Chair is aware of the financial constraints in New England.

Mr. LIEBERMAN. Mr. President, news accounts have indicated that New England's veteran health care system will suffer additional cuts despite recent efficiency and consolidation efforts. Is the Chairman aware that veterans could be cut off from health services throughout the region? Is the Chairman aware that without additional dollars administrators will have to cut deeply into valuable health care programs and basic administrative support services?

Mr. BOND. I am well aware that the New England region has had to make significant reductions in health care costs, in part because of the VA funding formula. Mr. Dodd. I know the Chairman knows that the veterans in VISN 1 live in a region that stretches from Connecticut to Maine. The budget for our region's medical care has dropped from $854 million in fiscal year 1996 to $809 million in fiscal year 1998. I have been informed by the Department of Veterans Affairs that the New England region will endure yet another budget cut in fiscal year 1999. I hope that the Appropriations Committee will take note of the impact these reductions are having on facilities across New England.

Mr. LEAHY. Mr. President, as is the Chairman, I am a member of the VA/
HUD Subcommittee that funds the Department of Veterans Affairs. He knows my personal concern about the situation facing our veterans in New England. The Appropriations Committee added $278 million in this conference report to address an increase in the VA/HUD appropriations bill. This increase in rent forces low-income tenants out of their homes. This increase in rent forces these tenants to search for new housing, often in rental markets with exceptionally low vacancy rates. At the same time the supply of low-income housing takes a big hit, fewer and fewer units are available with each prepayment of Section 236 housing for the low-income families in desperate need of adequate housing.

Mr. President, the Senate version of the VA/HUD bill included a provision to give tenants of Section 236 housing a fair notice—one full year—of the owner's intent to prepay the mortgage on the building. This one-year notice was designed to accomplish two goals. First, it would have given the tenants a notice of the owner's prepayment intentions. For some tenants, especially those living in the Minneapolis area, finding alternative housing has been extremely difficult. The vacancy rate is at 1.9%. It was simply unreasonable to expect those tenants to find alternative housing within only 30 days with such a low vacancy rate. In fact, it has been nearly impossible for owners and tenants to get families to find adequate housing in such a short time in such a tight housing market. Secondly, the one-year notice would have given a community the critical time necessary to begin to formulate options to keep that building available for those in need of affordable housing. I am pleased that the Senate is on record supporting the need for a fair notice to tenants.

Unfortunately, the conference report does not contain the full extent of my provision. The one-year notice period was reduced in the VA/HUD Conference Committee. It was reduced to not shorter than five months, but not longer than a nine months notice by the building owners. In addition, the provision now includes an enactment date effective one year after the hearing. This critical one year notice period would have given a community the time necessary helping those who are making the transition to work. These vouchers establish a critical link between housing and employment opportunities, while simultaneously helping those who are making aconcerted effort to get off of welfare assistance. They are an example of the tools whose significance cannot be overstated given the uncertainty of welfare reform.

Furthermore, this bill does not fully address the severe housing shortages. About one out of every four households in need of housing assistance receives it. Of the roughly 12 million families that need housing assistance but do not receive it, almost half have worst case housing needs. These families are paying more than half of their incomes every month in rent, or live in physically substandard housing, or both.

The appropriations bill will help address this need by funding 50,000 new section 8 vouchers. These vouchers will be targeted to people moving from welfare to work. These vouchers establish a critical link between housing and employment opportunities, while simultaneously helping those who are making a concerted effort to get off of welfare assistance. They are an example of the tools whose significance cannot be overstated given the uncertainty of welfare reform.
vouchers to as many as 40,000 more low-income families each year. I commend the appropriators for recognizing the need for this resource, and implementing this important change.

The conference report also reaffirms our commitment to homeownership by expanding the FHA single family mortgage insurance program. We are currently seeing record levels of homeownership in this country, and HUD should take great pride in this accomplishment. But all of those families who qualify for homeownership are afforded an opportunity to purchase a home in the neighborhood of their choice. The Fiscal Year 1999 appropriations bill will help address this inequity by raising the FHA loan limits in both high cost urban areas and lower cost rural areas. These new loan limits will enable roughly 17,000 additional families to become homeowners each year.

The conferences are also to be commended for increasing the levels of funding for a number of important HUD programs. Funding for the CDBG program, the HOME program, the public Housing capital fund, the HOPE VI program, the homeless assistance fund, Fair Housing initiatives, HOPWA, Housing and Development assistance, and the Lead Hazard Abatement program have all been significantly increased for Fiscal Year 1999. These funding levels, many of which are higher than the Administration's request, demonstrate the appropriators' commitment to supporting housing and economic development initiatives despite other competing needs contained in this appropriations bill.

I am especially pleased that the appropriators have chosen to fund the Youthbuild program at $42.5 million for Fiscal Year 1999—$7.5 million over what was enacted in 1998. Youthbuild, which I helped pass into law, provides on-site training in construction skills, as well as academic and job skills lessons, to at-risk youth between the ages of 16 and 24. Approximately 7,300 young people have participated in Youthbuild programs to date, and many more at-risk youth will be able to benefit in the future from the increased resources that have been devoted to this program.

Mr. President, I would also like to express my support for the public housing reform act which was attached to the appropriations bill as a compromise measure to promote homeownership by expanding the FHA single family mortgage insurance program.

The public housing reform bill was ordered to be printed in the conference report. As ranking member of the Subcommittee on Housing Opportunity and Community Development, I have worked closely with Senator MACK, Senator SARBANES, Secretary CUOMO, Representative KENNEDY and Representative LAZIO to develop this important change. I am very proud of the final product.

The public housing reform act successfully achieves a delicate balance: it deregulates public housing authorities while retaining some key provisions; it allows all of those families who qualify for homeownership are afforded an opportunity to purchase a home in the neighborhood of their choice. The Fiscal Year 1999 appropriations bill will help address this inequity by raising the FHA loan limits in both high cost urban areas and lower cost rural areas. These new loan limits will enable roughly 17,000 additional families to become homeowners each year.

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The bill provides for the possibility of transfer of housing from an agency to an eligible management entity due to the mismanagement of the agency (section 534). Such mismanagement may be applied to mixed-finance projects eligible for the clarification and concur with the Senator's understanding of the intent of these provisions.

 SECTION 226

Mr. D'AMATO. Mr. President, I would like to enter into a colloquy with my good friend Senator BOND in order to fully clarify a provision of the VA-HUD Appropriations Act for Fiscal Year 1999. I am pleased that the conference has included language in Section 226 of the VA-HUD Appropriations Conference Report (H. Rept. 105-769) which would clarify that existing contract arrangements between the New York City Housing Authority...
Mr. President, I rise to support the Quality Housing and Work Responsibility Act of 1998. This public and assisted housing reform legislation is the result of four years of delicate crafting and compromise and has bipartisan Congressional support and the endorsement of Department of Housing and Urban Development Secretary Cuomo. I support its final passage today as part of the Fiscal Year 1999 Veterans Affairs, Housing and Urban Development (HUD) and Independent Agencies appropriations bill (H.R. 4194).

Mr. President, it is with great respect that I salute the distinguished Chairman of the Banking Subcommittee on Housing Opportunity and Community Development, Senator Connie Mack. Senator Mack is owed a debt of gratitude for her dedication and commitment to an informed and reasoned approach to public housing reform. He consistently pursued a steadfast course toward a compromise which represents a positive change to the existing public housing system while protecting our residents whom the program serves. I commend him for his strong leadership and effective stewardship of this landmark legislation.

I also commend Banking Committee Ranking Minority Member Paul Sarbanes, Housing Subcommittee Ranking Minority Member John Kerry, all Members of the Banking Committee and many interested Members of the Senate for their essential guidance and leadership on this issue. Chairman Kit Bond and Ranking Member Barbara Mikulski of the VA-HUD Appropriations Subcommittee deserve our appreciation. I am pleased to allow this bipartisan legislation to be included in the Fiscal Year 1999 VA-HUD Appropriations Act. Our House colleagues, in particular Banking Subcommittee on Housing Chairman Rick Azar, Banking Committee Chairman Jim Leach, Banking Committee Ranking Minority Member John LaFalce and Housing Subcommittee Ranking Minority Member Joe Kennedy, all deserve thanks and appreciation. In addition, I commend and thank HUD Secretary Andrew Cuomo and his Administration for his able assistance and support of this bill. All deserve credit for their dedication to this consensus-building effort.

Resident associations, public housing authorities, low-income housing advocates, non-profit organizations, state and local officials and other affected parties have carefully considered and participated in this important political and policy process. I express my thanks to all for their significant involvement which has successfully yielded a balanced, fair, and comprehensive reform that will effectively end the deterioration and ill utilization of affordable housing throughout our nation.

The Quality Housing and Work Responsibility Act recognizes that the vast majority of public housing, is well-managed and safe for the 6.4 million American families, elderly and disabled with decent, safe and affordable housing. It also responds to the need for improvements to the public and assisted housing system. It will protect our residents by maintaining the Brooke amendment, which caps rents at 30% of a tenant's income, and establishing a ceiling rent voluntary option as an incentive for working families. In addition, the bill allows housing assistance to be targeted to those most in need. Forty percent of all public housing units which become vacant in any year and seventy-five percent of re-issued Section 8 vouchers will be targeted to families with incomes below thirty percent of the local area median income. It will expand homeownership opportunities for low and moderate income families. The bill will also speed the demolition of distressed housing projects through the repeal of the one-for-one replacement requirement.

The reforms contained in this Act will reduce the costs of public and assisted housing to the Federal Government by streamlining regulations, facilitating the formation of local partnerships, and leveraging additional state, local and private resources to improve the quality of the existing stock. I urge the Administration to ensure that federal funds can be used more efficiently in order to serve additional families through the creation of mixed income communities.

Mr. President, I would like to comment in more detail on a few of the many significant provisions in the bill. The legislation recognizes that every American deserves to live in a safe and secure community. To achieve that aim, the Act will ban absentee landlords on very narrow grounds. The legislation being passed today will clarify that housing authorities are entitled to refuse to do business with landlords who refuse to take action against tenants who are engaged in criminal activity or who threaten the health, safety or right to peaceful enjoyment of the premises of their neighbors.

Another critical safety and security measure will ensure that housing authorities have the well-defined power to ban absentee and negligent landlords from participation in the Section 8 voucher program. Currently, HUD's regulations only allow housing authorities to refuse to do business with absentee landlords on very narrow grounds. The legislation being passed today will clarify that housing authorities may cease to do business with landlords who refuse to take action against tenants who are engaged in criminal activity or who threaten the health, safety or right to peaceful enjoyment of the premises of their neighbors.

In addition, my proposals to protect the essential rights of current residents have been adopted in the Act and I commend the residents of my home State for bringing injustices to my attention. I urge the Administration to ensure the protection against eviction without good cause has been fully maintained in the Act. This is critical for the hundreds of thousands of senior, disabled and hardworking low-income New Yorkers who depend on public and assisted housing for shelter. Second, the residents' right to organize and assemble has been fully protected and extended to the project-based and Section 8 opt-out properties. It is imperative that, a number of their fundamental constitutional rights to free speech and assembly protected. Finally, the Act makes absolutely clear that no provision of the existing HUD regulation (24 CFR...
Mr. D'AMATO. Mr. President, I would ask my friend Senator MACK for a clarification. The provisions included in the Quality Housing and Work Responsibility Act of 1998 will grant residents a voluntary option to choose a flat rent. Several clarifying provisions have been added to the legislation to protect residents and reduce the administrative burden on housing authorities. First, residents will be protected from being coerced into making a choice of rents which is adverse to their interest. Second, in the case of a financial hardship, residents are granted the right to an immediate change to the Brooke Amendment rent, which caps rent at no greater than thirty percent of income.

Mr. President, the Act also specifically provides that no additional administrative burden be placed on housing authorities that already administer flat rent or ceiling rent systems. If an agency's present system allows the family the opportunity to annually request a change from an income-based system to a flat or ceiling rent system, or vice-versa, the fact that rent is initially determined by an existing computer system which automatically selects the lower rent should not be considered a violation of the requirements of the Act. I would ask Senator MACK if these statements are consistent with his views of the legislation?

Mr. MACK. Mr. President, I fully concur with the statements of my friend Senator D'AMATO. His statements are fully consistent with my understanding of the legislation.

Section 8 Tenant-Based Renewal Terms

Mr. D'AMATO. Mr. President, I would like to ask Senator MACK his view of the inclusion of specific terms for the renewal of expiring Section 8 tenant-based contracts. The renewal terms included in the Act will ensure that housing authorities continue to receive full funding to maintain effective Section 8 tenant-based contracts. This Act's renewal provisions will address a number of problems which have arisen—including a very serious potential threat to affordable housing in my home State of New York—as a result of HUD's attempt to revise its method of funding renewals.

Under the renewal terms of Section 556 of the Act, housing authorities will be ensured that they receive full funding to maintain their current obligations and continue to re-issue turnover vouchers, without any attrition or loss of assistance. Housing authorities in New York will be able to continue to assist thousands of new families each year—particularly the homeless and victims of domestic violence. Without the changes this legislation brings, the New York City Housing Authority alone could have suffered a loss of over 7,000 vouchers over the next few years. This potential catastrophe has been averted.

To be more specific, Section 556 establishes a baseline for maintaining current Section 8 obligations. This baseline is to be calculated by taking into account the number of families which were actually under lease as of October 1, 1997, in addition to its April 1, 1998 Notice shall be included in the definition of "additional families authorized." Finally, HUD shall apply an inflation factor to the baseline which takes into account local factors such as actual increases in local market rents.

I would ask Senator MACK, if these statements are consistent with his views of the legislation?

Mr. MACK. Mr. President, Senator D'AMATO's comments are absolutely accurate. Section 556 of the Act was added in response to a vociferous outcry among housing authorities and low-income advocates who feared that HUD's administrative actions during Fiscal Year 1998 could have inadvertently led to a decline in housing assistance under the Section 8 program. The renewal terms included in the Act are intended to avoid such a result and will ensure that full funding for the program is maintained. I appreciate the Chairman's work to ensure that this provision will not have adverse budgetary implications.

Mr. D'AMATO. I thank the Senator for his clarifying remarks and commend him for the excellent work that went into the legislation.

Drug Elimination Program Amendments

Mr. D'AMATO. Mr. President, I would like to enter into a colloquy with the respected Chairman of the Banking Committee's Subcommittee on Housing Opportunity and Community Development, Senator CONNIE MACK and the full Committee Ranking Member, Senator PAUL SARBANES. One of the most significant provisions addressed by the Quality Housing and Work Responsibility Act of 1998 is the amendment of the Public and Assisted Housing Drug Elimination Act of 1990. Mr. President, the Drug Elimination Program is critical to the fight against drugs and serious crime in our Federal housing developments. The residents of this housing have a right to a safe and peaceful environment. The Federal Government bears a unique and overriding responsibility to ensure that residents feel secure in their homes, can walk to the store or send their children to school without fear for their physical well-being. I am especially appreciative of the inclusion of a funding mechanism which will ensure the intent will be an extremely effective tool in fighting drugs and crime in public housing. The provisions of the Act will ensure that existing programs are placed on a solid financial foundation—without precluding assistance to new programs which meet urgent or serious crime problems.

I would ask the distinguished Chairman of the Housing Subcommittee for his views on the legislation?

Mr. MACK. Mr. President, I welcome the comments of my friend Senator D'AMATO. Indeed, the amendments to the Public and Assisted Housing Drug Elimination Act of 1990 which we have included in the Act represent a significant improvement in the program. The amendments will provide renewable grants for agencies that meet performance standards established by HUD. In addition, housing authorities with urgent or serious crime needs are protected and will be assured an equitable amount of funding.

Mr. President, the intent of these provisions is to provide more certain funding for agencies with clear needs for funds and to assure that both current funding recipients and other agencies with urgent or serious crime problems are appropriately assisted by the program. The provisions will also reduce the administrative costs of the current application process which entail a substantial burden for agencies and HUD. Under the terms of the amendments, HUD can establish a fixed funding mechanism in which the relative needs of housing authorities are addressed with a greater amount of certainty.

Mr. SARBANES. Mr. President, I concur with my colleagues. Drug Elimination Grant funds have proven to be an extremely effective tool in fighting drugs and crime in public housing. This provision will enable housing authorities with significant needs to implement long-term strategies to continue this important fight.
appreciate the work of the Chairman on this important issue.

Mr. D’AMATO. Mr. President, I thank both of my colleagues for their clarifying remarks.

Mr. MCCAIN. Mr. President, once again, I find myself in the unpleasant position of speaking before my colleagues about unacceptable levels of parochial projects in the VA/HUD appropriations bill. Although the level of add-ons in some portions of this conference report is down, this bill still contains approximately $965 million in wasteful pork barrel spending. This is an unacceptable amount of low priority, unrequested, wasteful spending.

The level of add-ons in the Veterans Affairs section of this conference report is down. The total value of specific earmarks in the Veterans Affairs section of this conference report is about $116 million.

Let me just review some examples of items included in the bill. The bill directs $1 million for the VA’s first-year costs to the Alaska Federal Health Care Partnership’s proposal to develop an Alaska-wide telemedicine network to provide access to health services and health information for the Alaska Native Health Service, IHS, DOD and Coast Guard clinic facilities and linking remote installations and villages with tertiary health facilities in Anchorage and Fairbanks.

An especially troublesome expense, neither budgeted for nor requested by the Administration for the past seven years, is a provision that directs the Department of Veterans Affairs to continue the seven-year-old demonstration project involving the Clarksburg, West Virginia VAMC and the Ruby Memorial Hospital at West Virginia University. Last year, the appropriations bill contained a plus-up of $2 million to the Clarksburg VAMC that ended up on the Administration’s line-item veto list and that the Administration had concluded wasteful.

The VA provides first-rate research in many areas such as procthetics. However, some of my colleagues still prefer to direct the VA to ignore their priority research programs and instead provide critical veterans health care dollars for parochial or special interest projects. For example, this bill earmarks $3 million for the Center of Excellence at the Truman Memorial VA Medical Center in Missouri for studies on hypoxic tolerance, surfactants, and lupus erythematosus, and provides $6 million in the medical and prosthetic research appropriation for Musculoskeletal Disease research in Long Beach, California. It is difficult to argue against worthy research, but for such projects as these, they are not a priority for the Department of Veterans Affairs.

Like transportation and military construction bills, the VA appropriations funding bill is no exception for construction project additions to the President’s request. For example, the bill adds $7.5 million in funding for the Jefferson Barracks National Cemetery in Missouri for gravesite development which will provide 13,200 grave sites for full casket interments. Although this is a worthy cause, I wonder how many other national cemetery projects in other States were leapedfrogged to ensure that Missouri’s cemetery received in the VA’s highest priority.

In the area of critical VA, medical facility funding, again, certain projects in key members’ states received priority billing, including $20.8 million in additional funding for the Lebonan, Pennsylvania VAMC and $300 million for the Clarksburg VAMC ambulatory care renovation project in Ohio, a $9.5 million add for the Lebanon, Pennsylvania VAMC for nursing unit renovations, including providing patients with increased privacy, a $25.2 million add for construction of an ambulatory care addition at the Tucson VA Medical Center in Arizona, and provides $125,000 per renovation of the Pershing Hall building in Paris, France for memorial and private purposes.

Mr. President, we are charged with the important responsibility of dedicating funding toward the highest priorities to safeguard our environment. Yet, I am troubled that this conference report is loaded with directed earmarks toward specific projects without adequate explanation of why these projects are higher in priority than national environmental problems and needs.

Rather than dedicating funding toward higher-priority environmental concerns, the priorities of the conferences are earmarking spending of $125,000 for the establishment of a regional environmental finance center in Kentucky and $225,000 for a demonstration project in Maryland to determine the feasibility of using poultry litter as a fuel to general electric power.

I commend the efforts of my colleagues who worked tirelessly to rectify differences between the two chambers and present us with this conference report. Each of them have worked diligently to ensure that important housing programs and initiatives are adequately funded in a fair and objective manner.

Contained in this bill is funding for many programs vital in meeting the housing needs of our nation and for the revitalization and development of our communities. Many of the programs administered by HUD help our nation’s families, young and old, find stable homes, assist low-income families obtain affordable housing, combat discrimination in the housing market, assist in rehabilitating neighborhoods and helps our nation’s most vulnerable—the elderly, disabled and disadvantaged have access to safe and affordable housing.

In July, I came to the Senate floor and highlighted the numerous earmarks and set asides contained in the conference report, at that time, the egregious violations of the appropriate budgetary process in the HUD section amounted to $270.25 million dollars.

Unfortunately, I find myself coming to the floor today to again highlight the numerous earmarks and budgetary violations which remain in the conference report of this bill. In the HUD section alone there is $285.1 million in earmarks or set asides, while this amount is slightly lower than when the Senate first considered this bill it is still too great a burden for the American taxpayers.

The list of projects which received preferential treatment is quite long but I will highlight a few of the more egregious violations. There is $1.25 million set aside for the City of Charlotte, NC to conduct economic development in the Wilkinson Boulevard corridor, $1 million for the Audubon Institute of Science Museum in New Orleans and $2 million for the Hawaii Housing Authority to construct a community resource center at Kuhio Homes/Kuhio Park Terrace in Honolulu, Hawaii.

It is difficult to believe many credible and viable community development proposals may be excluded from access to federal housing funds because such a large amount of funds have been unfairly set aside for earmarks. Projects fortunately fortunate enough to have advocates on the appropriating committee.

Finally, I would like to comment on the public housing reform bill which is now included in this funding bill. In the limited period of time I was afforded to examine this provision, I have learned that it includes several initiatives intended to enhance the quality of life for many individuals while promoting self sufficiency and personal responsibility in our communities.

While I applaud these goals and will not object to this bill based on the inclusion of this section I am gravely concerned about the process used to pass this reform bill. It concerns me that this complex measure was inserted at the last moment during conference which precluded the Senate from having sufficient time to thoroughly examine its provisions and fully evaluate its objectives. This is a very serious matter which directly impacts the lives of thousands of American families and our local communities.

Certainly, this issue deserves thoughtful deliberation. I will review through the established legislative process and should not be attached at the last moment to a funding conference report. This is not the manner in which we should be implementing meaningful reform intended to benefit the citizens of our nation.

Mr. President, I have touched on only the tip of the iceberg. There is more
could point to, were time available. I continue to look forward to the day when my trips to the floor to highlight member interest spending are no longer necessary.

The PRESIDING OFFICER. The Senator from Florida has 7 minutes 30 seconds remaining.

Mr. BOND. I yield 7 minutes 30 seconds to the Senator from Florida. I will ask my colleagues, if there is additional time remaining, if he might have 2½ minutes.

Ms. MIKULSKI. I would be happy to work with the Senator. I would like to bring to my colleague’s attention that Senator SARABANES might be parachuting in, as well, to comment on the public housing initiatives. If he lands, I want to be able to accommodate him.

The PRESIDING OFFICER. The Senator from Florida is recognized for the remaining time.

Mr. MACK. Mr. President, I am pleased to have the support of this conference report. I want to commend the chairman of the subcommittee, Senator BOND, and the ranking member, Senator MIKULSKI, for bringing to the floor a well-balanced bill.

I am pleased to share with you that this bill contains a comprehensive reform of the nation’s system of public and assisted housing. We began this process of reforming public housing more than three years ago. Negotiating this legislation was a long, difficult and sometimes painful process. But the end result is a carefully crafted, bipartisan compromise that reflects input from the Senate, the House, and the administration. I believe it is a good bill. I appreciate the indulgence of Chairman BOND in permitting the authorizing committee to utilize the appropriations process as the vehicle to enact these important reforms, and I appreciate his long-standing support of public housing reform. In the end, it was the willingness of the Appropriations Committee to increase the level of incremental section 8 assistance that removed the last hurdle to this agreement.

I want to express special thanks to Senator PAUL SARABANES for his critical role in the development of this legislation and in the recent negotiations. I am convinced that this agreement would not have been possible without the leadership and support of the Senator. And I want to thank him enough. I also want to thank the chairman of the Banking Committee, Senator ALFONSE D’AMATO, for his steady support and guidance over the past 3 years, and also the ranking member of the Housing Subcommittee, Senator KERRY, who has made major contributions to this legislation. This has truly been a bipartisan effort throughout.

There are so many people that have played a role. Obviously, the Secretary of HUD, Secretary Cuomo, and I spent many hours and many, many phone calls trying to work through this and working also with Congressman Lazio, who made a special effort to try to find a way to bring this to a conclusion, and also the work of Congressman LEWIS, the chairman of the subcommittee on the House side.

So, this has truly been a bipartisan effort. I thank all of those who were involved.

Since my appointment to the Banking Committee almost 10 years ago, I have visited public housing developments throughout Florida and in cities like Detroit, Chicago, and Jersey City. I have seen public housing that is well run and I have seen public housing that concentrates the very poorest of the poor in developments that are havens for crime and drug abuse and islands of welfare dependency.

On a personal note, I want to say to my colleagues that while I have been working on this specific legislation now for 4 years, I have been involved in public housing issues now for 10 years, since I have been on the Banking Committee. There are particular thoughts that come to my mind, two visits that I made.

I spoke with individuals that lived in public housing, and that significantly affected me. I am pleased to say it has had a major role in the legislation that we developed. One person was an individual from Liberty City in Miami, who, frankly, grew up in public housing in Liberty City and saw how public housing has changed since the late 1930s. She—and I have used this term “screamed” at me as she was explaining to me the problems she was dealing with and how she used to have a decent place to live and how it had been destroyed over the years. Her message was heard.

I also think of a little 4, 5, or 6-year-old boy in Melbourne, FL. When we walked out of an apartment that was totally destroyed, as we walked down between these three-story buildings and opened up of windows and doors hanging by their hinges, this little fellow was walking down between the buildings. I thought to myself, what kind of future can this little fellow possibly dream of if the only environment in which he was going to live was the public housing like we saw. I wanted to share that with my colleagues.

The time is long overdue for us to eliminate the disincentives to work and to provide, if the administration wants to trap people in poverty, to ease the complex, top-down bureaucratic rules and regulations that aggravate the problems and prevent housing authorities from operating effectively and efficiently. It is time to begin the process of concentrating the poor, creating mixed-income communities with role models and establish a foundation for building communities of hope instead of despair.

Let me make clear that this is only the beginning. The effect of these reforms won’t be felt overnight. We are creating a framework for meaningful and beneficial change in our public and assisted housing system. But our ultimate success will depend on the ongoing cooperation and commitment of Congress, HUD, housing authorities, the residents, and local communities.

The reforms contained in this legislation will significantly improve the nation’s public housing and tenant-based rental assistance program and the lives of those who reside in federally assisted housing. The funding flexibility, substantial deregulation of the day-to-day operations and policies of public housing authorities, encouragement of mixed-finance developments, policies to deal with distressed and troubled public housing, and rent reforms will change the face of public housing for PHAs, residents, and local communities.

This bill empowers residents and promotes self-sufficiency and personal responsibility. It institutes permanent rent reductions and provides disincentives for residents to work, seek higher paying jobs and maintain family unity. Further, it expands homeownership opportunities for residents of both public and assisted housing.

It improves the living environment for public housing residents by expanding opportunities for working poor families and providing flexibility for housing authorities to leverage private resources and develop mixed-income, mixed-finance communities.

It refocuses the responsibility for managing public housing back to the public housing authorities, residents and communities, it eliminates counterproductive rules and regulations, and frees public housing communities to seek innovative ways to serve residents.

The bill requires tough, swift action against PHA with severe management deficiencies, and provides HUD or court-appointed receivers with the necessary tools and powers to deal with troubled agencies and to protect public housing residents.

It enhances safety and security in public housing by enhancing the ability of public housing authorities to screen out and evict criminals and drug abusers who pose a threat to their communities.

Finally, the bill enhances resident choice. It merges the section 8 voucher and certificate programs into a single, choice-based program designed to operate more effectively in the private marketplace. It repeals requirements that trap administratively burdensome income to landlords, such as “take-one, take-all,” endless lease and 90-day termination notice requirements. These reforms will make participation in the section 8 tenant-based program more attractive to private landlords and increase housing choices for lower-income families.

To get to this stage, we have had to work through some very difficult and contentious issues. All sides have been willing to make concessions in the interest of compromise. I will mention only one of those issues—income targeting.
At a time when housing resources are scarce, a strong argument can be made that the bulk of housing assistance should be made available for the very poor. At the same time, there is a concern that excessive concentrations of the very poor in public housing developments have negatively affected the liveability of those developments.

The final income targeting numbers of public housing and project-based and tenant-based section 8 represent a fair compromise that will encourage mixed income populations in public housing and ensure that tenant-based assistance remains an important tool for housing choice for very low-income families.

Mr. President, this public housing reform bill is the first comprehensive housing reform measure to pass Congress in almost six years. It is a good, bipartisan package that represents the most significant reform of public and assisted housing in decades. I urge my colleagues to adopt this conference report and I urge the President to sign the bill.

Mr. President, Senator SARBANES was not here when I mentioned earlier how much I appreciate his working with us, working with me. In trying to find ways to keep the process moving as we would hit roadblock after roadblock after roadblock, I want to extend to him publicly my appreciation for his work; also, again, to Senator MIKULSKI, and to Senator BOND. We know that we added to their difficulties. We greatly appreciate what they were able to accomplish with us.

Lastly, I want to mention some members of the staff. Jonathan Miller, and Matt Josephs of the minority staff, again, just went out of their way to help us accomplish this. David Hardiman and Melody Fennel—I thank them as well.

Chris Lord, Kari Davidson, and Cheh Kim of my staff did an outstanding job and did so many hours in publishing to accomplish this, at moments of maybe thinking that we weren't going to make it but held in there to get the job done. I thank them.

I thank the Chair for his indulgence. I yield the floor.

The PRESIDING OFFICER. The Senator from Maryland.

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

Mr. SARBANES. Mr. President, I thank the Chair.

First, although I am going to speak a little longer, I want to say that in my involvement in this process, I thank Senator MACK for his very generous and gracious comments, and I want to say that this bill would never have happened but for his very fine leadership. I am extremely indebted to him for the very positive and instructive and understanding way he moved this process forward. It has been a long and difficult process, but I am very pleased that we have arrived at this day.

First, let me express my very strong support for this bill. I want to commend Senator MIKULSKI and the chairman, Senator BOND, for their very excellent work with respect to the matters before the Appropriations Subcommittee on Housing and Urban Development and have plauded them for the excellent bill they have written with regard to the funding for the Department of Housing and Urban Development.

The President submitted a strong budget. And I am happy to see that the bill now before us responds to many of those requests.

The bill represents a well-rounded approach to housing and economic development. It provides for 50,000 new housing units to help people move from welfare to work by eliminating the current 90-day wait on reissuing vouchers upon turnover. The bill effectively adds another 40,000 vouchers.

It provides $500 million in additional capital funds for public housing modernization to help maintain this important affordable housing resource. And the bill includes a total of $625 million for Hope VI, the very innovative program that was created by my very able colleague, Senator MIKULSKI, which is focused on tearing down the worst, most isolated public housing projects and replacing them with mixed-income housing. Senator MIKULSKI has been an absolute champion of trying to rescue this situation which plagues many of our very large housing projects. I want to acknowledge the tremendous leadership that she has provided in this area.

Working together with Senator BOND, they have fashioned what I think a first-rate piece of legislation. I am very pleased to support it.

Let me say, since she is my very able colleague, what a pleasure it has been working with her. I sit on the authorizing committee. Of course, she is on the appropriating committee. Over the years we have been able to work together I think in a partnership not only for our State but for the country.

Mr. President, the primary reason I come to our colleagues is to call the Senate's attention to the fact that an important piece of legislation reforming the Nation's Public Housing Program is attached to this appropriations conference report. This is a tremendous step forward. This public housing legislation I think represents a fine piece of legislative craftsmanship. It reflects a bipartisan approach to reform of our public and assisted housing.

We have been working at this problem, I think been working at this problem for 4 years, at least. The success of this effort reflecting what is before us, is, to a very significant extent, the result of the fine leadership provided by Senator MACK as Chairman of the Housing Subcommittee of the authorizing committee; the work of Senator KERRY, the ranking member of that subcommittee, interacting with our House colleagues, and the able and effective urgings of the Secretary of Housing and Urban Development.

Senator MACK has taken a keen interest in the area of public housing since he took over the housing subcommittee in 1995. He has personally visited public housing authorities and has spoken to administrators and residents. The commitment of his own time and concern I think is a model of how people responsible for certain programs need to understand the program, oversee the program, and then formulate the changes which will make the program work better.

Senator MACK has been a strongly positive and constructive force throughout the long and often difficult process we have followed to get this positive resolution. I am pleased to express publicly my very deep respect and appreciation for his efforts.

Mr. President, this public housing bill embodies an important bargain. We provide public housing authorities with increased flexibility to develop local situations to address housing needs in their communities but, in turn, they are required to use that flexibility to better serve their residents by creating more economically integrated communities.

The PHAs will get more flexibility in how to use operating and capital funds. It encourages them to seek new sources of private capital to both build new housing and to repair existing units. It provides more flexibility in the calculation of public housing development costs and encourages the construction of higher quality housing.

Finally, the law gives PHAs increased flexibility for the most income families while guaranteeing that the poor, including the working poor, continue to have access to 40 percent of the public housing units made available each year.

This new increased flexibility is not an end in itself. The purpose is to provide higher quality housing in an overall improved living environment to the families who live in public housing. We want the Public Housing Program and the Rental Voucher Program, which the appropriators have generously supported in this legislation, to be stepping stones to better lives, to provide access to better schools and more economic opportunities.

There is now a growing consensus that we need to have a mix of families with different levels of income in public housing. Such a policy will strengthen public housing projects and make them more livable communities. To achieve this outcome, the legislation requires the public housing authorities to demonstrate how they will attempt to create these more economically integrated communities. The Secretary
The bill also creates new rent rules that encourage existing tenants to go to work. There is a mandatory earned income disregard so that tenants who start working will reap the benefit of that effort at least for a year before additional payments are phased in. As a result of the special efforts of Senator Kerr, the bill deepens the targeting above poverty levels that tenant in both House and Senate bills for section 8 vouchers, requiring 75 percent of vouchers to go to lower-income families.

The bill gives tenants an important role in working with housing authorities to determine housing policies. Residents will sit on boards, and the resident advisory boards I think will be very helpful.

Mr. SARBANES. May I have 30 seconds, if the chairman has any time? The PRESIDING OFFICER. All time has expired.

Mr. BOND. Mr. President, I ask unanimous consent that the distinguished Senator from Maryland have an additional minute. I ask for an additional 3 minutes on this side to afford 2 minutes to my colleague from Ohio and a minute for myself to close.

The bill gives tenants an important role in working with housing authorities to determine housing policies. Residents will sit on boards, and the resident advisory boards I think will be very helpful.

Mr. BOND. Mr. President, I yield.

The PRESIDING OFFICER. Mr. BOND is recognized for 2 minutes.

Mr. BOND. Mr. President, I rise today to discuss two important provisions in this bill—provisions that honor two distinguished Ohioans who are retiring from public service this year—Lou Stokes and John Glenn.

Mr. President, the bill before us would name the Veterans Administration Medical Center in Cleveland, Ohio, the Louis Stokes VA Medical Center. That is a fitting tribute for a number of reasons.

First, Lou Stokes is a veteran, serving our country in the U.S. Army during the Second World War. Second, as ranking member of the House Appropriations Subcommittee on Veterans Affairs, Lou Stokes has demonstrated he is a true champion on behalf of his fellow veterans.

Third, Lou Stokes in recent years has dedicated his attention to improving the quality of care at the facility that will bear his name. He has been working tirelessly with me to provide funds to improve this facility for our veterans in northeast Ohio. This bill in fact contains $20.8 million to improve the ambulatory care unit at the Stokes Medical Center. That is the latest of a lifetime of examples of how Lou Stokes has made a difference—a difference for veterans and for all his constituents.

I also am pleased and proud that the bill before us contains a provision that, in my view, represents the deepest feelings of the people of Ohio regarding our senior Senator John Glenn.

Mr. President, it would be fair to say that the imagination of Ohio, and indeed of all America, has been captured by Senator Glenn’s imminent space voyage. It is an inspiring odyssey. It is exciting—it reminds us of the spirit of American possibility we all thrilled to when John Glenn made his first orbit back in 1962.

Senator Glenn’s return to space as a member of the crew of the space shuttle Discovery marks the culmination of an incredible public career. This is man who flew 149 heroic combat missions as a Marine pilot in World War II and the Korean War—facing death from enemy fighters and anti-aircraft fire.

And none of us who were alive back in 1962 can forget his historic space flight. I was in Mr. Ed Wingard’s science class at Yellow Springs High School in Yellow Springs, Ohio—we were glued to the TV. Our hearts, and the hearts of all Americans, were with him that day. John Glenn reassured us all that America didn’t just have a place in space. At the height of the cold war, he reassured us that we have a place—in the future.

And that, Mr. President, brings me to the purpose of the legislation I am introducing. Even as we speak, in Cleveland, Ohio, there are some hardworking men and women of science who are keeping America strong, who are keeping America from having an arm’s length advantage. They are the brilliant, persevering, and dedicated workers of the NASA-Lewis Space Research Center. People who understand aviation know how crucially important the cutting-edge work of NASA—Lewis scientists is, for America’s economic and technological future.

Mr. President, what more fitting tribute could there be to our distinguished colleague, Senator Glenn, than to rename this facility—in his honor?

That, Mr. President, is the purpose of this legislation. It recognizes not just a man’s physical accomplishments—but his spirit. It inspired us in 1962. It inspires us this year. And it will remain strong in the work of all those who expand America’s frontiers.

The facility would be renamed the National Aeronautics and Space Administration John H. Glenn Research Center at Lewis Field—to honor our distinguished colleague, and also the aviation pioneer for whom it is currently named. George Lewis became Director of Aeronautical Research at the precursor to NASA, in 1919. It was then called the National Advisory Committee on Aeronautics, or NACA. Lewis visited Germany prior to World War II. When he saw their commitment to aeronautic research, he championed American investment in aeronautical improvements—and created the center which eventually bore his name.

He and John Glenn are pioneers on the same American odyssey. Ohio looks to both of them with pride—and with immense gratitude for their leadership.

And I am proud, today, that we were able to include this in the bill. I thank my colleagues on both sides. On my side, this is a very difficult piece of legislation. It recognizes not just a man’s physical accomplishments—but his spirit. It inspired us in 1962. It inspires us this year. And it will remain strong in the work of all those who expand America’s frontiers.

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He and John Glenn are pioneers on the same American odyssey. Ohio looks to both of them with pride—and with immense gratitude for their leadership.
October 8, 1998

I urge my colleagues to support this measure because I believe, while it has many compromises in it, they are reasonable compromises. I am most hopeful that we can have a resounding vote and see this measure signed into law.

Mr. President, I ask for a yeas and nays on this conference report.

The PRESIDING OFFICER. Is there a sufficient second?

There is a sufficient second.

The yeas and nays were ordered. The PRESIDING OFFICER. The question is on agreeing to the VA–HUD conference report. The yeas and nays have been ordered. The clerk will call the roll.

The assistant legislative clerk called the roll.

Mr. NICKLES. I announce that the Senator from North Carolina (Mr. HELMS) is necessarily absent.

Mr. FORD. I announce that the Senator from Ohio (Mr. GLENN) and the Senator from South Carolina (Mr. HOLINGS) are necessarily absent.

The PRESIDING OFFICER (Mr. INHOFE). Are there any other Senators in the Chamber who desire to vote?

The result was announced—yeas 96, nays 1, as follows:

[Rollcall Vote No. 307 Leg.]

YEAS—96

Abraham Enzi Lugar
Akaka Faircloth Mack
Allard Feingold McCain
Ashcroft Feinstein McConnell
Baucus Ford Mikulski
Bennett Fred Musgrave
Biden Gorton Moynihan
Bingaman Graham Murkowski
Bond Gramm Murray
Boxer Grams Nickles
Breaux Grassley Reed
Brownback Gregg Reid
Bryan Hagel Robb
Bumpers Hatfield Roberts
Burns Hatch Rockefeller
Byrd Hutchinson Roth
Campbell Hutchison Santorum
Chafee Inhofe Sarbanes
Cleland Inouye Sessions
Coats Jeffords Shelby
Coogan Johnson Smith (NH)
Collins Kemphorne Smith (OR)
Corzine Kennedy Snow
Coverdell Kerrey Specter
Craig Kerry Stevens
D’Amato Kohl Thomas
Daschle Landrieu Thompson
DeWine Lautenberg Thurmond
Dodd Leahy Torricelli
Domenici Levin Warner
Dorgan Lieberman Wallack
Durbin Lott Wyden

NAYS—1

Kyl

NOT VOTING—3

Glenn Helms Hollings

The conference report was agreed to. Mr. LOTT addressed the Chair.

The PRESIDING OFFICER. The majority leader.

SENIOR GORTON RECEIVES HIS FIFTH GOLDEN GAVEL AWARD

Mr. LOTT. Mr. President, yesterday evening the senior Senator from Washington, Senator GORTON, reached 100

presiding hours in the 105th Congress for his 100 hours of service presiding over the Senate. He will be awarded the Golden Gavel. But there is an interesting point here. This is the fifth Golden Gavel that Senator GORTON has obtained in the Senate—representing 500 hours presiding in the Senate Chamber.

I think most Senators will acknowledge that he does an excellent job when he is the Presiding Officer. He is one we call on quite often on Friday afternoon at night. He is always willing to do it. And he dedicates each one of these Golden Gavels to one of his grandchildren. He has seven. This is the fifth one; so he has two more to go.

This is an assignment that takes time and patience. I publicly thank Senator GORTON for achieving this and for the way that he is doing it for his grandchildren.

I ask my colleagues to join in expressing our appreciation.

(Applause.)

Mr. DASCHLE addressed the Chair.

The PRESIDING OFFICER. The minority leader.

Mr. DASCHLE. I do not know that anything else needs to be said, but I certainly want to join with the majority leader in offering my congratulations and my condolences for all of those hours. As one who has only been presented one Golden Gavel in my time in the Senate, I can appreciate the magnitude of the accomplishment just accomplished by the senior Senator from Washington. On behalf of all of our colleagues, I join in congratulating the Senator. I yield the floor.

INTERNET TAX FREEDOM ACT

Mr. MCCAIN. Mr. President, what is the pending business?

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read a bill (S. 442) to establish national policy on the taxation of property, goods, services, or information accomplished through other means.

A bill (S. 442) to establish national policy on the taxation of property, goods, services, or information accomplished through other means; or

(II) the processing of orders through the Internet;

(III) imposes an obligation to collect or pay sales and use taxes on property, goods, services, or information accomplished through other means;

(2) DISCRIMINATORY TAX. The term "discriminatory tax" means—

(A) any tax imposed by a State or political subdivision thereof on commercial activity with respect to sales or use of property, goods, services, or information accomplished through other means, unless the rate is lower as part of a phase-out of the tax over not more than a 5-year period;

(B) any tax imposed by a State or political subdivision thereof that—

(i) except with respect to a tax on Internet access that was generally imposed and actually enforced prior to October 1, 1998, the ability to access a site on a remote seller's computer server is considered a remote seller for determining tax collection obligations; and

(ii) the display of a remote seller's information or content on the out-of-State computer server of a provider of Internet access service or online services is deemed to be the agent of a remote seller for determining tax collection obligations as a result of—

(I) the display of a remote seller's information or content on the out-of-State computer server of a provider of Internet access service or online services;

(ii) the processing of orders through the out-of-State computer server of a provider of Internet access service or online services.

The PRESIDING OFFICER. Is there objection to the amendment being modified?

Mr. GRAHAM addressed the Chair.

The PRESIDING OFFICER. The Senator from Florida.

Mr. GRAHAM. Mr. President, I raise a point of order that this amendment is not germane.

The PRESIDING OFFICER. Would the Senator from Florida suspend for just a moment?

The clerk first will report the amendment.

The assistant legislative clerk read as follows:

The Senator from Arizona (Mr. MCCAIN), for himself and Mr. WYDEN, proposes an amendment numbered 3711, as modified.

The amendment is as follows:

On page 26, beginning with line 3, strike through line 5 on page 27 and insert the following:

(2) DISCRIMINATORY TAX.—The term "discriminatory tax" means—

(A) any tax imposed by a State or political subdivision thereof on transactions involving similar property, goods, services, or information accomplished through other means; or

(ii) is not generally imposed and legally collectible by such State or such political subdivision on transactions involving similar property, goods, services, or information accomplished through other means, unless the rate is lower as part of a phase-out of the tax over not more than a 5-year period; or

(iii) imposes an obligation to collect or pay the tax on a different person or entity than in the case of transactions involving similar property, goods, services, or information accomplished through other means;

(iv) establishes a classification of Internet access service providers or online service providers for purposes of establishing a higher tax rate to be imposed on such providers than the tax rate generally applied to providers of similar information services delivered through other means; or

(B) any tax imposed by a State or political subdivision thereof—

(i) except with respect to a tax on Internet access that was generally imposed and actually enforced prior to October 1, 1998, the ability to access a site on a remote seller's out-of-State computer server is considered a factor in determining a remote seller's tax collection obligation; or

(ii) a provider of Internet access service or online services is deemed to be the agent of a remote seller for determining tax collection obligations as a result of—

(I) the display of a remote seller's information or content on the out-of-State computer server of a provider of Internet access service or online services; or

(ii) the processing of orders through the out-of-State computer server of a provider of Internet access service or online services.

The PRESIDING OFFICER. Is there objection to the amendment being modified?

Mr. GRAHAM. Mr. President, I object to the modification of the amendment and raise a point of order that the amendment is not germane.
The PRESIDING OFFICER. The Senator from Arizona [Mr. MCCAIN], for himself and Mr. WYDEN, proposes an amendment numbered 3711.

The amendment is as follows:

On page 26, beginning with line 3, strike through line 5 on page 27 and insert the following:

(2) DISCRIMINATORY TAX.—The term "discriminatory tax" means—

(A) any tax imposed by a State or political subdivision thereof on electronic commerce that—

(i) is not generally imposed and legally collectible by such State or such political subdivision involving similar property, goods, services, or information accomplished through other means;

(ii) is not generally imposed and legally collectible at the same rate by such State or such political subdivision on transactions involving similar property, goods, services, or information accomplished through other means in a manner that is lower than the tax rate generally applied to providers for purposes of establishing a high-tax environment of this type.

(MR. MCCAIN.)

For the information of my colleagues, I want to explain what will occur here and the significance of this vote.

By the way, as far as the modification is concerned to amendment No. 3711, since it is agreed on both sides, once we dispense with this parliamentary tactic, then obviously we will be able, by unanimous consent, to modify a concern that was not in the amendment.

Mr. GRAHAM. I object to that request to modify and I raise again the point of order that the amendment is not germane.

The PRESIDING OFFICER. There is no request to modify the pending amendment. There is a duly filed motion to suspend the rules with respect to that amendment. The motion to suspend is debatable.

Mr. MCCAIN. Mr. President, point of parliamentary inquiry. Will there be a ruling on the motion of the point of order as to germane?

The PRESIDING OFFICER. The motion to suspend the rules needs to be resolved.

Mr. MCCAIN. Further point of inquiry.

The PRESIDING OFFICER. The Senator from Florida.

Mr. MCCAIN. What is the position relative to debate on the motion to suspend the rules for the purpose of considering this amendment?

The PRESIDING OFFICER. The Senate is operating under cloture, and the motion will be debatable as under the limitation of the cloture rule.

Mr. MCCAIN. Mr. President, has the Chair ruled?

The PRESIDING OFFICER. The Senator from Arizona.

MOTION TO SUSPEND THE RULES

Mr. MCCAIN. In full accordance with the rules and procedures of the Senate and pursuant to the notice filed yesterday, I move to suspend rule XXII as it applies to the consideration of amendment No. 3711.

And, Mr. President, for the information of my colleagues, I want to explain what will occur here and the significance of this vote.

Mr. MCCAIN. In full accordance with the rules and procedures of the Senate and pursuant to the notice filed yesterday, I move to suspend rule XXII as it applies to the consideration of amendment No. 3711.

And, Mr. President, for the information of my colleagues, I want to explain what will occur here and the significance of this vote.

By the way, as the modification is concerned to amendment No. 3711, since it is agreed on both sides, once we dispense with this parliamentary tactic, then obviously we will be able, by unanimous consent, to modify a concern that was not included in the amendment.

At some point this morning we will vote to suspend the rules regarding germaneness with respect to the pending amendment. Senator WYDEN and I would have offered this amendment, long before cloture was invoked, but we didn't because we were still negotiating language with other Senators—specifically, the Senator from North Dakota and other Senators—who were involved in this very important piece of legislation. We could have offered it and I am sure we could have passed the amendment, but in the environment of trying to reach overall agreement on language of this legislation we did not do it at that time. I did not propose this amendment in order to accommodate other Senators. As we all know, sometimes there are package agreements involving different parts of the legislation.
Let me briefly explain why this amendment is needed. The amendment does two things. First, it clarifies what is a discriminatory tax. This is necessary because without this definition the moratorium is rendered meaningless. States, for example, if an app, new item every time a new product appears. They simply interpret existing laws to apply to the products. What we are seeking to do here is clarify that the Internet cannot be singled out for the application of a tax in a discriminatory manner. An item which has a widget, a tax, or a cellular phone tax, or a microwave oven tax, it would not be able to apply such tax in a discriminatory manner solely to the Internet and thereby claim the moratorium does not apply.

Mr. President, if this definition is not included in the bill, then the moratorium is gutted.

The second part of the amendment clarifies that the location of a server or of website may constitute nexus. This is exceedingly important. If an individual in Illinois, sitting at his or her desk is surfing the web and buys a product for his mother in Maine, using a server located in Massachusetts, the fact that the server is located in Florida, or in Ohio, should not constitute nexus for the purposes of taxation. Neither the purchaser nor the company from which merchandise was purchased, nor the recipient, under this exemption.

So, again, this language simply clarifies this matter. We do not state that the appearance of a catalog in someone’s mailbox constitutes nexus. This provision simply updates that fact in the age of the Internet.

As technology bypasses us all and the use of the web becomes more and more ubiquitous and seamless, we will need to protect the technology that is fueling our economy. The issues of Quill and others here, the need for a definition and should not have to pay taxes will and should be settled by the Congress and the States. But regardless of that outcome, this technology should not be harmed by onerous, discriminatory, unfair—and in many cases—outdated laws.

To close, adoption of this amendment is vital to the passage of this legislation. This vote is key to its passage. If we fail to muster the 66 votes necessary, this bill will be dead. And as I have said, we wanted to kill it all along. We were forced to file cloture on the motion to proceed. We were forced to file cloture on the bill. We did all we could to accommodate all Senators with interests in this bill. We protected the rights of Senators to offer and debate amendments.

We did not have to allow the senior Senator from Arkansas an opportunity to offer non-germane amendments prior to cloture we did. We could have filled 20 changes to try to address concerns. I have done that to the 20 changes to try and accommodate the Senator from Florida and others. In fact, the definition of a discriminatory tax—which is what this is all about—is essentially that which was used in the House, and it was acceptable to the Governors and the States when it was debated there in the House. The reason that the Senator from Arizona and I have focused on this issue is that this definition of discrimination is essential to ensure technological neutrality.

What this definition does is straightforward. It ensures that the new technology and the Internet is not discriminated against. It makes sure that a web site is treated like a catalog; catalogs aren’t taxed. We don’t want the Congress to be single examples of selective and discriminatory treatment. The provision also makes sure that Internet service providers are, in effect, treated like the mail. The mail isn’t taxed when a product is shipped to the destination. Similarly, the Internet service provider should not be taxed merely for being the carriers or transmitters of information. In effect, Senator Coats recognized this in his amendment that was adopted yesterday.

So what we have done is, yesterday, we have worked with the Senator from North Dakota, Senator Enzi, and others, to address this discriminatory tax question in a way that we thought would be agreeable. Over-night, we tightened up the language to deal with the grandfathering question. The minority leader, Senator Daschle, made some important and, I thought, useful suggestions. We incorporated those this morning to make sure that when we talk about the grandfathering provision, as it relates to South Dakota and North Dakota, the grandfather provision would tightly protect those two States. We have done that. That Senator finds now that if we do not prevail on this point and the bill goes down, all of these efforts now for a year and a half are going to leave us in a situation where I think we will see, with respect to the Internet and the digital economy, the same problems develop that a year ago, with respect to mail order and catalogs. We have had a number of people at the State and local level saying, you know, with respect to the mail order and catalog issue, we wish we had done what you are bringing about with respect to the Internet.

We know that we have to have sensible policies so we can protect some of
the existing sources of revenue for the States. Some call it the "old economy"; I don't. I think they are extremely important to the States. We have to respect those, while at the same time writing the ground rules for the future, if and only if, where the Internet is going to be the infrastructure and where every few months takes us to exciting new fields and increases dramatically in revenue.

So I hope our colleagues will not cause all of the other important work that has been done here to be done. That is Senator Dodd's legislation and the important work done by Senator Bryan. There is a host of good measures that we agreed to accept as part of this legislation in an effort to be bipartisan and to accommodate our colleagues.

But, once again, the goalsposts are moving. The definition of discriminatory tax that came up in the House is essentially what we are using. The Governors and the States found that all other existing taxes other than the income tax, is acceptable. And then, after taking that kind of approach, even last night, we moved again, at the request of colleagues—and we thought they were reasonable requests—to tighten up the language. Now is the time to make sure that we do not gut this bill, the definition of a moratorium, and particularly don't gut a concept that we think is acceptable to our colleagues, and that is the concept of technological neutrality.

When you vote for the McCain-Wyden amendment to suspend the rules and pass this, you will be voting for a solid grandfather provision that ensures that all existing taxes are preserved. You will be voting to protect ongoing liabilities, which is what the Senator from Florida said he is concerned about, along with the Senator from Connecticut, and others. You will be voting to make sure, in a separate section, that all other existing taxes other than the income tax are preserved, and you will be voting for the principle of technological neutrality.

I think it would be a great mistake to gut this legislation now after all this progress has been made. I represent a State with 100,000 small businesses. These businesses are a big part of the economic future that we all want for our constituents. They cannot afford a crazy quilt of taxes that would be applied by a good chunk of the Nation’s 30,000 taxing jurisdictions, based on what we have seen during this debate.

Let's do this job right. Let's do it in a thoughtful and uniform way. I urge our colleagues to support this bipartisan amendment by Senator McCain and I have offered. I yield the floor.

Mr. Graham addressed the Chair.

The PRESIDING OFFICER. The Senator from Florida is recognized.

Mr. Graham. The PRESIDING OFFICER. Mr. President, who was a distinguished member of the Senate of the State of Wyoming, knows and from his professional career as a CPA, nexus has traditionally been determined by State law, not by Federal law. Each State determines what is the necessary presence for tax purposes.

So the essential position of the Finance Committee was, first, that this is a matter that was being properly dealt with at the State level, and that was not a compelling reason why we should federalize the tax.

Second, they found that no State is currently attempting to enforce a tax collection obligation on the basis of the circumstances outlined in amendment number 3711. With the McCain amendment number 3711, the Finance Committee was, first, that this is a matter that was being properly dealt with at the State level, and that was not a compelling reason why we should federalize the tax.

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amendment has been increasingly in the public attention. That is the fact that there are States which either are or are potentially in litigation with various providers within the Internet industry over the question of their tax liability. We have been sensitive to that in this legislation by providing a grandfather clause, which essentially protects the right of those States. As presented, this nexus amendment clause is retroactive, as the discriminatory tax definition in this legislation is determined by the current grandfather clause, and would apply to past events.

There is concern that the effect of this legislation would be to tilt the playing field in the courtroom of that litigation by making it more difficult on a retroactive basis for the States to make their arguments about an adequate nexus to the State as the basis of taxation of these Internet providers.

I don't think that this Congress wants to get itself into ongoing litigation which might involve the State of Mississippi, or the State of North Dakota, or the State of Arizona, or the State of Florida, or any other State. That is not our business, and I do not think that we can or should intrude into that thickness of litigation.

Mr. President, it is for those reasons that I believe this amendment is defective. This Senate has adopted rules that provide that, after cloture has been invoked, the only amendments that can be considered are those that are germane to the bill.

The very fact that the sponsors of this amendment have filed what is a very unusual motion to suspend the Senate's rules as it relates to germane is an indication that, first, they don't think it is germane; and, second, that under the rules of the Senate it should not be debatable in this postcloture environment.

As the managers and sponsors of this bill, they have had ample opportunity to get this language included throughout this long and tedious process. They have not done so. Now, in the postcloture environment, they are asking us to waive a fundamental rule of the Senate, which is, after cloture has been invoked, the only amendments that can be filed by the primary sponsor of the bill, now they want to be able to take up what we believe to be an inopportune amendment, an amendment which was rejected after thorough analysis by the Senate Finance Committee, a measure which I think would have the effect of injecting us into litigation and affecting potential litigation between the States and various Internet providers.

Mr. President, I strongly urge my colleagues that we not adopt this motion, that we not change our rules, that we play by the rules that we have agreed to, and that we play by the rules that have been in effect between States and the Internet industry in the past, and not retroactively reach back and adopt a provision which could interfere with the normal resolution of pending litigation.

Having said all of that, Mr. President, it is my hope that while this discussion has been going on, there have been good-faith efforts made to arrive at a resolution of this issue, and I would be my suggestion to have possibly a brief period by suggesting the absence of a quorum so that we might see if in fact we have arrived at a resolution that would obviate the necessity of the general steps that would be required in order to further pursue this matter. I think that would be in everybody's interest.

I suggest the absence of a quorum. The PRESIDING OFFICER. Without objection, it is so ordered. The Senator from Arizona.

Mr. MCCAIN. Mr. President, I ask unanimous consent that the amendment numbered 3711 be withdrawn, and I send to the desk amendment No. 3711 with a modification.

The PRESIDING OFFICER. Is there objection? Without objection, it is so ordered.

The amendment (No. 3711) was withdrawn. AMENDMENT NO. 3711, AS MODIFIED (Purpose: To define what is meant by the term "discriminatory tax" as used in the bill.)

The PRESIDING OFFICER. The clerk will report the new amendment as so modified.

The legislative clerk read as follows: The Senator from Arizona [Mr. MCCAIN], for himself and Mr. WYDEN, proposes an amendment numbered 3711, as modified.

Mr. MCCAIN. Mr. President, I ask unanimous consent that reading of the amendment be dispensed with.

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

The amendment is as follows: On page 25, beginning with line 3, strike through line 5 on page 27 and insert the following:

(2) DISCRIMINATORY TAX—The term "discriminatory tax" means—

(A) any tax imposed by a State or political subdivision thereof on electronic commerce that—

(i) is not generally imposed and legally collectible by such State or such political subdivision on transactions involving similar property, goods, services, or information accomplished through other means;

(ii) is not generally imposed and legally collectible at the same rate by such State or such political subdivision on transactions involving similar property, goods, services, or information accomplished through other means, unless the rate is lower as part of a phase-out of the tax over not more than a 5-year period;

(iii) imposes an obligation to collect or pay the tax on a different person or entity than in the case of other taxes involving similar property, goods, services, or information accomplished through other means;

(iv) establishes a classification of Internet access service providers or online service providers for purposes of establishing a higher tax rate to be imposed on such providers than the tax rate generally applied to providers of similar information services delivered through other means; or

(B) any tax imposed by a State or political subdivision on transactions involving similar property, goods, services, or information accomplished through other means. (iii) imposes an obligation to collect or pay the tax on a different person or entity than in the case of other taxes involving similar property, goods, services, or information accomplished through other means;
words and all of the provisions. That is why it was hard to sift through all of this and reach an agreement. But an agreement has been reached that I think is a good agreement, one that accomplishes the purpose of this legislation in a manner that is not injurious to any other interests.

I thank the Senator from Arizona—I would say for his patience, but he is a Senator who is impatient to get things done on the Senate floor. I understand that and accept that, as do others. That is why he brings a lot of legislation to the floor and is successful with it.

I thank the Senator from Oregon who has been at this task for a long, long time and has been very determined to help get this legislation through the Senate.

Let me say to the Senator from Florida, one of the admirable qualities of that Senator, among many, is his stubborn determination to make certain that when things are done here, they are done the right way and that he understands it and that the interests affected are protected in a manner that is consistent with what he views as a matter of principle. I know that is frustrating to the Senators from the Senate of Florida certainly has that right. He contributes to this process by being determined to make certain we understand the consequences of all of this.

I thank him for working with us now in these final moments to reach an agreement that I think is the right agreement. We will pass this legislation, and I think we have accomplished something significant.

Mr. President, let me also indicate that my staff member, Greg Rohde, who has been working on these issues for many, many years with me, has done an outstanding job, as well as have other staff who have helped work through this process. I thank him for his work.

I yield the floor.

Mr. GRAHAM addressed the Chair.

The PRESIDING OFFICER. The Chair recognizes the Senator from Florida.

Mr. GRAHAM. Mr. President, I understand I only have 22 seconds. I want to say some positive things. I ask that I may be yielded—

Mr. McCAIN. I yield the Senator from Florida as much time as he may use from my time.

Mr. President, I appreciate that generosity, and I will not overly indulge. Let me say, we have reached an honorable resolution to this issue which, for those who have been listening to this arcane debate, I will summarize by saying a significant issue will be made prospective in its application and not have retroactive application. Reading the language we have agreed to add to the McCain amendment 3711, which makes a portion of the nexus language prospective in combination with the definition of “tax on internet access,” which was agreed to earlier, this amendment should not interfere with litigation between States and internet service providers. With that agreement, that has brought the various parties of interest into concurrence.

What I want to say, Mr. President, is the three people who have been particularly active, who are on the floor now—Senator McCAIN of Arizona, Senator DORGAN of North Dakota, Senator WYDEN of Oregon—are three of the finest people with whom I have had the privilege to serve in public office. If America was going to have its judges, I believe the question quite wisely, I would be happy to be judged by these three men.

As the Senator from Arizona said, we have had some degree of controversy, but that is the nature of the democratic process. If this were a passive and tranquil process where everybody voted 400 to 0, that would be reminiscent of the way in which the Soviet Union used to operate its parliament, not the U.S. Senate.

I think we have reached not only an appropriate resolution of this specific amendment, but I am proud where we are overall. We have achieved the purpose of having a reasonable period of timeout, with a thoughtful commission appointed to study some extremely complicated areas, the intersection of a legal system that is complex in areas of State-Federal relations, telecommunications and a highly complex new set of technologies.

This is an appropriate area for us to stand back and ask for the assistance of some thoughtful citizens who can bring their wisdom and experience to bear and give us the framework of some policy that then will be returned to the Senate and to the House of Representatives for enactment, as well as to the various State legislatures for their consideration.

I think we have, at the end of this process, arrived at exactly what our framers intended the legislative branch to do. I am proud to vote not only for this amendment but for the bill on final passage, and I look forward to the commission’s work over the next several months and a return to these subjects in the year 2000 or 2002.

Again, I thank my colleagues for their very significant leadership in bringing us to this position.

Several Senators addressed the Chair.

The PRESIDING OFFICER. The Chair recognizes the Senator from North Dakota.

Mr. DORGAN. Mr. President, I ask unanimous consent that Tyler Candeé be accorded the privilege of the floor for the rest of the day.

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

Mr. GRAHAM addressed the Chair.

The PRESIDING OFFICER. The Senator from Florida.

Mr. GRAHAM. Mr. President, I also would like to take this opportunity to thank Mr. Russ Sullivan who is legislative director in my office, and Kate Mahar, who has worked with him. They have been on a fast learning curve on these issues, fortunately, about 12 hours ahead of myself. I publically thank them for their contribution to this final inclusion.

Mr. WYDEN addressed the Chair.

The PRESIDING OFFICER. The Chair recognizes the Senator from Oregon.

Mr. WYDEN. Thank you very much, Mr. President. I think this may well be a historic day. What the U.S. Senate is doing is beginning to write the ground rules for the digital economy. As we have seen just in the last hour again, it is going to be a tough job.

We have had just in the last hour another set of questions that have come up with respect just to the terminology that is used in this new field. For example, some States call an Internet access tax a tax on on-line services.

What we have done now as a result of the agreement among the Senator from Arizona, the Senator from North Dakota, the Senator from Florida and myself, is we have said that we are going to treat those terms the same way when, in fact, they have the same meaning. I think that this exercise, while certainly laborious and difficult, is just an indication of the kind of challenges we have to overcome.

I thank particularly the Senator from Florida. He feels very strongly about this issue and has made the case again and again to me that it is important to do this job right, and I share his view. I thank him for his courtesies.

The Senator from North Dakota and I have been debating this legislation now for a year and a half, probably at a much higher decibel level than either of us would have liked.

The chairman of the committee, Chairman McCain, and I have been friends for almost 20 years. For the Senator from Oregon—not even a full freshman, an arrival in a special election—to have a chance to team up on this important piece of legislation is a great thrill. I thank him and his staff for all of their courtesies.

Before I make any final comments, I want to thank Ms. Carole Grunberg of our office who again and again, when this legislation simply did not look like it could go forward, persisted. And standing with Ms. Grunberg’s staff and Senator McCain’s staff, has helped to get us to this exciting day.

I am particularly pleased, Mr. President—I will wrap up with this—for the benefits that this legislation is going to have for people without a lot of political power in America. I think about the 100,000 home-based businesses I have in my State. I think about the disabled folks who are starting little businesses in their homes. For them, the Internet is the great equalizer. It allows people who would pick themselves as the little guy to basically be able to compete in the global economy with the big guys.
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Unless we come up with some ways to make uniform some of these definitions and terms, which is what we have been trying to do in the last hour—and we have made some real headway and reached a success—those little guys are going to find it hard to compete.

So I look forward to continuing the discussions with our colleagues as we look to other questions with respect to the Internet. This, it seems to me, is just the beginning of the discussion rather than the end.

Mr. President, I urge my colleagues now to support this modified amendment, to support the bill, and I yield the floor.

Mr. McCaIN addressed the Chair.

The PRESIDING OFFICER. The Chair recognizes the Senator from Arizona.

Mr. McCaIN. Mr. President, I again thank Senator WyDEN, Senator Dorgan, the Senator from Florida, Senator Graham, and all who were involved in this agreement and very complex issue. I also thank my staff—all of them, including Mark Buse.

I also would like to add to the comments of the Senator from Florida, Senator Graham, who said this is how the process should work. It has been very tough, very difficult, very time-consuming, but I think the magnitude of the legislation we are considering probably warranted all of that—and perhaps more. So I thank him very much. And as far as the freshman from Oregon is concerned, he has certainly earned his spurs as a member of the Commerce Committee.

By the way, I also thank the Chair for his involvement in this issue. He is probably the most computer literate Member of the U.S. Senate. We obviously value his talent and expertise and look forward to the day when he has his laptop on the floor for its use. And look forward to the day when he will have his laptop on the floor for its use. And look forward to the day when he has his laptop on the floor for its use.

Mr. President, I urge my colleagues now to support this modified amendment, to support the bill, and I yield the floor.

Mr. McCaIN addressed the Chair.

The PRESIDING OFFICER. The Chair recognizes the Senator from Arizona.

Mr. McCaIN. Mr. President, I again thank Senator WyDEN, Senator Dorgan, the Senator from Florida, Senator Graham, and all who were involved in this agreement and very complex issue. I also thank my staff—all of them, including Mark Buse.

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Mr. President, I urge my colleagues now to support this modified amendment, to support the bill, and I yield the floor.

Mr. WYDEN addressed the Chair.

Mr. WYDEN. Mr. President, I thank my colleagues both when he was in the House and now as a member of the Commerce Committee in the Senate. I'd also like to thank Senator McCaIN for his steadfastness and determination in ensuring that this important legislation is considered by the full Senate.

The Internet holds great promise to expand prosperity and bring ever more Americans into the national economy. In the past, to open a store and sell goods to the public, a merchant needed a storefront, build-out the storefront, maintain its interior, pay rent and deal with myriad other business and legal concerns. All of these actions consume time and often scarce resources. To many Americans, they present an unreachable high bar to starting or maintaining a business. The Internet will allow millions of Americans to sell goods and services online, and will dispense with many of the burdensome costs involved with starting and maintaining a business. One great impediment, however, to the evolution of commerce over the Internet is the immediate threat of both disparate taxing jurisdictions and inequitable taxation.

The product offered over the Internet can be purchased by anyone with a computer and a modem, regardless of the town or state in which the person lives. Imagine needing to know the tax consequences of selling to each of the thousands of taxing jurisdictions in the country as a prerequisite to starting a business. This problem becomes even more complex if states and localities begin to impose taxes on electronic transactions or transmissions as such, in addition to sales, use and other taxes.

This legislation attempts to reasonably address this concern by imposing a brief moratorium specifically on the issue of the multi-jurisdictional taxation of electronic commerce. It will allow the federal government, the states, the Internet industry and Main Street businesses a brief time-out to rationally discuss the several issues involved in Internet taxation and to develop a reasonable approach to taxation which permits electronic commerce to thrive in America.

In my view, the legislation does not seek to deprive states of needed tax revenue. Senators WyDEN and McCaIN have gone to great lengths to minimize the number of existing taxes that would be affected. In addition, the bill expressly grandfathering existing state taxes on Internet access. What the bill does, however, is attempt to ensure that the development of the Internet is not undermined by a bonfire of confusing state and local taxes.

This bill was carefully negotiated to address competing equities. States and localities certainly have very real and legitimate needs to raise revenue to sustain vital public and community functions. By the same token, the Internet and the promise it holds for our economy, for schools, for children and families, and for our democracy is also very compelling. It is a wholly new medium whose mechanics, subtleties and nuances few of us really understand. I do not hear any Senator stating that electronic commerce should never be the basis of tax revenue, and I do not believe any Senator is trying to permanently deprive states of important privileges. Instead, the bill strives to create a brief period during which we in government and those in business can attempt to better understand this new medium and create a sensible policy that permits the medium to flourish as we all want.

I urge my colleagues to support this bill.

Mr. ROTH. Mr. President, I rise to express my support for the Internet Tax Freedom Act. This legislation imposes a temporary moratorium on taxes relating to the Internet and establishes a Commission to study and make recommendations for international, Federal, state, and local government taxes of the Internet and other comparable sales and services.

This legislation reflects the exciting times in which we live—a time when commerce between two individuals located a thousand miles apart can take place at the speed of light. Today, names like Netscape, Amazon.com, Yahoo, and America On-Line are household names—each a successful company in a new and exciting global
business community. And they are only a few of literally thousands who provide their goods and services over the Internet.

They compete in a world where technological revolutions take place on a daily basis, thereby benefiting millions of families everywhere. Even in America's most remote communities, our children have access to the seven wonders of the world, to metropolitan art museums, electronic encyclopedias, and the world's best music and literature. These companies—and the countless companies like them—are pioneers. And the new frontier is exciting, indeed.

In the new realm of cyberspace, government has three choices: lead, follow, or get out of the way. The legislation we introduce today is a clear indication that government is prepared to lead. It demonstrates that Congress is not going to allow haphazard tax policies, and a lack of foresight to get in the way of the growth and potential of this new and promising medium. It makes it clear that government's interaction with Internet commerce will be well-considered and constructive—beneficial to future prospects of Internet business and the individuals they serve.

From the introduction of the Internet Tax Freedom Act, in early 1997, members of the Finance Committee expressed keen interest in considering this legislation. The Finance Committee has clear jurisdiction over state and local taxes—it's also the place for trade issues. And this July, we received a referral of the bill. We conducted a hearing on the issues and listened to witnesses detail the growth and potential of the Internet. Witnesses also articulated the many sides and concerns associated with the tax implications of Internet commerce.

Following our hearing, the Finance Committee held a markup, where we approved an amendment in the nature of a substitute to the original bill reported out of the Commerce Committee. The Finance Committee made significant improvements to the original legislation. We beefed up the trade component of the bill. We directed the USTR to examine and disclose the barriers to electronic commerce in its annual report. And we declared that it is the sense of Congress that international agreements provide that the Internet be free from tariffs and discriminatory taxation.

The Finance Committee's substitute also shortened the moratorium period on State and local taxes relating to the Internet. We did this with an understanding that the Advisory Committee, set up in the legislation, would not need the five year period that was set out in the original Commerce bill. At the same time, we streamlined the Advisory Committee and focused its study responsibilities.

We took out any grandfather provision, feeling that as a policy matter, there should not be any taxes on the Internet during the moratorium period—regardless of whether some States had jumped the gun and applied existing taxes to Internet access. The Finance Committee also felt that this bill should be an example to our international negotiating partners—that if States want to make the same provisions out of the international agreements, that we should remove them from our domestic taxation.

I recognize that there have been various dates that have changed some of the things we did in the Finance Committee. Despite those amendments, the central thrust of the legislation, which is to call a time-out while a commission assesses the Internet and makes some recommendations about how we should tax electronic commerce, remains. Important international provisions—relating to trade and tariff issues—also remain unchanged.

Mr. President, I support the Internet Tax Freedom Act. It is a demonstration of Congress' understanding of the exciting potential and the opportunities that will be realized in cyberspace. It is a thoughtful approach to a very important issue. It meets current needs, and allows continued growth in this new frontier. I hope my colleagues will join me in supporting it.

Mr. MOYNIHAN. Mr. President, I first want to thank the Chairman of the Finance Committee, Senator Roth, for having recognized that the Internet Tax Freedom Act be considered by the Finance Committee before any action on this floor. I recognize and applaud all of the effort that has gone into the other proposals dealing with this subject, and in particular we should acknowledge the work of Senators Wyden, McCain, Dorgan, Graham, Lieberman, and Gregg.

Since June of 1997, the chairman and I sought referral of this legislation to the Finance Committee. We had the opportunity to consider the important tax and trade issues related to the Internet, which by some estimates will grow to $300 billion of commercial transactions annually by the year 2000. The bill was finally referred to the Finance Committee on July 21st of this year.

That referral to the Finance Committee was consistent with Senate precedents. In recent years, the Finance Committee has had jurisdiction over legislation with direct impact on state and local taxes. Both the "source tax" bill that was of great interest to Senators Bryan, Reid, and Baucus, prohibiting states from taxing the pensions of former residents, and Senator Summers' mail order tax proposal, requiring mail order companies to collect and remit sales taxes due on goods shipped across state lines, were referred to the Finance Committee.

The legislation before us today also deals directly with international trade. It requests that the administration continue to seek trade agreements that keep the Internet free from foreign tariffs and other trade barriers. As reported by the Finance Committee, this bill would establish trade objectives designed to guide future negotiations over the regulation of electronic commerce—issues clearly within the Finance committee's bailiwick.

A few comments on the substance of this legislation. I am not entirely persuaded that there is a pressing need for a federal moratorium on the power of state and local governments to impose and collect certain taxes, but it seems to me that such a moratorium does enjoy a great deal of support. The two-year moratorium period in the Finance Committee bill and the three-year period agreed to as a floor amendment during this debate is surely preferable to the six-year provision in the Commerce Committee bill.

There is some question whether such a moratorium is actually necessary. New York is proof that States do not need a directive from Congress to act on this matter; Governor Pataki and the New York State legislature have agreed on a bill exempting Internet access services from State or local sales, use, and telecommunications taxes. The Governor's legislation also makes clear that out-of-state businesses will not be subject to State or local taxes on Internet activity occurring during the period of the moratorium.

With respect to the Advisory Commission on Electronic Commerce established by the membership of 36, almost half of that in the House bill, is manageable and is more likely to lead to meaningful recommendations. An item of particular interest to me is the requirement in that the Commission examine the application of the existing Federal "communications services" excise tax to the Internet and Internet access. We need to know more about how and whether that tax should apply to new technology.

This bill is not perfect, but on balance I believe it deserves our support. I urge its adoption and hope it can be enacted this year.

Mr. LOTT. Mr. President, I am pleased to rise in support of the Senate's overwhelming passage today of the Internet Tax Freedom Act. This bill represents several months of thoughtful consideration and discussion among Members on both sides of the aisle to address the tax treatment of this emerging medium of commerce. The way in which events have unfolded in technology have dramatically changed lifestyles. Today, it is the Internet changing lives, and unlike any other
technology to date. It is connecting people all around the world in ways that no one at the Department of Defense ever conceived of when the network was created. It is a true testament to the fact that leadership and entrepreneurial drive is alive and well in America.

This new tool of communication and information is also fast becoming one of the most important and vibrant marketplaces in decades. It holds great promise for businesses, both large and small, to offer their products and services for sale to a worldwide market. This is good news for everyone. It means new jobs, new opportunities and choices for consumers and retailers, and ultimately more revenue for state and local governments.

Mr. President, by its very nature, the Internet does not respect the traditional boundaries of state borders or county lines used to define our tax policies today. With some 30,000 taxing jurisdictions across America and a myriad of overlapping and burdensome taxes, this is a legitimate concern for consumers and businesses online. This issue needs to be explored and resolved.

The Internet Tax Freedom Act is about the Internet marketplace. It is about taking a necessary and temporary time-out so that a Commission of government and industry representatives can thoroughly study electronic commerce and make sensible recommendations to Congress about a fair, uniform and consistent Internet tax structure. The moratorium will apply to discriminatory and multiple taxes as well as to taxes paid just to access the Internet.

This legislation will treat Internet sales the same as any other type of remote sale. It will not favor the Internet or disadvantage others.

Businesses and consumers using electronic commerce need and deserve some sense of equal treatment and sense of uniformity about how they will be taxed.

Mr. President, over the past several months, I personally heard from governors and groups across the nation who expressed serious concerns about the hindering effect on electronic commerce due to ambiguous and conflictual tax treatment. I also heard from others expressing concerns about raising revenue and providing services to their citizens. People voiced support for a passage of a balanced bill that would represent their views. Adequate time was allowed for the Senate to hear what they had to say, and their concerns are reflected in the amendments and in the final bill.

Internet businesses, like many other issues faced in Congress, is not without controversy. The spirited exchange on the Senate floor during the past several days is evidence of that. I respect the views that have been debated.

I recognize the delicate balance in many of the views expressed, and appreciate the good faith efforts of my colleagues in working together to reach consensus. I know it was not easy.

Passage of this legislation was made possible by the hard work of many people.

First, I commend Senator John McCain, Chairman of the Senate's Commerce Committee, for his diligent leadership and commitment to tackle this complex and contentious issue. He has been steadfast throughout this process, and to him I say thank you.

I also owe a debt of gratitude for the work and contributions of the Chairman of the Senate's Finance Committee, Senator BILL ROTH. He provided a fresh perspective on the issue of electronic commerce.

Clearly, the participation of several Members with diverse interests was integral in moving this bill forward. I am proud to see Senators from both sides of the aisle—Senator BYRON DORGAN, Senator JUDD GREGG, Senator TIM JOHNSON, Senator JOE LIEBERMAN, and Senator RON WYDEN—all work together in a respectful manner to get the job done.

Nothing is ever accomplished in the Senate without the dedicated efforts of staff. I want to take this opportunity to identify those who worked hard to prepare this legislation for consideration. From the Senate Commerce Committee: Mark Buse, Jim Drewry, Carl Grunberg, Paula Ford, Kevin Joseph, John Raitd, Mike Rawson, and Jessica Ryan. From the Finance Committee: Stan Fendley, Keith Hennessey, Jeffrey Kupfer, Brigitta Pari, Frank Polk, and Mark Prater. Other individuals participated on behalf of their Senators: Renee Bennett, Laureen Daly, Richard Glick, Hazen Marshall, Greg Rhode, Mitch Rose, Stan Sokul and Russell Sullivan. I thank them all for their efforts.

Mr. President, the current power of the Internet and its future potential will advance America into the next millennium. Passage of the Internet Tax Freedom Act is a crucial step in recognizing the significance of the Internet in electronic commerce and what it will mean in the lives of every American consumer, to American businesses, and to America's economy.

Mr. LEAHY. Mr. President, I want to add my own support to promoting electronic commerce and keeping it free from new federal, state or local taxes. I am a cosponsor of the Internet Tax Freedom Act, S. 442.

In ways that are becoming increasingly apparent, the Internet is changing the way we do business. More than 50 million people around the world surf the net—50 million. And more and more of these users turn to the World Wide Web and the Internet to place orders with suppliers or to sell products or services to customers or to communicate with clients.

The Internet market is growing at a tremendous pace. Over the past 2 years, sales generated through the web grew more than 5,000 percent. In fact, in a recent Business Week article, electronic commerce sales are estimated to reach $379 billion by the year 2002, pumping up the Nation's gross domestic sales by $10 to $20 billion every year by 2002.

And I see it in my own State of Vermont. On my home page on the Web, I have put together a section called "Cyber Selling In Vermont." It is a step-by-step resource guide for exploring how you can have on-line commerce and other business uses of the Internet. It has links to businesses in Vermont that are already cyberselling.

As of today, this site includes links to web sites of more than 100 Vermont businesses doing business on the Internet. They range from the Quill Bookstore in Manchester Center to Al's Snowmobile Parts Warehouse in Newport.

For the past 3 years, I have held annual workshops on doing business on the Internet in which I have received a tremendous response to these workshops from Vermont businesses of all sizes and customer bases, from Main Street merchants to boutique entrepreneurs.

In my last doing Business on the Internet Workshop in Vermont, we had these small business owners from all over our State. They told how successful they have been selling on the Web. They had such Main Street businesses as a bed and breakfast, or in one case a wool boutique, and a real estate company. One example is Megan Smith of the Vermont Inn in Killington. She attended one of my workshops. Now she is taking reservations over the net, reservations not just from Vermont, but from throughout the country. So cyberselling pays off for Vermonters.

Now Vermont businesses have an opportunity to take advantage of this tremendous growth, to have their goods on line. I have tried to be a missionary for this around our State, because I believe the Internet commerce can help Vermonters ease some of the geographic barriers that historically have limited our limited our markets where our products can thrive.

The World Wide Web and Internet businesses can sell their goods all over the world in the blink of an eye, and they can do it any time of the day or night.

As this electronic commerce continues to grow—for even a small State like mine; we can see it all over the country—I hope we in Congress can be leaders in developing policies that will nurture this new market. I followed closely the Internet Tax Freedom Act since Senator WYDEN introduced it last summer. I want to commend the senior Senator from Oregon for his leadership on this cyber tax policy.

More than 30,000 cities and towns in the United States are able to levy discriminatory sales on electronic commerce. Because of that, we need this national bill to provide the stability necessary if this electronic commerce is going to flourish.

We are not asking for a tax-free zone on the Internet. If sales taxes and
other taxes would apply to traditional sales and services under State or local law, then those taxes would also apply to Internet sales under our bill. But the bill would outlaw taxes that are applied only to Internet sales in a discriminatory manner.

We do not want somebody to kill these businesses before they even begin because they think it is some way they can pluck the money out of the pockets of those who are using the Internet. We should not allow the future of electronic commerce to be crushed by the weight of multiple taxation. Without this legislation, they would have faced multiple taxation, and a lot of these Internet businesses now creating jobs, now flourishing, now adding to the commerce of our States would have been wiped out of business.

This legislation creates a temporary national pause to allow us to study and recommend appropriate rules for international, federal, State, and local government taxation of transactions over the Internet. This also will help us very, very much.

The Administration would submit its findings and recommendations to Congress within the next 18 months. With the help of this commission, Congress should be able to put a tax framework in place to foster electronic commerce and protect the rights of state and local governments when the three-year moratorium ends.

During my time in the Senate, I always tried to protect the rights of Vermont state and local legislators to craft their laws free from interference from Washington. Thus, the imposition of a broad, open-ended moratorium on state and local taxes relating to the Internet in the original bill gave me pause. I certainly agreed with the goal of not having the tax moratorium end before 1999. However, the provision in this tax bill that they did not want their States' taxes to be grandfathered into the tax moratorium, but instead preferred to stop taxing the Internet. This debate has raised the consciousness of public leaders as to the great benefits electronic commerce holds for U.S. business to improve its productivity and reach new customers, and even more importantly, the level playing field the Internet provides for small businesses. At the same time, awareness of the enormous problems faced by small businesses which are suddenly, over the net, selling beyond their physical reach and the uncertainties they face in the legal and tax environment in 30,000 taxing jurisdictions.

The second major benefit of this bill will be to slow down the taxation of the Internet. The moratorium in S. 442, while grandfathering in existing State taxes on Internet access, will prevent new taxes from being added.

The third, and I consider the most important, major benefit of this legislation will be the creation of a commission to draft model State legislation. The moratoriums foreclose many theories for these new Internet companies and transactions that gives these firms some certainty as to how they will be treated tax-wise in the different States. This is the essence of the bill that Senator GREENE and I introduced in March, called NETFAIR, S. 1888—to remove the uncertainty under which electronic commerce companies have had to operate in the United States and bring some order to the interstate business climate. It is important to note that this model State legislation would not preempt the States, but would be adopted by the States, at their choice.

The Senate agreed to expand the duties of the commission beyond that of drafting model State legislation to looking at the States' collection of use taxes on all remote sales. This is a legitimate area of study and of concern within the Commerce and Finance Committee. In opposing this amendment, I was merely voicing my concern that the commission may become bogged down in a debate over the taxation of catalog sales that I fear it will not be able to stand focused on its job and accomplish the very useful purpose of helping create a predictable legal environment for electronic commerce. It is my hope that the commission will try to complete the draft State legislation outlined in S. 442 first before turning to this larger debate.

At this point, I want to thank Senators ROTH and MUYNIHAN and the rest of the Finance Committee members for adding the International element to this bill. The Finance Committee recognized the need to create a domestic policies toward the Internet in the context of the international environment. Just as the Internet puts small companies on an equal footing with large companies, it also is creating a new international playing field. Developing countries that have not yet fully industrialized, and countries whose telephone penetration is only a fraction of that in the United States, can leap frog entire stages of technological advancement and move to fiber optic and wireless technologies that will carry video, sound, data, and voice.

A number of my colleagues and I have had an opportunity to speak with John Chambers, the President and CEO of Cisco Systems, one of the major suppliers of networking equipment at a breakfast last week. He knows something about electronic commerce since his company accounted for one-third of electronic commerce in 1998.

I was very impressed when he said that, on his trip through Asia, the political leaders of Singapore, Malaysia, Hong Kong and China wanted to hold substantive one- to two-hour conversations with him because they understand the power on the Internet and understand that information technology will change, not just their country's economy, but the economy of the world. They understand that those countries that embrace the information age will prosper and those who don't will fall behind.

Once again, Mr. President, I want to thank my colleagues and their staffs for the extraordinary effort they made to reach this point where we can finally vote on this straightforward legislation.

Mr. WARNER. Mr. President, I rise to restate my strong support for the Internet Tax Freedom Act. I am proud to be a cosponsor of this legislation.
and pleased that with end the 105th Congress legislation that brings fairness and equitable tax treatment to hundreds of Virginia Internet and online companies.

It has been a difficult week, but we have been reaching a resolution on this most important issue. This moratorium is critical to the development of an industry that has become a pillar of Virginia's, and our Nation's, economy.

I will ask a resolution passed earlier this year expressing the sense of the General Assembly of Virginia that the Internet should remain free from State and local taxes.

Mr. President, I also wish to commend Governor Jim Gilmore. He has been a tireless advocate and a true leader on this issue. He was one of a handful of governors to recognize the potential of this industry and the irreparable harm that could come to it at the hands of tens of thousands of tax collectors across the Nation. He shares my view that we will remain the leader in the information technology industry only as long as we pursue policies of lower taxes and less regulation—policies that have made Virginia such an attractive home to thousands of high-tech companies and their employees.

HOUSE JOINT RESOLUTION No. 36

Expressing the sense of the General Assembly of Virginia that services which provide access to the international network of computer systems (commonly known as the Internet) and other related electronic communication services, as well as data and software transmitted via such services, should remain free from fees, assessments, or taxes imposed by the Commonwealth or its political subdivisions.

Agreed to by the House of Delegates, February 17, 1998; agreed to by the Senate, March 10, 1998.

Whereas, services which provide access to the international network of computer systems (commonly known as the Internet) and other related electronic communication services, as well as data and software transmitted via such services, have provided immeasurable educational, economic, and social benefits to the citizens of Virginia, the United States, and the world; and

Whereas, technological advancements made by and to the Internet and other related electronic communication services, as well as data and software transmitted via such services, develop at an ever-increasing rate, both qualitatively and quantitatively; and

Whereas, these advancements have been encouraged by public policy which facilitates technological innovation, research, and development; and

Whereas, companies which provide Internet access services and other related electronic communication services are making substantial capital investments in new plants and equipment; and

Whereas, it has been estimated that consumers, businesses, and others engaging in interstate and foreign commerce through the Internet or other related electronic communication services would be subject to taxation in more than 30,000 separate taxing jurisdictions in the United States alone; and

Whereas, multiple and excessive taxation places an unacceptable burden at risk and discourages increased investment to provide such services, which, in turn, could put such jurisdictions at a long-term social, educational, and economic disadvantage; and

Whereas, the growth and development of electronic communication services should be nurtured and encouraged by appropriate state and federal policies; and

Whereas, the Commonwealth's exercise of its taxation and regulatory powers in relation to electronic communications services would likely impede the future viability and enhancement of Internet access services and other electronic communication services in the Commonwealth, which, in turn, could restrict access to such services, as well as data and software transmitted via such services, for all Virginians;

Whereas, previous rulings of departments of taxation or revenue in several states have resulted in state taxes being levied on Internet access providers or Internet-related services, and have, in some cases, prompted action by those states' legislatures to overturn such rulings; and

Whereas, a majority of the states that have addressed the issue of taxing Internet-related services have chosen to exercise restraint in taxing Internet service providers and Internet-related services; and

Whereas, Virginia's existing tax code (§58.1-609.5) exempts from retail sales and use tax purchases of services where no tangible personal property is exchanged; and

Whereas, pursuant to §58.1-609.5, the Commissioner of the Department of Taxation has promulgated regulations (Title 22 Virginia Administrative Code 22.1-210-4000) which provide that charges for services generally are exempt from retail sales and use tax, but that services provided in connection with sales of tangible personal property are taxable; and

Whereas, in interpreting and applying Virginia's tax code and regulations, the Commissioner has ruled that services provided in connection with sales of tangible personal property are taxable; and

Whereas, in further interpreting and applying Virginia's tax code and regulations, the Commissioner has ruled that sales of software via the Internet are not subject to Virginia's retail sales and use tax (P.D. 97-405, October 2, 1997); and

Whereas, in resolving further, that P.D. 97-405 (October 2, 1997), by which the Commissioner ruled that sales of software via the Internet are not subject to Virginia's retail sales and use tax (P.D. 97-425, October 21, 1997); and

Whereas, in resolving further, that P.D. 97-405 (October 2, 1997), by which the Commissioner ruled that sales of software via the Internet are not subject to Virginia's retail sales and use tax (P.D. 97-425, October 21, 1997), and

Resolved further, that P.D. 97-405 (October 2, 1997), by which the Commissioner ruled that sales of software via the Internet are not subject to Virginia's retail sales and use tax (P.D. 97-425, October 21, 1997), and

That P.D. 97-405 (October 21, 1997), by which the Commissioner ruled that sales of software via the Internet are not subject to Virginia's retail sales and use tax (P.D. 97-425, October 21, 1997), and

Resolved further, that P.D. 97-405 (October 2, 1997), by which the Commissioner ruled that sales of software via the Internet are not subject to Virginia's retail sales and use tax (P.D. 97-425, October 21, 1997), and

Resolved finally,

That, to the greatest extent possible, future rulings of the Commissioner reflect the sense of the General Assembly of Virginia that Internet access services and other related electronic communication services, as well as data and software transmitted via such services, should remain free from fees, assessments, or taxes imposed by the Commonwealth and its political subdivisions; and, be it

Resolved finally, that the Clerk of the House of Delegates transmit a copy of this resolution to the Commissioner of the Department of Taxation that he may be apprised of the sense of the General Assembly in this matter.

Mr. MCCAIN. Mr. President, I ask unanimous consent that no further amendments be in order to S. 442, the Senate proceed immediately to third reading, and final passage then occur, without debate, and I further ask that the final passage vote occur now, and that paragraph 4 of rule XII be waived.

And, Mr. President, I ask for the yeas and nays.

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

Is there a sufficient second? There is a sufficient second.

The yeas and nays were ordered.

The PRESIDING OFFICER. The question is on the engrossment and third reading of the bill.

The clerk is ordered to engross a bill for a third reading and was read the third time.

The PRESIDING OFFICER. The bill having been read the third time, the question is, Shall the bill, as amended, pass? The yeas and nays have been ordered.

The clerk will call the roll.

The legislative clerk called the roll.

Mr. FORD. I announce that the Senator from Ohio (Mr. GLENN) and the Senator from South Carolina (Mr. HOLINGS) are necessarily absent.

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

The result was yeas 96, nays 2, as follows:

[Roll Call Vote No. 308 Leg.]
S11858
CONGRESSIONAL RECORD — SENATE
October 8, 1998

GLENN
HALLINGS

The bill (S. 442), as amended was passed, as follows:

S. 442

Be it enacted by the Senate and House of Representa-
tives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.
This Act may be cited as the "Internet Tax Freedom Act".

TITLE I—MORATORIUM ON CERTAIN TAXES
SEC. 101. MORATORIUM.
(a) MORATORIUM.—No State or political subdivision thereof shall impose any of the following taxes during the period beginning on October 1, 1998, and ending 3 years after the date of enactment of this Act—
(1) taxes on Internet access, unless such tax was generally imposed and actually enforced prior to October 1, 1998; and
(2) multiple or discriminatory taxes on electronic commerce.
(b) PRESERVATION OF STATE AND LOCAL TAXING AUTHORITY.—Except as provided in this section, nothing in this Act shall be construed to modify, or supersede, or authorize the modification, impairment, or superseding of, any State or local law pertaining to taxes otherwise permissible by or under the Constitution of the United States or other Federal law and in effect on the date of enactment of this Act.
(c) LIABILITIES AND PENDING CASES.—Nothing in this Act affects liability for taxes accrued and enforced before the date of enactment of this Act, nor does this Act affect ongoing litigation relating to such taxes.
(d) DEFINITION OF GENERALLY IMPOSED AND ACTUALLY ENFORCED.—For purposes of this section, a tax has been generally imposed and actually enforced prior to October 1, 1998, if, before that date, the tax was authorized by statute and either—
(1) a provider of Internet access services had a reasonable opportunity to know by virtue of a rule or other public proclamation made by the appropriate administrative agency of the State or political subdivision thereof that such agency has interpreted and applied such tax to Internet access services; or
(2) a State or political subdivision thereof generally collected such tax on charges for Internet access.
(e) EXCEPTION TO MORATORIUM.—
(1) IN GENERAL.—Subsection (a) shall also not apply to any person or entity who in interstate or foreign commerce is knowingly engaged in the business of selling or transferring, by means of the World Wide Web, material that is harmful to minors unless such person or entity requires the use of a verified credit card, debit account, adult access code, or adult personal identification number, or such other procedures as the Federal Communications Commission may prescribe, in order to restrict access to such material by persons under 17 years of age.
(2) EXCEPTION.—For purposes of paragraph (1), a person shall not be considered to be engaged in the business of selling or transferring material by means of the World Wide Web if such person—
(A) a telecommunications carrier engaged in the provision of a telecommunications service;
(B) a person engaged in the business of providing an Internet access service;
(C) a person engaged in the business of providing an Internet information location tool; or
(D) similarly engaged in the transmission, storage, retrieval, hosting, formatting, or translation (or any combination thereof) of a communication made by another person, without selection or alteration of the communication.

SECTION 2. Moratorium on Certain Taxes
SEC. 201. SHORT TITLE.
This Section may be cited as the "Internet Tax Freedom Act of 1998".

TITLES 11—MORATORIUM ON CERTAIN TAXES
SEC. 1101. MORATORIUM.
(a) MORATORIUM.—No State or political subdivision thereof shall impose any of the following taxes during the period beginning on October 1, 1998, and ending 3 years after the date of enactment of this Act—
(1) taxes on Internet access, unless such tax was generally imposed and actually enforced prior to October 1, 1998; and
(2) multiple or discriminatory taxes on electronic commerce.
(b) PRESERVATION OF STATE AND LOCAL TAXING AUTHORITY.—Except as provided in this section, nothing in this Act shall be construed to modify, or supersede, or authorize the modification, impairment, or superseding of, any State or local law pertaining to taxes otherwise permissible by or under the Constitution of the United States or other Federal law and in effect on the date of enactment of this Act.
(c) LIABILITIES AND PENDING CASES.—Nothing in this Act affects liability for taxes accrued and enforced before the date of enactment of this Act, nor does this Act affect ongoing litigation relating to such taxes.
(d) DEFINITION OF GENERALLY IMPOSED AND ACTUALLY ENFORCED.—For purposes of this section, a tax has been generally imposed and actually enforced prior to October 1, 1998, if, before that date, the tax was authorized by statute and either—
(1) a provider of Internet access services had a reasonable opportunity to know by virtue of a rule or other public proclamation made by the appropriate administrative agency of the State or political subdivision thereof that such agency has interpreted and applied such tax to Internet access services; or
(2) a State or political subdivision thereof generally collected such tax on charges for Internet access.
(e) EXCEPTION TO MORATORIUM.—
(1) IN GENERAL.—Subsection (a) shall also not apply to any person or entity who in interstate or foreign commerce is knowingly engaged in the business of selling or transferring, by means of the World Wide Web, material that is harmful to minors unless such person or entity requires the use of a verified credit card, debit account, adult access code, or adult personal identification number, or such other procedures as the Federal Communications Commission may prescribe, in order to restrict access to such material by persons under 17 years of age.
(2) EXCEPTION.—For purposes of paragraph (1), a person shall not be considered to be engaged in the business of selling or transferring material by means of the World Wide Web if such person—
(A) a telecommunications carrier engaged in the provision of a telecommunications service;
(B) a person engaged in the business of providing an Internet access service;
(C) a person engaged in the business of providing an Internet information location tool; or
(D) similarly engaged in the transmission, storage, retrieval, hosting, formatting, or translation (or any combination thereof) of a communication made by another person, without selection or alteration of the communication.

SECTION 3. Moratorium on Certain Taxes
SEC. 301. SHORT TITLE.
This Section may be cited as the "Internet Tax Freedom Act of 1998".

TITLES 12—MORATORIUM ON CERTAIN TAXES
SEC. 1201. MORATORIUM.
(a) MORATORIUM.—No State or political subdivision thereof shall impose any of the following taxes during the period beginning on October 1, 1998, and ending 3 years after the date of enactment of this Act—
(1) taxes on Internet access, unless such tax was generally imposed and actually enforced prior to October 1, 1998; and
(2) multiple or discriminatory taxes on electronic commerce.
(b) PRESERVATION OF STATE AND LOCAL TAXING AUTHORITY.—Except as provided in this section, nothing in this Act shall be construed to modify, or supersede, or authorize the modification, impairment, or superseding of, any State or local law pertaining to taxes otherwise permissible by or under the Constitution of the United States or other Federal law and in effect on the date of enactment of this Act.
(c) LIABILITIES AND PENDING CASES.—Nothing in this Act affects liability for taxes accrued and enforced before the date of enactment of this Act, nor does this Act affect ongoing litigation relating to such taxes.
(d) DEFINITION OF GENERALLY IMPOSED AND ACTUALLY ENFORCED.—For purposes of this section, a tax has been generally imposed and actually enforced prior to October 1, 1998, if, before that date, the tax was authorized by statute and either—
(1) a provider of Internet access services had a reasonable opportunity to know by virtue of a rule or other public proclamation made by the appropriate administrative agency of the State or political subdivision thereof that such agency has interpreted and applied such tax to Internet access services; or
(2) a State or political subdivision thereof generally collected such tax on charges for Internet access.
(e) EXCEPTION TO MORATORIUM.—
(1) IN GENERAL.—Subsection (a) shall also not apply to any person or entity who in interstate or foreign commerce is knowingly engaged in the business of selling or transferring, by means of the World Wide Web, material that is harmful to minors unless such person or entity requires the use of a verified credit card, debit account, adult access code, or adult personal identification number, or such other procedures as the Federal Communications Commission may prescribe, in order to restrict access to such material by persons under 17 years of age.
(2) EXCEPTION.—For purposes of paragraph (1), a person shall not be considered to be engaged in the business of selling or transferring material by means of the World Wide Web if such person—
(A) a telecommunications carrier engaged in the provision of a telecommunications service;
(B) a person engaged in the business of providing an Internet access service;
(C) a person engaged in the business of providing an Internet information location tool; or
(D) similarly engaged in the transmission, storage, retrieval, hosting, formatting, or translation (or any combination thereof) of a communication made by another person, without selection or alteration of the communication.
aiding or facilitating the work of the Commission. Gifts or grants not used at the expiration of the Commission shall be returned to the donor or grantor.

(d) In a provider of access services. — The Commission shall have reasonable access to materials, resources, data, and other information from the Department of Commerce, the Department of State, the Department of the Treasury, and the Office of the United States Trade Representative. The Commission shall also have reasonable access to the use of the facilities of any such Department or Office for purposes of conducting meetings.

e) Sunset. — The Commission shall terminate 18 months after the date of the enactment of this Act.

(f) Meetings. — Any meeting held by the Commission shall be duly noticed at least 14 days in advance and shall be open to the public.

(3) OPPORTUNITIES TO TESTIFY. — The Commission shall provide opportunities for representatives of the general public, taxpayer groups, consumer groups, and State and local government officials to testify.

(g) Proposed rules. — The Commission shall, to the extent possible, ensure that its work does not undermine the efforts of the National Tax Association Communications and Electronic Commerce Tax Project.

SEC. 103. REPORT. Not later than 18 months after the date of the enactment of this Act, the Commission shall transmit to Congress for its consideration a report reflecting the results, including such legislative recommendations as required by section 102(c)(1) of the Commission's study under this title. Any recommendation agreed to by the Commission shall be tax and technologically neutral and appli- cate to all forms of remote commerce. No finding or recommendation shall be included in the report unless agreed to by at least two-thirds of the members of the Commission voting on the finding or recommendation.

SEC. 104. DEFINITIONS. For the purposes of this title:

(1) Q UORUM. – Nine members of the Commission shall constitute a quorum for conducting the business of the Commission.

(2) M EETINGS. — Any meeting held by the Commission shall be duly noticed at least 14 days in advance and shall be open to the public.

(a) In General. — The term “quorum” means collectively the myriad of computer and telecommunications facilities, including equipment and operating software, which collectively the interconnection of the network of networks that employ the Transmission Control Protocol/Internet Protocol, or any predecessor or successor protocols to that protocol, to communicate information of all kinds by wire or radio.

(b) I NTERNET ACCESS. — The term “Internet access” means a service that provides access to use the facilities of any such Department or Office for purposes of conducting meetings.

(c) State. — The term “State” means any of the several States, the District of Columbia, or any commonwealth, territory, or possession of the United States.

(d) T AX. — The term “tax” means any tax that is imposed by one State on or with respect to a provider of similar information services delivered through other means.

(e) N ATIONAL TAX ASSOCIATION COMMUNICATIONS AND ELECTRONIC COMMERCE TAX PROJECT. — The Commission shall conduct a thorough study of Federal, State and local, and international taxation and tariff treatment of transactions using the Internet and Internet access and other comparable intrastate, interstate or international sales activities.

(f) S UNSET. — The Commission shall terminate its operations on October 8, 1998.
COMMUNICATIONS ACT OF 1934 (47 U.S.C. 542, 573), or any other fee related to obligations or telecommunications carriers under the Communications Act of 1934 (47 U.S.C. 151 et seq.).

(9) TELECOMMUNICATIONS SERVICE.—The term “telecommunications service” has the meaning given such term in section 3(46) of the Communications Act of 1934 (47 U.S.C. 153(46)) and includes telecommunications services as defined in section 4251 of the Internal Revenue Code of 1986.

(10) INTERNET ACCESS.—The term “tax on Internet access” means a tax on Internet access, including the enforcement or application of any new or preexisting tax on the provision or use of Internet services unless such tax was generally imposed and actually enforced prior to October 1, 1998.

SEC. 201. DECLARATION THAT INTERNET SHOULD BE FREE OF NEW FEDERAL TAXES.

(a) It is the sense of Congress that no new Federal taxes similar to such taxes described in section 103(a) should be enacted with respect to the Internet and Internet access during the moratorium provided in such section.

(b) In section 104(3). Public Law 104-106 (April 26, 1996) is amended—

(1) in subsection (a)(1) if (A) by striking “and” at the end of clause (i), (B) by inserting “and” at the end of clause ( ii); and (C) by inserting after clause (ii) the following new clause:

“(iii) United States electronic commerce,”; and

(2) in subparagraph (C) if (A) by striking “and” at the end of clause (i), (B) by inserting “and” at the end of clause (ii); and (C) by inserting after clause (ii) the following new clause:

“(iii) the value of electronic commerce transacted with;” ; and

(3) by adding at the end the following new subsection:

“(d) ELECTRONIC COMMERCE.—For purposes of this section, the term “electronic commerce” has the meaning given that term in section 104(3) of the Internet Tax Freedom Act.”

SEC. 203. DECLARATION THAT THE INTERNET SHOULD BE FREE OF FOREIGN TARIFFS, TRADE BARRIERS, AND OTHER RESTRICTIONS.

(a) In General.—It is the sense of Congress that the President should seek bilateral, regional, and multilateral agreements to remove barriers to global electronic commerce through the World Trade Organization, the Organization for Economic Cooperation and Development, the Trans-Atlantic Economic Partnership, the Asia Pacific Economic Cooperation forum, the Free Trade Area of the America, the North American Free Trade Agreement, and other appropriate venues.

(b) NEGOTIATING OBJECTIVES.—The negotiating objectives of the United States shall be—

(1) to assure that electronic commerce is free from—

(A) tariff and nontariff barriers; (B) burdensome and discriminatory regulation and standards; (C) discriminatory taxation; and (2) to accelerate the growth of electronic commerce by expanding market access opportunities; (A) the development of telecommunications infrastructure; (B) the procurement of telecommunications equipment; (C) the provision of Internet access and telecommunications services; and (D) the exchange of goods, services, and digitalized information.

(c) ELECTRONIC COMMERCE.—For purposes of this section, the term “electronic commerce” has the meaning given that term in section 104(3).

SEC. 204. NO EXPANSION OF TAX AUTHORITY.

(a) Nothing in this Act shall be construed to expand the duty of any person to collect or pay taxes beyond that which existed immediately before the date of the enactment of this Act.

(b) PRESEVERABILITY.

If any provision of this Act, or any amendment made by this Act, or the application of such provision or amendment to any person or circumstance, is held by a court of competent jurisdiction to violate any provision of the Constitution of the United States, then the other provisions of this Act, and the application of such provision to other persons and circumstances, shall not be affected.

TITLE III—GOVERNMENT PAPERWORK ELIMINATION ACT

SEC. 301. SHORT TITLE.

This title may be cited as the “Government Paperwork Elimination Act”.

SEC. 302. AUTHORITY OF OMB TO PROVIDE FOR ACCESSION TO USE OF ALTERNATIVE INFORMATION TECHNOLOGIES BY EXECUTIVE AGENCIES.

Section 3504(a)(1)(B)(vi) of title 44, United States Code, is amended to read as follows:

“(vi) the acquisition and use of information technology, including alternative information technologies that provide for electronic submission, maintenance, or disclosure of information as a substitute for paper, and for the use and acceptance of electronic signatures.”.

SEC. 303. PROCEDURES FOR USE AND ACCEPTANCE OF ELECTRONIC SIGNATURES BY EXECUTIVE AGENCIES.

(a) IN GENERAL.—In order to fulfill the responsibility to administer the functions assigned under chapter 35 of title 44, United States Code, the provisions of the Clinger-Cohen Act of 1996 (divisions D and E of Public Law 104-106) and the amendments made by that Act, and the provisions of this title, and to enhance market access opportunities, the Director of the Office of Management and Budget shall, in cooperation with the National Telecommunications and Information Administration, conduct an ongoing study of the use of electronic signatures under this title on—

(1) paperwork reduction and electronic commerce;

(2) individual privacy; and

(3) the security and authenticity of transactions.

(b) REPORTS.—The Director shall submit to Congress on a periodic basis a report describing the results of the study carried out under subsection (a).

SEC. 304. DEADLINE FOR IMPLEMENTATION BY EXECUTIVE AGENCIES OF PROCEDURES FOR USE AND ACCEPTANCE OF ELECTRONIC SIGNATURES.

In order to fulfill the responsibility to administer the functions assigned under chapter 35 of title 44, United States Code, the provisions of the Clinger-Cohen Act of 1996 (divisions D and E of Public Law 104-106) and the amendments made by that Act, and the provisions of this title, and the Director of the Office of Management and Budget shall ensure that procedures to facilitate transmission, when practicable as a substitute for paper; and for the use and acceptance of electronic signatures, when practicable.

SEC. 305. ELECTRONIC STORAGE AND FILING OF EMPLOYMENT FORMS.

In order to fulfill the responsibility to administer the functions assigned under chapter 35 of title 44, United States Code, the provisions of the Clinger-Cohen Act of 1996 (divisions D and E of Public Law 104-106) and the amendments made by that Act, and the provisions of this title, the Director of the Office of Management and Budget shall, not later than 18 months after the date of enactment of this Act, direct private employers to store and file electronically with Executive agencies forms containing information pertaining to the employees of such employers.

SEC. 306. STUDY ON USE OF ELECTRONIC SIGNATURES.

(a) ONGOING STUDY REQUIRED.—In order to fulfill the responsibility to administer the functions assigned under chapter 35 of title 44, United States Code, the provisions of the Clinger-Cohen Act of 1996 (divisions D and E of Public Law 104-106) and the amendments made by that Act, and the provisions of this title, the Director of the Office of Management and Budget shall, in cooperation with the National Telecommunications and Information Administration, conduct an ongoing study of the use of electronic signatures under this title on—

(1) paperwork reduction and electronic commerce;

(2) individual privacy; and

(3) the security and authenticity of transactions.

(b) REPORTS.—The Director shall submit to Congress on a periodic basis a report describing the results of the study carried out under subsection (a).
SEC. 307. ENFORCEABILITY AND LEGAL EFFECT OF ELECTRONIC RECORDS.

Electronic records submitted or maintained by law, information collected in the provision of electronic signature services for communications with an executive agency, as provided by this title, shall not be denied legal effect, validity, or enforceability because such records are in electronic form.

SEC. 309. APPLICATION WITH INTERNAL REVENUE LAWS.

No provision of this title shall apply to the Department of the Treasury or the Internal Revenue Service to the extent that such provision—

(1) involves the administration of the internal revenue laws; or

(2) conflicts with any provision of the Internal Revenue Service Restructuring and Reform Act of 1998 or the Internal Revenue Code.

SEC. 401. SHORT TITLE.

This title may be cited as the “Children's Online Privacy Protection Act of 1998.”

SEC. 402. DEFINITIONS.

In this title:

(A) child.—The term “child” means an individual under the age of 13.

(B) operator.—The term “operator”—

(i) means any person who operates a website located on the Internet or an online service, or who collects or maintains personal information from or about the users of or visitors to such website or online service, or on whose behalf such information is collected or maintained, where such website or online service is operated for commercial purposes, including any person offering products or services for sale through that website or online service.

(ii) includes any person who collects personal information from a child by a website or online service, shall not be deemed directed to children solely for referring or linking to a commercial website or online service directed to children by using a technique or method of presentation that is not reasonably likely to result in such a commercial website or online service being identified as a business or government practice, for the purpose of advertising or promoting such activity to children.

(C) prohibit conditioning a child’s participation in a game, the offering of a prize, or another activity on the child disclosing more personal information than is reasonably necessary to participate in such activity; and

(D) require the operator of such a website or online service to establish and maintain reasonable procedures to protect the confidentiality, security, and integrity of personal information collected from children.

(2) WHEN CONSENT NOT REQUIRED.—The regulations shall provide that verifiable parental consent under paragraph (3)(A)(i) is not required in the case of—

(12) person.—The term “person” means any individual, partnership, corporation, trust, estate, cooperative, association, or other entity.

(13) person.—The term “person” means any individual, partnership, corporation, trust, estate, cooperative, association, or other entity.

SEC. 403. REGULATION OF UNFAIR AND DECEPTIVE ACTS AND PRACTICES IN CONNECTION WITH THE COLLECTION AND USE OF PERSONAL INFORMATION FROM AND ABOUT CHILDREN ON THE INTERNET.

(a) acts prohibited.—

(1) in general.—It shall be unlawful for an operator of a website or online service directed to children, or any operator that has actual knowledge that it is collecting personal information from a child, to collect personal information from a child in a manner that violates the regulations prescribed under subsection (b).

(2) regulations.—

(B) requires the operator of such a website or online service to establish and maintain reasonable procedures to protect the confidentiality, security, and integrity of personal information collected from children.

(2) when consent not required.—The regulations shall provide that verifiable parental consent under paragraph (3)(A)(i) is not required in the case of—
SEC. 404. SAFE HARBORS.

(a) Guidelines.—An operator may satisfy the requirements of regulations issued under section 403(b) by following a set of self-regulatory incentives that are adopted by an association of operators that possesses the marketing or online industries, or by persons, approved under subsection (b).

(b) Incentive.

(1) SELF-REGULATORY INCENTIVES.—In prescribing regulations under section 403, the Commission shall provide incentives for self-regulation by operators to implement the protections afforded children under the regulatory requirements described in subsection (b) of that section.

(2) DEEMED COMPLIANCE.—Such incentives shall include provisions for ensuring that a person will be deemed to be in compliance with the requirements of the regulations issued under section 403 if that person complies with guidelines that, after notice and comment, are approved by the Commission upon making a determination that the guidelines meet the criteria described in subsection (b) of that section.

(3) EXPEDITED RESPONSE TO REQUESTS.—The Commission shall act upon requests for safe harbor treatment within 180 days of the filing of the request, and shall set forth in its conclusions with regard to such requests.

(c) Enforcement.

(1) CIVIL ACTIONS.—In any case in which the attorney general of a State has reason to believe that an interest of the residents of that State has or is threatened or adversely affected by the engagement of any person in a practice that violates any regulation of the Commission prescribed under section 403(b), the State, as parens patriae, may bring a civil action on behalf of the residents of the State in a district court of the United States of appropriate jurisdiction to—

(A) enjoin that practice;

(B) enforce compliance with the regulations;

(C) obtain damage, restitution, or other compensation on behalf of residents of the State;

(D) obtain such other relief as the court may consider to be appropriate.

(2) Notice.—In general.—Before filing an action under paragraph (1), the attorney general of the State involved shall provide to the Commission—

(i) written notice of that action; and

(ii) a copy of the complaint for that action.

(b) Exemption.—

(i) In general.—Subparagraph (A) shall not apply to the filing of an action by an attorney general of a State under this subsection, if the attorney general determines that it is not feasible to provide the notice described in that subparagraph before the filing of the action.

(ii) Notification.—In an action described in clause (i), the attorney general of a State shall file with the Commission a copy of the complaint to the Commission at the same time as the attorney general files the action.

(c) Enforcement.—

(1) Generally.—In receiving notice under subsection (a)(2), the Commission shall have the right to intervene in the action that is the subject of the notice.

(2) Right to intervene.—If the Commission intervenes in an action under subsection (a), it shall have the right—

(A) to be heard with respect to any matter that arises in that action; and

(B) to file a petition for appeal.

(3) Amicus Curiae.—Upon application to the Commission by a person whose self-regulatory guidelines have been approved by the Commission and are relied upon as a defense by any defendant to a proceeding under this section, the Commission may file amicus curiae in that proceeding.

(d) Actions by the Commission.—In any case in which an action is instituted by or on behalf of the Commission for violation of any regulation prescribed under section 403, no State may, during the pendency of that action, institute an action under subsection (a) against any defendant named in the complaint in that action for violation of that regulation.

(e) Venue; Service of Process.—

(1) Venue.—Any action brought under subsection (a) may be brought in the district court of the United States of appropriate jurisdiction.

(2) Service of process.—In an action brought under subsection (a), process may be served in any district in which the defendant—

(A) is an inhabitant; or

(B) may be found.

SEC. 406. ADMINISTRATION AND APPLICABILITY OF ACT.

(a) Administration.—Except as otherwise provided, this title shall be enforced by the Commission under the Federal Trade Commission Act (15 U.S.C. 41 et seq.).

(b) Provisions.—Compliance with the requirements imposed under this title shall be enforced under—

(1) section 8 of the Federal Deposit Insurance Act (12 U.S.C. 1818), in the case of—

(A) national banks, and Federal branches and Federal agencies of foreign banks, by the Office of the Comptroller of the Currency;

(B) member banks of the Federal Reserve System (other than national banks), branches and agencies of foreign banks (other than Federal branches), Federal agencies, and insured State branches of foreign banks, commercial lending companies owned or controlled by foreign banks, and organizations operating under section 25 or 25a of the Federal Reserve Act (12 U.S.C. 601 et seq. and 611 et seq.), by the Board; and

(C) banks insured by the Federal Deposit Insurance Corporation (other than members of the Federal Reserve System) and insured State branches of foreign banks, by the Board of Directors of the Federal Deposit Insurance Corporation;

(2) section 8 of the Federal Deposit Insurance Act (12 U.S.C. 1818), by the Director of the Office of Thrift Supervision, in the case of Federal agencies, organizations operating under section 25 or 25a of the Federal Reserve Act (12 U.S.C. 601 et seq. and 611 et seq.), by the Board; and

(D) State branches of foreign banks, by the Federal Deposit Insurance Corporation; and

(3) the Federal Credit Union Act (12 U.S.C. 1761 et seq.), by the National Credit Union Administration Board with respect to any Federal credit union;

(4) part A of subtitle VIII of title 40, United States Code, by the Secretary of Transportation with respect to any air carrier or foreign air carrier subject to that part;
(5) the Packers and Stockyards Act, 1921 (7 U.S.C. 181 et. seq.) (except as provided in section 406 of that Act (7 U.S.C. 226, 227)), by the Secretary of Agriculture with respect to any activity related to livestock markets;

(6) the Farm Credit Act of 1971 (12 U.S.C. 2001 et seq.) by the Farm Credit Administration with respect to any enterprise involved in activities subject to that Act; and

(7) the Packers and Stockyards Act, 1921 (7 U.S.C. 181 et. seq.) (except as provided in section 602).

SEC. 401. DEFINITIONS.

(1) ENDOWMENT FUND.—The term "endowment fund" means a fund established by the Oregon University System for the purpose of generating income for the support of the Institute.

(2) INSTITUTE.—The term "Institute" means the Oregon Institute of Public Service and Constitutional Studies established under this title.

(3) SECRETARY.—The term "Secretary" means the Secretary of Education.

SEC. 502. OREGON INSTITUTE OF PUBLIC SERVICE AND CONSTITUTIONAL STUDIES.

From the proceeds of any endowment fund to support the Institute described in section 502, the Secretary is authorized to award a grant to Portland State University at Portland, Oregon, for the establishment of an endowed chair in the field of Public Service and Constitutional Studies.

SEC. 503. DUTIES.

In order to receive a grant under this title, Portland State University shall establish the Institute. The Institute shall have the following duties:

(1) To generate resources, improve teaching, enhance curriculum development, and further the knowledge and understanding of students of all ages, public service, the United States Government, and the Constitution of the United States of America.

(2) To increase the awareness of the importance of public service, to foster among the youth of the United States greater recognition of the role of public service in the development of the United States, and to promote public service as a career choice.

(3) To establish a Mark O. Hatfield Fellows program for students of government, public policy, public health, education, or law who have demonstrated a commitment to public service through volunteer activities, research projects, or employment.

(4) To create library and research facilities for the collection and compilation of research materials for use in carrying out programs of the Institute.

(5) To support the professional development of selected officials at all levels of government.

SEC. 504. ADMINISTRATION.

(1) LEADERSHIP COUNCIL.—In general. In order to receive a grant under this title, Portland State University shall ensure that the Institute operates under the direction of a Leadership Council in (this title referred to as the "Leadership Council") that—

(a) consists of 15 individuals appointed by the President of Portland State University, and

(b) is established in accordance with this section.

(2) APPOINTMENTS.—Of the individuals appointed under (1), at least 1 shall represent—

(A) Portland State University, Willamette University, and Oregon Health Sciences University.

(B) the Oregon Institute of Public Service and Constitutional Studies at the Mark O. Hatfield School of Government at Portland State University.

(C) at least 3 shall represent the Oregon University System.

(D) at least 3 shall represent Oregon businesses or government and reside outside of Oregon.

(E) at least 1 shall be an elected official.

(F) at least 3 shall be leaders in the private sector.

(3) EX-OFFICIO MEMBER.—The Director of the Institute described in section 502(a) shall be an ex officio member of the Leadership Council.

(4) CHAIRPERSON.—The Chairperson shall be the President of Portland State University or a representative designated by the President.

(5) SECRETARY.—The Secretary shall be the Secretary of Education.

(6) UNIVERSITY.—The term "University" means Southern Illinois University at Carbondale, Illinois.

SEC. 602. PROGRAM AUTHORIZED.

(1) GRANTS.—From the funds appropriated under section 606, the Secretary is authorized to award a grant to Southern Illinois University for the establishment of an endowed chair.

(2) ENDOWMENT FUND.—The term "endowment fund corpus" means an amount equal to the total value of the endowment fund minus the endowment fund corpus.

(3) INSTITUTE.—The term "Institute" means the Paul Simon Public Policy Institute described in section 602.

(4) SECRETARY.—The term "Secretary" means the Secretary of Education.

(5) UNIVERSITY.—The term "University" means Southern Illinois University at Carbondale, Illinois.
grant received under this section into the endowment fund.

(d) MATCHING FUNDS REQUIREMENT.—The University may receive a grant under this section only if the University has deposited in the endowment fund established under this title an amount equal to one-third of such grant. The University shall designate adequate assurance to the Secretary that the University will administer the endowment fund in accordance with the requirements of this title. The amount for the University match shall be derived from State, private foundation, corporate, or individual gifts or bequests, but may not include Federal funds or funds derived from any other federally supported fund.

(e) DURATION; CORPUS RULE.—The period of any grant awarded under this section shall not exceed 20 years, and during such period the University shall not withdraw or expend any of the endowment fund corpus. Upon expiration of the grant period, the University may use the endowment fund corpus, plus any endowment fund income for any educational purpose of the University.

SEC. 603. INVESTMENTS.

(a) IN GENERAL.—The University shall invest the endowment fund corpus and endowment fund income in those low-risk instruments that are, with respect to which a regulated investment company may invest under the laws of the State of Illinois, such as federally insured bank savings accounts or comparable certificates of deposit, money market funds, or obligations of the United States.

(b) JUDGMENT AND CARE.—The University, in investing the endowment fund corpus and endowment fund income, shall exercise the judgment and care, under circumstances then prevailing, which a person of prudence, discretion, and intelligence would exercise in investing the endowment fund corpus and endowment fund income in those low-risk instruments described in paragraph (a) of this subsection (from the endowment fund corpus or endowment fund income, in accordance with the investment requirements described in section 603; or (3) fails to account properly to the Secretary, or to the General Accountability Office if properly designated by the Secretary to conduct an audit of funds made available under this title, pursuant to such rules and regulations as may be prescribed by the Commissioner General of the United States, concerning investments and expenditures of the endowment fund corpus or endowment fund income.

(b) Termination.—If the Secretary terminates a grant under subsection (a), the University shall return to the Treasury of the United States an amount equal to the sum of the original grant or grants under this title, plus any endowment fund income earned thereon. The Secretary may direct the University to take appropriate measures to remedy any violation of this title and to protect the financial interest of the United States.

SEC. 606. AUTHORIZATION OF APPROPRIATIONS.

There is authorized to be appropriated to carry out this title $3,000,000,000 for fiscal year 1999. Funds appropriated under this section shall remain available until expended.

TITLE VII—HOWARD BAKER SCHOOL OF GOVERNMENT

SEC. 701. DEFINITIONS.

In this title:

(1) BOARD.—The term "Board" means the Board of Advisors established under section 704.

(2) ENDOWMENT FUND.—The term "endowment fund" means a fund established by the University to support the Howard Baker School of Government established under this title.

(3) SECRETARY.—The term "Secretary" means the Secretary of Education.

(4) UNIVERSITY.—The term "University" means the University of Tennessee in Knoxville, Tennessee.

SEC. 702. HOWARD BAKER SCHOOL OF GOVERNMENT.

From the funds authorized to be appropriated under section 706, the Secretary is authorized to award a grant to the University for the establishment of an endowment fund to support the Howard Baker School of Government at the University of Tennessee in Knoxville, Tennessee.

SEC. 703. DUTIES.

In order to receive a grant under this title, the University shall establish the School. The School shall have the following duties:

(1) To establish a fellowship program for the support of elected officials at all levels of government.

(2) To establish a professorship to improve the knowledge and understanding of, the study of democratic institutions, including aspects of regional planning, public administration, and public policy.

(3) To establish a lecture series to increase the knowledge and understanding of major public issues of the day in order to enhance informed citizen participation in public affairs.

(4) To provide appropriate library materials and appropriate research and instructional equipment for use in carrying out academic and support personnel, construction and renovation, community and student services programs, technical assistance, and research, and endowment fund income in accordance with the requirements of this title.
TITLE VIII—JOHN GLENN INSTITUTE FOR PUBLIC SERVICE AND PUBLIC POLICY

SEC. 801. DEFINITIONS.

(1) ENDOWMENT FUND.—The term "endowment fund" means a fund established by the University for the purpose of generating income for the support of the Institute.

(2) INSTITUTE.—In General.—The term "endowment fund corpus" means an amount equal to the grant or grants awarded under this title plus an amount equal to the matching funds required under section 802(d).

(3) ENDOWMENT FUND INCOME.—The term "endowment fund income" means an amount equal to the total value of the endowment fund corpus plus endowment fund income.

(4) INSTITUTE.—The term "Institute" means the John Glenn Institute for Public Service and Public Policy described in section 802.

(5) Secretary.—The term "Secretary" means the Secretary of Education.

(6) University.—The term "University" means the Ohio State University at Columbus, Ohio.

SEC. 802. PROGRAM AUTHORIZED.

(a) GRANTS.—From the funds appropriated under this title, the Secretary is authorized to award a grant to the Ohio State University for the establishment of an endowment fund to support the John Glenn Institute for Public Service and Public Policy. The Secretary may enter into agreements with the University and include in any agreement made pursuant to this title such provisions as are determined necessary by the Secretary to carry out the provisions of this section.

(b) PURPOSES.—The Institute shall have the following purposes:

(1) To sponsor classes, internships, community service activities, and research projects to stimulate student participation in public service in order to foster America’s next generation of leaders.

(2) To conduct scholarly research in conjunction with public officials on significant issues facing society and to share the results of such research with decisionmakers and legislators as the decisionmakers and legislators address such issues.

(3) To offer opportunities to attend seminars on such topics as budgeting and finance, ethics, personnel management, policy evaluations, and regulatory issues that are de- signed to help public officials learn more about the political process and to expand the organizational skills and policymaking abilities of such officials.

(4) To foster a general public by sponsoring national conferences, seminars, publications, and forums on important public issues.

(5) To provide access to Senator John Glenn’s extensive collection of papers, policy decisions, and memorabilia, enabling scholars at all levels to study the Senator’s work.

(c) MATCHING FUNDS REQUIREMENT.—The University shall deposit the proceeds of any grant received under this section into the endowment fund.

(d) MATCHING FUNDS REQUIREMENT.—The University may receive a grant under this section only if the University has deposited in the endowment fund established under this title an amount equal to one-third of such grant, and has provided adequate assurance to the Secretary that the University will administer the endowment fund in accordance with the requirements of this title.

(e) DURATION; CORPUS RULE.—The period of any grant awarded under this section shall not exceed 20 years, and during such period the University shall not withdraw or expend any of the endowment fund corpus. Upon expiration of the grant period, the University may use the endowment fund corpus, plus any endowment fund income for any educational purpose of the University.

SEC. 803. INVESTMENTS.

(a) In General.—The University shall invest the endowment fund corpus and endowment fund income in accordance with the University’s investment policy approved by the Ohio State University Board of Trustees.

(b) JUDGMENT AND CARE.—The University, in investing the endowment fund corpus and endowment fund income, shall exercise the care, skill, and prudence that prudent investors of like character acting under similar circumstances would exercise in the management of their own business affairs.

SEC. 804. WITHDRAWALS AND EXPENDITURES.

(a) IN GENERAL.—The University may withdraw and expend the endowment fund income to defray any expenses necessary to the operation of the Institute, including expenses of operations and maintenance, administration, academic and support personnel, constructing and maintaining research facilities, and student services programs, technical assistance, and research. No endowment fund income or endowment fund corpus may be used for any type of support of the executive officers of the University or for any commercial enterprise or endeavor. Except as provided in subsection (b), the University shall not, in the aggregate, withdraw or expend more than 50 percent of the total aggregate endowment fund income earned prior to the time of withdrawal or expenditure.

(b) SPECIAL RULE.—The Secretary is authorized to permit the University to withdraw or expend more than 50 percent of the total aggregate endowment fund income when the University demonstrates that such withdrawal or expenditure is necessary because of—

(1) A financial emergency, such as a pending insolvency or temporary liquidity problem; or

(2) A life-threatening situation occasioned by a natural disaster or arson; or

(3) Another unusual occurrence or exigent circumstance.

(c) REIMBURSEMENT.—

(1) INCOME.—If the University withdraws or expends more than the endowment fund income authorized by this section, the University shall repay the Secretary an amount equal to one-third of the amount improperly withdrawn or expended (representing the Federal share thereof).

(2) CORPUS.—Except as provided in section 802(e),

(A) if the University withdraws or expends any endowment fund corpus; and

(B) if the University withdraws or expends any endowment fund corpus, the University shall repay the Secretary an amount equal to one-third of the amount improperly withdrawn or expended (representing the Federal share thereof) plus any endowment fund income earned thereon.

SEC. 805. ENFORCEMENT.

(a) IN GENERAL.—After notice and an opportunity for a hearing, the Secretary is authorized to terminate a grant and recover any grant funds awarded under this section if the University—

(1) withdraws or expends any endowment fund corpus; or

(2) fails to invest the endowment fund corpus on a rate of return that is in accordance with the investment requirements described in section 803; or

(3) fails to account properly to the Secretary, or the General Accounting Office if properly designated by the Secretary to conduct an audit of funds made available under this title, for any of the purposes for which such funds are appropriated or for payment of any of the purposes for which such funds are appropriated; or

(4) fails to account properly to the Secretary, the General Accounting Office if properly designated by the Secretary to conduct an audit of funds made available under this title, for any of the purposes for which such funds are appropriated; or

(5) makes any misrepresentation in connection with the application for a grant under subsection (a), or

(b) TERRITORIAL.—If the Secretary terminates a grant under subsection (a), the University shall return to the Treasury of the United States an amount equal to the sum of the original grant or grants under this title, plus any endowment fund income earned because of the misrepresentation of the University to take such other appropriate measures to remedy any violation of this title and to protect the financial interest of the United States.

SEC. 806. AUTHORIZATION OF APPROPRIATIONS.

There is authorized to be appropriated to carry out this title $6,000,000 for fiscal year 2000. Funds appropriated under this section shall remain available until expended.

UNANIMOUS-CONSENT AGREEMENT

Mr. LOTT. Mr. President, pursuant to agreement of October 7, I ask the Sergeant at Arms to make the conference report to accompany S. 2206, the human services reauthorization bill.

I further ask that immediately following adoption of the conference report, the Senate proceed to executive session, and pursuant to the consent agreement of October 6, that the nomination of William A. Fletcher of California to be United States Circuit Judge for the Ninth Circuit, be considered.

THE PRESIDENT. Is there objection?

Without objection, it is so ordered.

Mr. LOTT. For the information of all Senators, there will be about 25 minutes or so on the human services reauthorization bill, and a Senate vote. It will be a voice vote. Then we will go to the Fletcher nomination.

Therefore, the next recorded vote would be at approximately 2:30. I yield the floor.

COATS HUMAN SERVICES REAUTHORIZATION ACT OF 1998—CONFERENCE REPORT

The PRESIDING OFFICER. Under the previous order, the Senate will now proceed to the consideration of the conference report to accompany S. 2206, which the clerk will report.

The legislative clerk read as follows:

The committee on conference on the disagreeing votes of the two Houses on the amendment of the House to the bill (S. 2206), have agreed to recommend and do recommend to their respective Houses this report, signed by all of the conferees.

(The conference report is printed in the House proceedings of the Record of October 6, 1998.)

Mr. JEFFORDS. Mr. President, the conference report on the Coats Human Services Reauthorization Act of 1998 includes the Head Start program, the
Community Services Block Grant, and the Low Income Home Energy Assistance Program. Through this reauthorization, these programs can continue to provide vital assistance to the neediest of Americans. The Assets for Independence Act, also included in this bill, is a model block grant program that gives States and local communities the opportunity to meet the needs of their low-income residents while ensuring an appropriate level of accountability for federal dollars.

For almost two decades, the Low Income Home Energy Assistance Program (LIHEAP) has provided a lifeline to countless Americans who cannot pay their fuel bills. The program works very well. It is widely regarded as a model block grant program that gives States and local communities the opportunity to meet the needs of their low-income residents while ensuring an appropriate level of accountability for federal dollars.

The reauthorization of LIHEAP will help about four million low-income, disabled, and elderly households pay their fuel bills so they won’t have to struggle to keep warm in the winter or to avoid heatstroke in the summer. They won't be forced to choose between heating and eating. Although some four million households received LIHEAP benefits this year, if we had the resources, some 30 million households would be eligible for LIHEAP assistance. This legislation establishes an authorization level that will permit the Congress to continue funding for LIHEAP, a goal towards which it will continue to work.

I know some of our colleagues in Congress wonder whether we still need a LIHEAP program. Today I think we need it more than ever. This program is more important than ever, especially in light of welfare reform efforts. Low- and fixed-income households still spend at least 18 percent of their income on energy bills, a proportion that was unchanged since LIHEAP was created.

The Assets for Independence Act represents an important new approach to helping low-income families and individuals. Through Individual Development Accounts, the saving, investment, and accumulation of assets is encouraged as a way to increase economic self-sufficiency and build a future. Senator Coats crafted this portion of the legislation. His work in the development of asset-based policies to help low-income individuals and families has helped us approach an old problem from a new angle.

Senator Coats took the lead in shepherding this bill through the legislative process, from the first draft to the conference report. When the Committee on Labor and Human Resources marked up the bill, they unanimously voted to change the name of the legislation to the Coats Act as a tribute to Senator Coats’ dedication to issues affecting children and families.

In both his personal and professional life, Senator Coats has been a long-standing activist on behalf of American families. He was a Big Brother in Indiana long before his political career began, and was recently elected President of the Board of Directors for Big Brothers/Big Sisters of America. Early in his congressional career, Senator Coats served as the Republican leader for the House Select Committee on Children, Youth, and Families. Upon arriving in the Senate in 1998, he became the ranking member of the Subcommittee on Children and Families of the Senate Committee on Labor and Human Resources. Serving as the subcommittee's Chairman since 1995, Senator Coats has been a voice of reason and a tireless advocate for children and families.

His compassion and caring is evident in the fact that legislation that has come out of that subcommittee since Senator Coats became a member. When he leaves the Senate, I will miss his leadership and most of all, his friendship.

The Coats Human Services Reauthorization Act will serve to remind us all of his contributions to the Labor Committee and the Senate.

This legislation is the result of months of hard work, negotiation, and compromise. It has been a truly bi-partisan, bicameral effort that has resulted in good public policy.

The legislation reinforces what works in these programs, and discards what does not, which is the whole purpose of reauthorizing programs.

It continues the mission that we began many years ago of empowering communities to help their most vulnerable populations, and it does this in a responsible manner. This bi-partisan effort and this legislation would not have been possible without the hard work of many outstanding staff members.

With this legislation, Stephanie Monro, the Staff Director for the Subcommittee on Children and Families, has added one more piece of effective public policy to her already impressive portfolio. Her work in researching, drafting, and negotiating this bill has been invaluable. Stephanie has been working in the Senate for fourteen years and I hope she will seriously consider continuing on here, after Senator Coats retires.

I want to thank Stephanie Robinson and Amy Lockhart, of Senator Kennedy's staff and Suzanne Day and Jim Groves, of Senator Coats' staff, for their contributions and their commitment to keeping this legislation a bi-partisan effort.

Conferencing a bill always involves long hours, hard work, and much patience. I appreciate the efforts of Denzel McGuire, Mary Gardner Clagett, and Sally Lovejoy on the staff of the House Committee on Education and Workforce.

I also want to thank Jackie Cooney of Senator Greg's staff, Alex Nock and Marcy Phillips with Representative Martinez, Melanie Marola with Representative Castle, Amy Adair and Randy Brant with Representative Souder for their work on this legislation.

Brian Jones recently left my staff on the Committee on Labor and Human Resources, but before he left, he contributed enormously to the crafting of this legislation. I wish him well in his new assignment and I applaud his contributions to this and other legislation while on my staff. Geoff Brown, who is on my personal staff was instrumental in crafting and negotiating the
At the head of the list, No. 1 on the list was Head Start. It said that for the taxpayer's investment in providing low-income, disadvantaged children with opportunities to prepare to enter the educational system, he or she was considering money that would have had to be spent on remedial education and would have been potentially lost because those children were not prepared to enter the educational system. Since that time, I have been a supporter of Head Start, in trying to provide funds for Head Start and also to make sure the program is effective. It is a program that clearly has provided many millions of children opportunities that they would not have otherwise had.

However, having said that, there have been questions about the quality of the program. We have experienced varying degrees of quality, from excellent in some cases to very poor in other cases. With the 1994 reauthorization, Congress made a commitment to enhance the focus on quality improvement. Since the last reauthorization, the Head Start bureau has offered technical assistance, resources and support to Head Start programs in pursuit of excellence—again, something that is all too rare. We have also terminated, actually terminated grants to those programs that were experiencing deficiencies to the extent that they could not be remedied.

Close to 100 Head Start grantees have been terminated or have relinquished their grants since 1994—the first time in history that deficient programs were actually recompeted. These are essential. Too often here we authorize a new program with glowing words and the best of direction that we can provide, only to find later that those programs did not match up to the promise, and yet they are continued, they are perpetuated, they are pursued, and if not, if necessary, recompeted.

Finally, in response to concerns raised about the lack of reliable research on Head Start, which can be used as a basis for determining its effectiveness, we have authorized the National Impact Study of Head Start. These studies will yield very valuable information about how this program is working and whether Head Start is, in fact, making a difference.

Mr. President, the whole emphasis here, as you can tell, is on sufficient oversight, sufficient involvement in the program, to determine how it is working and to establish and identify where it is not working, and to help make where it is not working better work. If, if necessary, recompeting the whole process, and turning it over to someone else.

There are three other components of this particular bill before us. One is the Low Income Home Energy Assistance Program. I will allow other Members, including the chairman, to address that. That is an issue they have been involved in more directly than I have. Another is the Community Services Block Grant, an excellent example of what can happen when one allows local communities to design their own responses to local problems. The “Washington knows best,” the “Washington has one model formula that fits all sizes,” is pretty much a discounted and discarded theory. We are working now, and need to work, with local communities to identify local problems and allow them to help us and work with us in fashioning a local solution.

Mr. President, 90 percent of the funds provided under this bill, under the Community Services Block Grant, must be passed through by the State to local eligible entities, which include a variety of public and nonprofit organizations,
The legislation has been described by our colleagues and friends, but I join in echoing the sentiments that have been expressed today in paying tribute to our friend and colleague from Indiana, Senator Coats, the staff who have worked with him, others on the committee, and our chairman, Senator Jeffords, in moving this legislation forward.

I remember back to 1994—maybe the Senator from Indiana remembers—when we were working at that time on the reauthorization of the Head Start Program. Many of us had been long-time supporters of that program. It is fair to say, at that time, that in the legislation, or the legislation that we are considering here, would not have been reauthorized unless it had the active involvement and leadership of the Senator from Indiana. That was a time of the great crisis in the Head Start Program. I think the accolades that have been given about the Senator are well-deserved.

I thank him, in particular, for saving the program back in 1994, but also for his continued commitment that he has had, along with my colleague, Senator Dodd, for these past years. As Senator Coats has pointed out, he was working as a cochair of the children’s caucus in the House of Representatives. Our colleague and friend Senator Dodd is cochair of the children’s caucus in the Senate. Both of these Senators have probably spent more time focusing on the needs of children in our country than any others and have worked in a very important bipartisan way.

I join with those who pay tribute to the Senator from Indiana, and naming this legislation after him is really well-deserved. I welcome the opportunity to stand with those who say he has made an indispensable contribution to the needs of poor children in our society. I say that with great sincerity and appreciation, because he has made a very, very important difference, not just in these programs, but basically in helping our country respond to these particular needs.

There have been times when we have had differences on various policy issues. But we are friends, and the Senate is at its best when we are able to work those out and, most of all, to respect the individual integrity which Members bring to these issues. The legislation before us today—and I urge our fellow Members to support it—is really the product of our best efforts. I think it will make an important difference in the lives of children.
I join with those in congratulating the Senator and in appreciating his leadership.

Mr. President, at a time when we have extraordinary prosperity, it is important that we look primarily at the needs of children, particularly the poor children. This bill invests in America's future by providing urgently needed assistance to low-income families and children.

This bill reauthorizes the Head Start program, the comprehensive early childhood development program for low-income children.

For more than thirty years, Head Start has been providing educational, nutritional, medical, and social services to help young children and their families reach their full potential. The advances made by this bill will ensure even greater success for the program in meeting the needs of today's families.

In preparing this bill, we've made significant efforts to improve program quality. That was particularly a matter that the Senator from Indiana was strongly committed to. We've established new education performance standards, to ensure that Head Start children enter school ready to learn. We've strengthened teacher qualifications, so that children will receive the very best care.

We've also worked to encourage closer cooperation by Head Start with other agencies so that full-day, full-year services will be more readily available to working families who need this kind of extended care.

More than 830,000 children currently receive the benefits of Head Start and they will continue to do so. Just as important, this bill makes it possible over the next five years to reach out more effectively to the 60% of eligible children who are not now receiving these services.

Head Start has demonstrated its success in raising the IQ of children. With the program's support, many families obtain the boost they need to achieve economic self-sufficiency.

A letter I received from Monica Marafuga, a Head Start teacher in Massachusetts, makes this point well:

"I believe that Head Start is sometimes the only hope for some families. As a teacher, I see the many families and children who need someone to guide them and point them in the right direction for a better life."

The Early Head Start program is also greatly enhanced by this bill. This program was established four years ago to provide high quality comprehensive services to very young children, from birth to age three, and their families. There is nothing that can replace a parent and a home that is supportive and loving. But as we have seen, many of the children in our society are missing the support which can help them develop at a very critical and important time of their life.

We know that the first three years of life are a critical period in every child's development. We are mindful of the excellent studies that have been done by the Carnegie Commission about the importance of the development of a child's brain in the first months and years of life. The Early Head Start Program helps in developing those cognitive, emotional, and social skills that can help children seize future opportunities and fulfill their highest potential. This is something we want to encourage.

I welcome the fact that we are able to see an important expansion of the Early Head Start program. We've included in this bill provisions to establish a new training and technical assistance fund, which will reinforce the program's commitment to provide quality services through on-going professional support for program staff.

The Early Start Program is having an important impact, and in this bill we continue a gradual expansion of the program so that more young children can be served. Currently, less than 2% of those eligible are receiving its benefits. This bill will expand the program over the next five years to cover an additional 40,000 babies and toddlers. This is a modest expansion, but one which I think, with its success, can be built on over future years.

In addition, the bill also renews our commitment to reducing poverty by reauthorizing the Community Services Block Grant. This program helps communities by providing assistance to address the specific needs of localities, marshaling other existing resources in the community, and encouraging the involvement of those directly affected.

Funds may be used for a variety of services, including employment, transportation, education, housing, nutrition, and child care.

I remember when Senator Robert Kennedy sponsored the initial Community Development Corporation more than 30 years ago, which was the predecessor of this program. I am especially pleased that this bill includes important new provisions for this block grant. This program has a proven record of fostering innovative methods for eliminating the causes of poverty. The need today is as great as it has ever been. Poverty continues to be a significant problem across the nation.

We know that 37 million of our fellow citizens live in poverty. Children are particularly vulnerable, representing 40% of those living in poverty despite the fact that they comprise only 25% of the overall population. These figures are particularly disturbing because studies show that children living in poverty tend to suffer disproportionately from stunted growth and lower test scores. The Community Services Block Grant can help alleviate these conditions and benefit these children.

The legislation also reauthorizes the Low-Income Home Energy Assistance Program for the next five years. The bill underlies legislation for this important program will ensure that LIHEAP continues to help low-income households with their home energy costs, particularly in extreme weather.

I am especially pleased that this legislation includes a provision to clarify the criteria for the President to release emergency LIHEAP funds. This assistance will enable many families to count on hot or cold weather, ice storms, floods, earthquakes, and other natural disasters. LIHEAP not only meets those immediate needs, but also provides an important long-term safety net.

In addition, it will enable the release of emergency LIHEAP funds if there is a significant increase in unemployment, home energy disconnections, or participation in a public benefit program.

There is clearly a continuing need for a strong LIHEAP program. 95% of the five million households receiving LIHEAP assistance have annual incomes below $18,000. They spend an extremely burdensome 18% of their income on energy, compared to the average middle-class family, which spends only 4%.

Without a strong LIHEAP program, families will be forced to spend less on food and more money on their utility bills—the so-called "heat or eat effect." The result is increased malnutrition among children.

Without a strong LIHEAP program, children will fall behind in school because they will be unable to study in their frigid households.

Without a strong LIHEAP program, low income elderly will be at an even greater risk of hypothermia. In fact, older Americans accounted for more than half of all hypothermia deaths in 1991.

LIHEAP is clearly a lifeline for the most vulnerable citizens in society, and I commend the House and Senate for strengthening this vital program. This bill also establishes a new and innovative approach to helping low-income individuals achieve financial independence, and again, I commend Senator COATS for his leadership on this new program. Individual Development Accounts are designed to promote economic self-sufficiency by providing matching funds for deposits made into qualifying savings accounts. Funds can be used to purchase a first home, open a small business, or pay for college education.

This program shows great promise for improving the lives of many individuals and families in communities across the country.

Mr. President, I want to just use the last minute in sharing my commendation for the wonderful staff, Republican and Democrat, who worked very closely together. This bipartisan effort is really the most effective way to develop the best possible legislation.

I want to also recognize Stephanie Monroe, who will be leaving the Senate and has been really a stalwart. Everyone has enormous respect for her. She has worked with Senator COATS, but I think all of us have had enormous confidence that she has done a really outstanding job. I also thank Suzanne Day and Kimberly Barnes O'Connor, and Amy Lockhart, a Congressional Fellow in my office, and
Stephanie Robinson of my staff who is an enormously gifted, talented and committed individual.

The Clinton Administration worked effectively with us in the development of this legislation, and they also deserve credit. I want to particularly recognize Helen Taylor who is the Associate Commissioner of the Head Start Bureau at the Department of Health and Human Services. Ms. Taylor has dedicated her professional career to improving the lives of young children for over 30 years of distinguished service in the field of early childhood development. Her knowledge and experience proved invaluable in this process, and I thank her for her true commitment to the children of Head Start.

This bill ensures the continuation of these important programs into the 21st century. Again, I thank the chairman of our committee, Senator J. EFFORDS, and Senator Dodd, and Senator COATS who have done an extraordinary job in bringing this legislation to where it is today.

Mr. J. EFFORDS, I want to take just a couple seconds to join in the accolades which Senator KENNEDY has made for the work of our members, and also to recognize all the tremendous work that Senator KENNEDY himself has done not only today but throughout the years on these very valuable programs.

Mr. President, I yield the floor.

Mr. DODD, Mr. President, I am delighted to stand here and thank the chairman and the ranking member, the Senator from Massachusetts, as we are about to adopt the Coats Human Services Reauthorization Act, which includes Head Start, LIHEAP and the community services block grants.

People are going to wonder. This is the second day in a row that I find myself on the floor extolling the tremendous contribution of my colleague from Indiana.

We were involved in a piece of legislation yesterday. But I think all of us, as I said yesterday, are going to miss our friend, who is going to be here only a few more days and will move on to another chapter in his life.

But it is highly appropriate, given his tremendous work over his career in the Senate on behalf of children and families that this piece of legislation is going to be named in honor of his service to his country.

I am very pleased to join in that effort, and to commend him for his spectacular work over the years of service in the Senate.

Senator COATS and I have worked intensively with Senator J. EFFORDS, Senator KENNEDY, other members of our committee, and the House committee to complete this important reauthorization. The strong bipartisan support for this bill is a clear statement of how we all feel about Head Start programs included in this bill. And it is also a testament to the leadership of Senator COATS on this legislation. While we have not necessarily agreed on every issue, I have always admired Senator COATS dedication to working to help working families, and in particular, to helping children. His presence on the Labor Committee will surely be missed, and I am pleased that the full committee has this important bill after Senator COATS, as a show of respect and admiration for his service in the Senate.

This bill is fundamentally about expanding opportunity in America for all of the nation's Children. The Community Services Block grant, and home heating assistance through LIHEAP:

Head Start is the nation's leading child development program, because it focuses on the needs of the whole child. Inherently, we know that a child cannot be successful if he or she has unidentified health needs, if his or her parents are not involved in their education, or if she is not well-nourished or well-rested. Head Start is the embodiment of those concerns and works each day to meet children's critical needs. This year, Head Start will serve over 830,000 children and their families that serves almost 6,000 in my home state of Connecticut.

The bill before us today further strengthens the Head Start program. We continue the expansion of the Early Head Start program, increasing the set aside for this program to 10 percent in FY 2002. Anyone who has picked up a magazine or newspaper within the last year knows how vital the first three years of child's life are to their development.

This program, which we established in the 1990's, offers comprehensive, high-quality services to these young children and their parents, to make sure the most is made of this window of opportunity.

We have added new provisions to encourage collaboration within states and local communities as well as within individual Head Start programs to expand the services they offer to families to full-day and full-year services, where appropriate, and to leverage other child care dollars to improve quality and better meet family needs.

We emphasize the importance of school readiness and literacy preparation in Head Start. While I think this has always been a critical part of Head Start, this bill ensures that gains will continue to be made in the area.

Mr. President, this bill puts Head Start on strong footing as we approach the 21st Century. It is a framework within which Head Start can continue to grow to meet the needs of children and their families. What is unfortunate is that we cannot guarantee more funding for Head Start—I think it is shameful that there are waiting lists for Head Start and that only 40 percent of eligible children are served by this program. And Early Head Start, which is admittedly a new program, serves just a tiny fraction of the infants and toddlers in need of these services.

The President has set a laudable goal to reach 1 million children by 2002. But I say we need to do more. We need a plan to serve 2 million children—all those eligible and in need of services— as soon as possible.

I argue that meeting the goal of fully funding Head Start will be too costly. Yes, it will cost a great deal to get there. But my question is how much more will it cost not to get there?

Studies show us that children in quality early childhood development programs, such as Head Start, start school more ready to learn than their non-Head Start counterparts. They are more likely to keep up with their classmates, avoid placement in special education, and graduate from high school. They are also less likely to become teenage mothers and fathers, go on welfare, or become involved in violence or the criminal justice system.

How much does it cost when we don't see these benefits?

I know this is an issue for another place and another venue. But I am hopeful as we strengthen Head Start we can also strengthen our resolve to expand this successful program to reach more children and their families.

Mr. President, the bill before us also makes important changes to the Community Services Block Grant program. CSBG makes funds available to states and local communities to assist low-income individuals and help alleviate the causes of poverty. One thousand local service providers—mainly Community Action Agencies—use these federal funds to address the root causes of poverty within their communities. CSBG dollars are particularly powerful because local communities have substantially more flexibility in determining where these dollars are best spent to meet their local circumstances.

I have had the pleasure of visiting Community Action Agencies in Connecticut many times. They are exciting, vibrant places at the very center of their communities—filled with adults taking literacy and job training courses, children at Head Start centers, seniors with housing or other concerns, and youths participating in programs of their own volition. CSBG clients have incomes that fall below the federal poverty guideline. Three-quarters of CSBG clients have incomes that fall below the federal poverty guideline.

To see clearly how critical the CSBG program is to the nation's low income families, one only needs to look at the statistics. The CSBG program in 1995 served more than 11.5 million people, or nearly three quarters of all Americans living in poverty. Three-quarters of CSBG clients have incomes that fall below the federal poverty guideline.

This bill recognizes the fundamental strength of the President has set a laudable goal to reach 1 million children by 2002. But I say we need to do more. We need a plan to serve 2 million children—all those eligible and in need of services—as soon as possible.

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Mr. ASHCROFT. Mr. President, I wish to express my appreciation and admiration for the distinguished Senator from Indiana. The Senator from Indiana has set a standard and an example in this body of what it means to be a Senator, what it means to be a decent Christian gentleman, the likes of which I do not think have been passed in my experience here. I have had the honor of calling him friend. I have had the opportunity to participate with him in a prayer breakfast that he leads. He sets the kind of example of good public service that all of us ought to seek to emulate. And I
am delighted that he has played an important role in this piece of legislation, as he has in so many others. And it will be, I am sure, successfully pursued.

The PRESIDING OFFICER. Under the previous order, the conference report is before the Senate and the motion to consider the vote is laid upon the table. The conference report was agreed to.

EXECUTIVE SESSION
The PRESIDING OFFICER. Under the previous order, the Senate will now go into executive session to consider the nomination of William A. Fletcher to be a United States Circuit Judge.

NOMINATION OF WILLIAM A. FLETCHER, OF CALIFORNIA, TO BE UNITED STATES CIRCUIT JUDGE FOR THE NINTH CIRCUIT
The PRESIDING OFFICER. The clerk will report Executive Calendar No. 619, on which there will be 90 minutes of debate equally divided in the usual form.

The assistant legislative clerk read the nomination of William A. Fletcher, of California, to be United States Circuit Judge for the Ninth Circuit.

Mr. SESSIONS addressed the Chair. Mr. SESSIONS. Mr. President, the role of the Senate is to advise and consent in nominations by the President for judicial vacancies. That is understood in the Constitution. Every nominee of the President comes before the Judiciary Committee and then they come before this body for a vote. We are at this point analyzing the nomination of William Fletcher, Willie Fletcher from California, to the Ninth Circuit. I regretfully must say I have concluded that I have to oppose that nomination. And I would like to discuss the reasons why.

Most of the nominations that have come forward from the President have received favorable review by the Judiciary Committee. In fact, we cleared nine today. A number of them are on the docket today and will probably pass out today. So we are making some substantial progress.

Nearly half of the vacancies that exist in federal courts are because there are no nominees for those vacancies—almost half of them. But on occasion we need to stand up as a Senate and affirm certain facts about our courts and our Nation. One of the facts that we need to affirm is that courts must carry out the rule of law, that they are there to make law, not to enshrine it. The courts are there to enforce law as written by the people through their Constitution that we adopted over 200 years ago. Also, that is, I think, where we are basically going.

With regard to this nomination, it is to the Ninth Circuit Court of Appeals in California. Without any doubt, the Ninth Circuit is considered the most liberal circuit in the United States. It is also the largest circuit. There are 11 circuit courts of appeals. And in the United States we have the U.S. district judges. These are the trial judges. The next level—the only intermediate level—the federal level—are the Appeals. And in this circuit they are one step below the U.S. Supreme Court. It is the courts of appeals that superintend, day after day, the activities of the district judges who practice under them.

There are more district judges in the circuit than there are circuit judges. And every appeal from a district judge's ruling, almost virtually every one, would go to the courts of appeals in California and Arizona and the States in the West that are part of the Ninth Circuit. Those appeals go to the Ninth Circuit, not directly to the U.S. Supreme Court. As they rule on those matters, they set certain policy within the circuits are so important.

We have—I think Senator BIDEN made a speech on it once—we have 1 Constitution in this country, not 11. The circuit courts of appeals are required to show fidelity to the Supreme Court and to the Constitution. The Supreme Court is the ultimate definer of the Constitution. And the courts of appeals must take the rulings of the Supreme Court and interpret them and apply them directly to their judges who work under them or in their circuit and in fact set the standards of the law.

We do not have 11 different circuits setting 11 different policies—at least we should not. And a known fact that the Ninth Circuit for many years has been out of step. Last year, 28 cases from the Ninth Circuit made it to the U.S. Supreme Court. The Supreme Court does not hear every case. This is where the circuit courts are so important.

Probably 95 percent of the cases decided by the courts never are appealed to the Supreme Court. The Supreme Court will not hear them. But they agreed to hear 28 cases from the Ninth Circuit. Of those cases, they reversed 27 of them. They reversed an unprecedented number. They reversed the Ninth Circuit 27 out of the 28 times they reviewed a case from that circuit. And this is not a matter of recent phenomena.

I was a Federal prosecutor for almost 15 years, and during that time I was involved in many criminal cases. And I study the law, and you seek out cases where you can fit them. Well, it was quite obvious—and Federal prosecutors all over the country used to joke about the fact that the criminal defense lawyers, whenever they could not find any law from anywhere else, they could make an argument. Still, a Ninth Circuit case that was favorable to the defendant. And they were constantly, even in those days, being reversed by the U.S. Supreme Court, because the U.S. Supreme Court's idea and demand is that we have one Constitution, that the law be applied uniformly.

So I just say this. The New York Times, not too many months ago, wrote an article about the Ninth Circuit and said these words: “A majority of the U.S. Supreme Court considers the Ninth Circuit a rogue circuit, out of control. It needs to be brought back into control. They have been working on it for years but have not been able to do so.”

All of that is sort of the background that we are dealing with today.

When we get a nominee to this circuit, I believe this Senate ought to utilize its advise and consent authority, its constitutional duty, to ensure that the nominees to it bring that circuit from being a rogue circuit back into the mainstream of American law, so we do not have litigants time and again having adverse rulings, that they have to go to the Supreme Court—however many thousands and hundreds of thousands of dollars—to get reversed.

This is serious business. Some say, “They just reversed them. Big deal.” It could be somebody's life, a lot of money, and a lot of cases that were wrong. That circuit were never accepted by the Supreme Court and were never reversed. The Supreme Court can’t hear every case that comes out of every circuit. So we are dealing with a very serious matter.

The Senator from Ohio who I suspect will comment today on the nominee, Senator DeWine, articulated it well. When we evaluate nominees, we have to ask ourselves whether they are competent, proper, whether the advice and consent of the Senate must be exercised properly. And whether the advice and consent that we exercise is to the good for the United States, the good of the people.

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The Founding Fathers who wrote that Constitution never dreamed that anyone would say that a prohibition of cruel and unusual punishment would prohibit the death penalty, because the death penalty was in every State and colony in the United States at the time the Constitution was adopted. It never crossed their minds.

This is an example of judicial activism when Justice Brennan would conclude that he could reinterpret the Constitution to fit what he thought best with what he thought were the policies that he was contracted with their Government when they ratified it. It says, "We, the people, ordain and establish this Constitution..." So they adopt it; it is reinterpreted. That is a classic definition of judicial activism.

We know Mr. Fletcher was his law clerk and has written a law review article referring to Justice Brennan as a national treasure. It is obvious he considers him an outstanding judge and a man he would tend to emulate.

Of course, judicial activism is part of his family. One of the problems, and the Presiding Officer has attempted to deal with it through legislation, and was successful. Just today, I believe, we have passed legislation dealing with nepotism, two family members serving on the same court.

The truth is, Mr. Fletcher's mother is a judge on the Ninth Circuit already. Of the judges in the United States, I am sure a number of judges of the most activist—in the Ninth Circuit, it is common knowledge she is one of the most activist nominee members of that court. It doesn't mean he will be, but he is connected to Justice Brennan, and his mother is a very liberal, an activist, and will remain on the court as a senior judge and will have the opportunity to participate in a substantial number of the opinions that are rendered by the Ninth Circuit, because they have three-judge panels who are the ones cases out of the judges there and they often put these judges on a panel. If she takes senior status, which I understand she has agreed to do, she would not resign from the bench but take senior status and still be able to handle a substantial caseload. That is a troubling fact to me.

To me, a judge is a very important position at any level of the courts. This is not an absolute disqualifying factor to me, but it is an important factor to me, and that is that Mr. Fletcher lacks any private practice experience. Mr. Fletcher has never practiced law. Mr. Fletcher has never tried a lawsuit. He has been a law clerk for William Brennan and a professor at the University of California Law School. He has never been in the courtroom as a litigant. He has never had the opportunity to have that knot in your stomach when a judge is about to rule on a motion, to understand the difficulties in dealing with our legal nature. He has not had that experience.

Having had 15 years of full-time litigation experience in Federal court trying cases, you learn things intuitively. Supreme Court justices and appellate court justices will be better judges if they have had that experience. It is an odd thing, and not a healthy thing, normally: it takes extraordinary and exceptional circumstances, in my opinion, to conclude that someone who has nothing but a law professor all their life is now qualified to take a lifetime appointment to review the decisions of perhaps 100 or more trial judges in their district who are working long hours, and he has never had the opportunity to practice before and see what it is like. That is not a good thing in itself. That is another reason I have serious reservations about this nominee.

Certainly Mr. Fletcher has a right to speak out, but in 1994, not too many years ago, he made a speech in which he criticized the "three strikes" law legislation, the criminal law changes that have swept the country, calling it "perfectly dreadful legislation." He has never been a prosecutor. He has never been a judge. He has never been a lawyer. Here he is saying this about this legislation, which I believe is widely supported throughout the country. In my opinion, it certainly has reduced the rise in crime, because "three strikes and you are out" focuses on repeat, habitual offenders.

Make no mistake, somebody will say, "You will have everybody in jail, J eff." Not so, everybody is not a repeat, three-time felony offender. If you focus on the repeat offender, those are the ones committing a disproportionate percentage of crime. We have done a better job on that in the last 10 or 15 years. We have tough Federal laws dealing with repeat offenders. States have implemented "three strike" laws and it has helped draw down the rise in crime. As a matter of fact, crime has been dropping after going up for many years because we got tough and identified the people and prosecuted them successfully and States have stepped up to the plate and done so.

He criticized that. That gives me a real insight into his view about criminal law, and here he will be presiding over reviewing cases of trials involving murderers and other criminals in the Ninth Circuit and he has never had any experience.

The thing we know about him is that he considers good, tough law legislation dreadful.

(Mr. ASHCROFT assumed the Chair.)

Mr. SESSIONS. Mr. President, I want to share some thoughts with you about judicial activism. In 1992, Mr. Fletcher wrote an article entitled "The Discretionary Constitution." He was a professor then. It has been interpreted by many as a blatant approval of judicial activism. He discusses institutional suits. I was attorney general of the State of Alabama and I had to deal with Federal judges who have major court orders dominating the prison systems. Most States have prison systems under court order, having Federal judges ruling those, and mental health systems and school funding issues are decided by Federal judges. So he wrote about that and other issues. In that article, this is what he said, and it really troubled me:

The only legitimate basis for a Federal judge to take over the political function in devising or choosing a remedy in an institutional suit is a demonstrated unwillingness or incapacity of the political branches to deal with matters or not act on them, and not act in an active, not a passive manner. The people have influence with that because they elect or reelect their representatives and, if they are not happy, they can remove them from office.

But you can't remove a Federal judge because he has a lifetime appointment. He cannot be removed, except for the most serious personal abuses of office. Normally, making bad decisions is not one of those. I will just say this. We have a circuit that is in trouble. It is continuing because a Republican President has put judges on matters or not act on them, and not act in an active or not to act. The people have influence with that because they elect their representatives and, if they are not happy, they can remove them from office.

Mr. President, I yield the floor.

Mr. HATCH addressed the Chair.

The PRESIDING OFFICER. The Senator from Utah is recognized.

Mr. HATCH. Mr. President, I yield myself such time as I need.

Mr. President, I rise to speak on the nomination of Professor William Fletcher, nominee to the Ninth Circuit Court of Appeals. I am pleased that the United States has finally considering this nominee.

Mr. Fletcher was first nominated during the 104th Congress on December
I do regret the fact that his nomination has languished for as long as it has, but I would like to comment on some of the obstacles that have hindered this nomination.

First, all nominees to the Ninth Circuit Court of Appeals get bogged down within the difficulties we were having with deciding whether or not to divide the Ninth Circuit. Once we established a commission to look into this matter, we have been able to process nominees to that court.

Second, some had concerns—legitimate concerns—that Professor Fletcher's mother, Betty Fletcher, currently serves as a judge on the Ninth Circuit. There is a statute that appears to prevent two people, closely related by blood or marriage, from serving on the same court. Now, the Justice Department said that only applies to people less than the judiciary, but that was pure bunk as far as I was concerned. The statute is pretty clear. Yes, it was written as a statute, but it is constitute it, and it is a matter of great concern to me. To ensure compliance with that law—or to the best of my ability to make sure that this law is complied with, Judge Betty Fletcher has agreed to take senior status upon confirmation, and Senator Kyhl has introduced legislation, which passed the Senate last night, which I support, that will clarify the applicability of the so-called antinepotism statute.

I just want to put a bit of that statute, it seems to me that it is very logical that we should not place persons of close consanguinity on the same court that oversees 50 million people. Surely we can find people other than sons of mothers on the court. Senator Kyhl has made a splendid effort to try to resolve this matter. He indicated in our Judiciary Committee this morning that, as a matter of principle, he would have to vote against Professor Fletcher because he feels that the statute as it stands does apply. I tried to resolve it by chatting with Judge Betty Fletcher who has agreed to take senior status upon her son's confirmation.

Now that these obstacles have been removed, I am pleased that we are voting on Mr. Fletcher and would like to express my considered view that he should be confirmed.

I am the first to say that I may not agree with all of Professor Fletcher's views on courts and procedure, the separation of powers, or constitutional interpretation. But the question is not whether I agree with all of his views, or whether a Republican President would or would not nominate such a candidate. The President is entitled to have his nominees confirmed, provided that the nominee is well qualified and will abide by the appropriate limitations on Federal judges.

I recognize that this is especially important for the Ninth Circuit and concur wholeheartedly with those of my colleagues who believe that the Ninth Circuit has literally gone out of control. I agree with the distinguished Senator from Alabama that that circuit is out of line and out of control. It is often reversed. It has a 75 percent reversal rate over the last number of decades because of these activist judges on that bench. But Professor Fletcher can fairly be said to work on that bench, he would follow precedent, that he would interpret and enforce the law, not make laws from the bench.

I believe Professor Fletcher is a man of honor and integrity and that he will live up to his word and, in fact, I hope he can be the best kind of advocate of the constitutional civil procedure, can actually help rein in some of the more radical forces on the Ninth Circuit Court of Appeals.

Professor Fletcher clearly is highly qualified. He is a graduate of the Yale Law School, he clerked for a Supreme Court justice, and is considered an eminent legal scholar. That consideration is justified. Although some of his writings may push the envelope of established legal thinking, as often happens with professors of law, we should recognize that this is the role of academics. I made that point during the Bork nomination when my colleagues on the other side were finding fault with many of the positions that Justice Bork enunciated in his judgish. I believe that his writings, many of which he repudiated later, but all of which were provocative and intended to create debate on the respective subjects.

In short, I believe Professor Fletcher is within the mainstream of American legal thought just as several Republican nominees such as Antonin Scalia, Frank Easterbrook, Richard Posner, and Ralph Winter were when they were nominated, and this body should confirm him today.

I hope my colleagues will confirm Professor Fletcher.

Today the Judiciary Committee voted out 15 judicial nominees and 4 U.S. attorneys. This year we have held hearings on 54 judicial nominees. If all of the judges who are now pending on the Senate floor are confirmed, as I expect they will be, we will end this Congress having confirmed 106 judges, resulting in a vacancy rate of 5.4 percent. This will be the lowest vacancy rate since the judiciary was expanded in 1990.

Also, over 50 percent of the judges confirmed this year, to date, by this Republican Senate have been women and minorities.

Given the fact that over the last five Congresses the average number of article III judges confirmed is 96, I think this Republican majority has done very well to this point, and will continue to do so. Can we do better? Always. I am sure we can. And we will certainly try to do better during this coming year, and I intend to do better during the coming year.

At this particular point, we are concerned about Professor William Fletcher, who I believe is highly qualified for this job. Even though I don't agree with him on everything that he believes, or everything that he has taught, the fact of the matter is he is qualified, he is a decent man, and he should be confirmed here today.

Although Professor Fletcher's nomination has taken quite a while to be brought up for a vote, I do not think there is any reason why the Judiciary Committee has not done its work. I am told that, according to the Department of Justice, the hearing Senator Specter chaired broke a record for the most nominees on a single hearing.

To date, the Republican Senate has already confirmed 80 judges. And today, that number will rise to 84, if Professor Fletcher and the other judges that will be brought up for a vote are confirmed—as I wholly expect they will. As I stated earlier, if all of the nominees now pending on the Senate floor are confirmed, the Senate will adjourn having confirmed 106 Article III judges.

Again, this will leave a judicial vacancy rate of only 5.6 percent. Keep in mind that President Clinton administration is on record as having stated that a vacancy rate of just over 7 percent is considered virtual full employment of the Federal judiciary.

I do not think anyone can legitimately argue that the Judiciary Committee has not done its job well. Yes, there have been some controversial Clinton nominees that have moved slowly or not at all, but sometimes nominees come to the Committee with problems that prevent their nominations from going forth. I am pleased to say that although some thought the problems relating to Professor Fletcher's nomination could not be worked out, they ultimately have been. I fully expect that Professor Fletcher's nomination will be confirmed today and I will vote for him.

The PRESIDING OFFICER. Who yields time?

Mr. Hatch. How much time does the distinguished Senator from Washington desire? I yield 5 minutes or such time as he needs to the distinguished Senator from Washington.

The PRESIDING OFFICER. The Senator from Washington.

Mr. Hatch. Mr. President, I share the background of the Senator from Alabama as attorney general of my State. I agree with much of the philosophic underpinning of his remarks directed at the judicial philosophy of Mr. Fletcher. I disagree, however, as to the conclusion, and I intend to vote for his confirmation.

The Constitution of the United States says that the President shall nominate and by and with the advice of the Senate shall appoint judges to positions like the one we are debating here today.

In my view—I have some differences even with my good friend from Utah on
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The PRESIDING OFFICER. Who yields time?

Mr. LEAHY. Mr. President, I yield to the distinguished Senator from California. She requires how much time?

Mrs. FEINSTEIN. I thank the distinguished manager. May I have 10 minutes?

Mrs. LEAHY. I yield 10 minutes to the distinguished Senator from California.

Mrs. FEINSTEIN. I thank the Senator from Vermont. Mr. President, I rise to voice my strong support for the nomination of Professor William H. Fletcher, of the Ninth Circuit Court. I very much appreciate the views of the chairman of the committee, the distinguished Senator from Utah, on this, and his considered judgment that Mr. Fletcher deserves approval by this body. And I hope, indeed, that will be the case.

Mr. Fletcher has been before this body for over 3 years now. He has had two Judiciary Committee hearings. I was present at both and listened to him. His responses and those of his opponents were crisp, to the point, direct, and showed a depth and breadth of knowledge of the law that I think is among the top one percent of those nominees who came before the committee.

His credentials are impeccable. As the chairman pointed out, they include: magna cum laude graduate of Harvard; Rhodes scholar; law degree from Yale; service in the Navy; law clerk for U.S. Supreme Court Justice William Brennan; and a clerkship for District Court Judge Stanley Weigel.

Since 1977, he has been a distinguished professor at the Boalt Hall School of Law at the University of California, where he won the 1983 Distinguished Teacher Award and has come to be regarded as one of the most foremost experts on the Federal court and the Constitution.

Mr. President, since the distinguished Senator from Alabama raised some concerns about this nominee, I would like to respond to some of those concerns. We asked Mr. Fletcher to respond, and, in fact, he provided us with a response on a number of items that I will mention by Mr. Thomas Jipping, of the Judicial Selection Monitoring Project, and subsequently repeated.

The first allegation is what was called the "discretionary Constitution." Mr. Jipping attributes to Professor Fletcher the conclusion:

When judges think that the political branches are not doing what they should, judges have the discretionary power to do it for them.

And he states: Mr. Fletcher writes that this virtually unlimited judicial discretion is a "legitimate substitute for political discretion" when the political branches are "in default." I would like to give you directly the statement from Mr. Fletcher:

The article says quite the opposite of what Mr. Jipping wrote. I do not believe in a "discretionary Constitution." As the article makes plain, I view judicial discretion as a problem, not a solution. Further, I did not write that judicial discretion is legitimate when political branches are "in default." Rather, I wrote that the exercise of judicial discretion in curing constitutional violations in institutional suits is presumptively illegitimate unless the political bodies that should cure those violations are in "serious and chronic default." I would like to put all of this in the record.

On the second point that has been raised critically, on standing, Mr. Fletcher writes:

Contrary to what Mr. Jipping wrote, I do not believe Congress can write statutes that allow anyone or anything to sue. Indeed, in some cases I take a narrower view of standing than the Supreme Court. For example, I argued that the Court should not have granted standing to the Wyoming buckaroos. In the position on standing would not drastically expand caseloads. Further, rather than inviting judges to legislate from the bench, I am particularly anxious that federal courts not perform as a "super-legislature."

The third point that he has been criticized for is the unconstitutionality of statutes. The critic writes:

Mr. Fletcher believes that judges can dictate constitutional legislation they believe was inadequately considered by Congress. He argues that a statute effectively terminating lawsuits against defense contractors by substituting the United States as the defendant was passed without hearings and based on what he believes are misrepresentations about its operation. That alone would be sufficient to strike down the statute.

Now, this is Mr. Fletcher's response: I believe no such thing. I argued that the presumption of constitutionality normally accorded to a statute should not be accorded to the Warner Amendment. The following factors: (1) The only body in Congress that considered the amendment was a subcommittee of the House Judiciary Committee which held hearings and concluded that it was unconstitutional; (2) When the amendment was later attached as a rider to an unrelated defense appropriations bill, it was consistently described as doing the opposite of what it actually did.

And so, if I might, to clear these things up, Mr. Fletcher has submitted to us a draft response, and I ask unanimous consent to have printed in the RECORD both the allegations and the responses.

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

DEAR SENATOR FEINSTEIN: I write to correct some mischaracterizations of my writing that have been put forward by Mr. Thomas Jipping.

The most extensive misrepresentations are contained in Mr. Jipping's May 10, 1996, op-ed piece in The Washington Times. I will take them in order.

1. JUDICIAL DISCRETION.

Mr. Jipping wrote: "First, Mr. Fletcher believes in what he has called a "discretionary Constitution." In fact, that was the title of his first law review article. When judges think the political branches are not doing what they should, judges have the discretionary power to do it for them.

And he states: Mr. Fletcher writes that this virtually unlimited judicial discretion is a "legitimate substitute for political discretion" when the political branches are "in default." I would like to give you directly the statement from Mr. Fletcher:

The article says quite the opposite of what Mr. Jipping wrote. I do not believe in a "discretionary Constitution." As the article makes plain, I view judicial discretion as a problem, not a solution. Further, I did not write that judicial discretion is legitimate when political branches are "in default." Rather, I wrote that the exercise of judicial discretion in curing constitutional violations in institutional suits is presumptively illegitimate unless the political bodies that should cure those violations are in "serious and chronic default." I would like to put all of this in the record.

On the second point that has been raised critically, on standing, Mr. Fletcher writes:

Contrary to what Mr. Jipping wrote, I do not believe Congress can write statutes that
violations in institutional suits is "presumptively illegitimate" unless the political bodies that should cure those violations are in "se- nous and chronic default." at pp. 637, 695 (emphasis added).

Extended analysis: The article analyzed institutional injunctions where there has already been some unconstitutional action in the operation of a prison or mental hospital, in the apportionment of a legislature, or in the racial segregation of public schools. After finding a constitutional violation, the question arises: Who should decide how that violation should be cured? Even where there has been a constitutional violation, the court may find that the political branches of the federal courts should be severely circumscribed, and that judicially formulated injunctions should be regarded as presumptively illegitimate.

Constitutional violations in institutional cases can be cured in many ways. For example, in a prison case where conditions of confinement violate the Eighth Amendment, a prisoner administrator can do a number of different things to bring the prison into compliance with the Constitution. Or in a reapportionment case, the state legislature can draw district lines in a number of different ways to bring the districts into compliance with the Constitution. Choices among the possible remedies inescapably involve the exercise of discretion, and should be regarded as presumptively illegitimate if made by a political body rather than by the court. Chief Justice Burger wrote: "Trial court remedial discretion [in institutional suits] can to some degree be controlled in the manner of its exercise; in some cases it may even be eliminated through sacrificing unduly the constitutional or other values at stake. But there comes a point where certain governmental tasks, whether by the political branches or the judiciary, simply cannot be performed effectively without a substantial mount of discretion. * * * The practical in-evitability of remedial discretion in performing those tasks defines the legitimate role of the federal courts. * * * Since trial court remedial discretion in institutional suits is inevi-tably political in nature, it must be regarded as presumptively illegitimate." at pp. 636-37 (emphasis added).

In Swann v. Charlotte-Mecklenberg Board of Education, 402 U.S. 1, 16 (1971), Chief Justice Burger wrote for the Court that the district court has the power to fashion an institutional injunction only "in default by the school board of their obligation to adopt and enforce acceptable remedies" (emphasis added). I argued that "default" by the political authorities—which in the view of the Supreme Court justified a judicially fashioned injunction—should be found only as a last resort. I wrote, "Political bodies and courts respond to different institutional imperatives. * * * As a matter of institutional structure, even when a constitutional violation has been found, a court cannot legitimately resolve such a problem unless the political bodies that ordinarily have such a problem abandoned their constitutional default that there is realistically no other choice." at p. 685 (emphasis added).

My position on the federal district court as the primary vehicle for constitutional activist. Indeed, my formulation is more conserva-tive and restrained than Chief Justice Burger's in Charlotte-Mecklenburg, where he re-quired the political branches to take affirmative action against the constitutional default. I recommended increasing the threshold for judicial action by requiring that the political body be in "such serious and chronic default that there is realisti-cally no other choice." Throughout the article, I emphasized the danger in judicial overreaching: "(A) The federal court must not permit a court to consider any illusory argument that it can be, anything more than a temporarily legitimate substitute for a po-

Mr. Jipping wrote: "Second, the Constitution limits court jurisdiction to 'cases' and 'controversies.' The 'case or controversy' jurisdiction is to demand that plaintiffs concretely trace their injury to the defendant's action, preventing judges from reaching out to decide issues quite remote from the ab-stract. In a 1988 article, Mr. Fletcher argues that standing is merely a way of looking at the merits of a case rather than assuring a court's jurisdiction over the parties. Congress can write statutes that allow any-one or anything to sue, regardless of whether plaintiffs have suffered any harm at all. This view would allow federal courts to cases and gives judges innumerable op-

The article Mr. Jipping refers to is "The Structure of Standing." 94 Yale L.J. 221 (1988).

Brief statement: Contrary to what Mr. Jipping wrote, I do not believe Congress can write statutes that allow anyone or anything to sue. Indeed, in some cases I take a nar-rower view of standing than the Supreme Court. For example, I argued that the Court should not have granted standing in Buckley v. Valeo. I wrote: "The question of standing on the Federal Election Campaign Act was passed without hearings and based on what he believes are misrepresentations about its operation. That alone would be suf-ficient to strike down the Act." Mr. Jipping refers to is "Atomic Bomb Testing and the Warner Amendment: A Violation of the Separation of Powers," 65 Wash. L. Rev. 285 (1990).

Brief statement: I believe no such thing. I argued that the presumption of constitution-ality normally accorded to a statute should not be abandoned. The Warner Amendment, based on the following factors: (1) The only body in Congress that consid-ered the Amendment was a subcommittee of the House Judiciary Committee, which held hearings and concluded that it was constitu-tional; (2) When the Amendment was later attached as a rider to an unrelated defense appropriations bill, it was consistently de-sccribed as doing the opposite of what it actu-ally did.

Elimination of the presumption does not mean that a statute is constitutional. A statute is unconstitutional only if it inde-pendently violates some provision of the Constitution. I did not argue—and do not be-lieve—that inadequate consideration by Con-gress alone would be sufficient to strike down a statute.'
Mr. Jipping wrote: "Finally, Mr. Fletcher is the most impressive scholar of the time. I am completely confident that when Fletcher finishes his service on the ninth circuit we will say that he has been a liberal judge or a conservative judge but that he has been an excellent judge, one who has brought a brilliant mind, greater powers of analysis, and total objectivity to the cases that came before him. I believe that the nomination of William Fletcher will add strength to the ninth circuit and I hope very much that he is confirmed.

I would like to also quote Stephen Bank of the University of Pennsylvania Law School:

"His work is both analytically acute and painstaking in its regard for history. Indeed, love of and respect for history shine through all his work, as the history itself illuminates the various corners of the law he enters."

Interestingly enough, the New Republic wrote in an editorial in 1995:

"Fletcher is the most impressive scholar of Federal jurisdiction in the country. His path-breaking articles on sovereign immunity and the evolution of common law have transformed the debates in these fields; and his work is marked by the kind of careful historical and textual analysis that should serve as models for all judicial decision.

If confirmed, Fletcher will join his mother—Mrs. FEINSTEIN. Mr. President, United States Senator and cast a vote on the nomination of a federal judge.

I very much hope that this body will confirm him this afternoon. I believe, as another has said, that he will, in fact, be an excellent, thoughtful and commonsense judge.

I thank the Chair. I yield the floor.

Mrs. BOXER. Mr. President, I am very happy to finally have the opportunity to come to the floor today and vote on the nomination of Professor William Fletcher to the U.S. Court of Appeals in the Ninth Circuit. I urge my colleagues in the Senate to vote for Professor Fletcher, who is eminently qualified to serve on the federal appeals court. Professor Fletcher was first nominated on April 26, 1995. He had a hearing and was reported out in May of 1996, and has been patiently waiting for a debate and vote on his nomination ever since.

Some members of the Senate oppose this nomination because his mother sits on this court. However, his mother, the Honorable Betty Fletcher, has already agreed to take senior status and not sit on panels with her son if he is confirmed. So, again, I am very happy to once again exercise my duties as a U.S. Senator and cast a vote on the nomination of a federal judge.

To give a little history, the 104th Congress never acted on Professor Fletcher's nomination the first time, so he had to be renominated on Jan

On the motion of Mrs. FEINSTEIN, the motion to proceed to other business was agreed to.
I believe professor Fletcher will make an exceptional addition to the federal bench. I believe his intelligence, broad experience, and professional service qualify him to sit on the federal bench with great distinction. I am sure the position can accommodate the excellence of his law and I urge my colleagues to vote for his confirmation.

Mr. SESSIONS addressed the Chair.

The PRESIDING OFFICER. The Senator from Alabama is recognized.

Mr. DeWINE. Mr. President, I rise this afternoon to oppose the nomination of William Fletcher to be a U.S. Circuit Court judge for the Ninth Circuit. On May 21, 1998, the Senate Judiciary Committee favorably reported out this nominee by a vote of 12 to 6. I voted against the nominee. I would like to take a moment this afternoon to explain to my colleagues in the Senate why I voted no on that date and why I intend to vote no today. I intend to vote no today, Mr. President, and I base my position on the fact that Mr. Fletcher’s writings and statements simply do not convince me that he will help to move the Ninth Circuit closer to the mainstream of judicial thought. And that is the criteria that I applied and will continue to apply in regard to the Ninth Circuit.

Although some Senators oppose this nominee because of their reading of the antinepotism statute and their concern in that area, the fact that Mr. Fletcher’s mother also serves on the Ninth Circuit, who, as my colleague pointed out, will take senior status, does not trouble me. As I said in the Judiciary Committee, I am not in favor of legislation that, based on family relationships, restricts the power of the President to make appointments to either nominate or confirm judges.

Having said that, Mr. President, let me restate what concerns me about this nomination. All of us—all of us—should be concerned about what has been going on in the Ninth Circuit over the last few years. Based on the alarming reversal rate of the Ninth Circuit, I have said before and I will say it again for the Record today, I feel compelled to apply a higher standard of scrutiny for Ninth Circuit nominees. I do so for nominations to any other circuit.

Mr. President, I will only support nominees to the Ninth Circuit who possess the qualifications and whose background shows that they have the ability and the inclination to move the circuit back towards the mainstream of judicial thought in this country. Before we consider future Ninth Circuit nominees, I urge my colleagues to take a close look at the evidence, evidence that shows that we have a judicial circuit today that each year continues to move away from the mainstream.

I believe the President of the United States has very broad discretion to nominate to the Federal bench whomever he chooses, and the Senate should give him due deference when he nominates someone for a Federal judgeship. However, having said that, the Senate does have a constitutional duty to offer advice and consent on judicial nominations. Each Senator, of course, has his or her own criteria for offering this advice and consent. However, given that these nominations are lifetime appointments, all of us take our advice and consent responsibility very seriously.

We should keep in mind that the Supreme Court of our country has time to review only a small number of decisions from any circuit. That certainly is true with the Ninth Circuit as well. This means that each circuit, the Ninth Circuit in this case, in reality is the court of last resort. In the case of the Ninth Circuit, they are the court of last resort for the 45 million Americans who reside within that circuit. To preserve the integrity of the judicial system for so many people, I believe we need to take a more careful look at who we are sending to a circuit that increasingly—increasingly—chooses to disregard precedent and ultimately just plain gets it wrong so much of the time.

Consistent with our constitutional duties, the Senate has to take responsibility for correcting this disturbing reversal rate of the Ninth Circuit. I think we have an affirmative obligation to do that. And that is why I will only support those nominees to the Ninth Circuit who possess the qualifications and who have clearly demonstrated the inclination to move the circuit back towards the mainstream.

Mr. President, I will want to apply a higher standard of scrutiny to future Ninth Circuit nominees to help ensure that the 45 million people in that circuit receive justice, and justice that is consistent with the rest of the Nation, justice that is not arbitrary nor dependent on the few times the Supreme Court reviews and ultimately reverses an erroneous Ninth Circuit decision.

I yield the floor.

The PRESIDING OFFICER (Mr. Sessions). The Senator from Vermont.

Mr. LEAHY. Mr. President, I reserve our time on this side. I know on the other side the Senator from Missouri, I assume, will speak on their time. I withhold my time on the floor as well. I am kind of stuck here anyway. I yield to the Senator from Missouri, on their time.

The PRESIDING OFFICER. The Senator from Missouri.

Mr. ASHCROFT. Mr. President, with the permission of the Senator from Alabama, I yield myself as much time as I might consume in opposition to the nomination.

The PRESIDING OFFICER. The Senator from Missouri.

Mr. ASHCROFT. Mr. President, the Ninth Circuit Court of Appeals is in serious need of improvement. The court is the epicenter of judicial activism in this country. The Ninth Circuit’s unique blend of distortion of text, novel innovation, and disregard for precedent caused it to be reversed by the U.S. Supreme Court 27 out of 28 cases in the term before last. That is not only not acceptable, it is not acceptable for the Federal Circuit, which this court’s cases were considered by the U.S. Supreme Court in the term before last, 27 out of 28 decisions were considered to be wrong.

If the people of this country found out that 27 out of 28 decisions of the Senate were considered to be wrong, Senators would not last very long. No tolerance would be provided for virtually any institution that was wrong that much of the time. The Ninth Circuit Court’s record improved last year, but barely. According to the National Law Journal, the court was reversed in whole or in part in 14 out of 17 cases last year. Over the last 2 years, that amounts to a reversal rate of 90 percent. In the last 2 terms, 9 out of 30 cases reviewed by the Supreme Court were considered to be wrong.

The Ninth Circuit’s disastrous record before the Supreme Court has not been lost on the Justices of the Supreme Court. In a letter supporting a breakup of the Ninth Circuit, Justice Scalia cited the circuit’s “notoriously poor record on appeal.” Justice Scalia explained, “A disproportionate number of cases from the Ninth Circuit are regularly taken by this court for review, and a disproportionate number reversed.”

The Ninth Circuit’s abysmal record cannot be dismissed or minimized because the Supreme Court is there to correct the Ninth Circuit’s mistakes. In a typical year, the Ninth Circuit disposes of over 8,500 cases. In about 10 percent of those cases, over 850 cases, the losing party seeks to have a review in the Supreme Court. Although appeals from the Ninth Circuit occupy a disproportionate share of the docket, the Supreme Court grants only between 20 and 30 petitions from the Ninth Circuit in a given year. If they are reversed 90 percent of the time because they are wrong in those cases that have been accepted. I do not know what the error rate would be in the other 8,500 cases that they litigate or consider on appeal, or what would be the error rate in the 850 cases that are sent, begging the Supreme Court to review cases. But very likely, in my judgment, if their error rate is 90 percent in those cases that are accepted by the Supreme Court, that there are also a lot of other individuals simply denied justice because of the extremely poor quality of the Ninth Circuit court of appeals.

This really places upon those of us in the U.S. Senate a very serious responsibility, a responsibility of seeking to improve the quality of justice that people receive from the Ninth Circuit.
Court. So, if there are errors in the other cases, they are just going to remain there.

Only three-tenths of 1 percent of the cases decided by the court are reviewed by the Supreme Court. So if we say it is OK for a circuit to be full of error, it is OK for that circuit to be absent the quality and the kind of correctness that is appropriate in the law, if we predicated our approval on the basis that there can be an appeal, the truth of the matter is, the Supreme Court does not even take may be more blatant injustices than the ones that the Supreme Court does take, because the Supreme Court is trying to resolve differences between the Ninth Circuit and the U.S. Supreme Court or the Eighth Circuit and the Ninth Circuit, or something like that. So we have a real shortfall of justice that exists as a potential whenever we have a court that is so error ridden, and its error-ridden nature exacerbated because of the correction responsibility that has to be exercised by the U.S. Supreme Court.

The truth of the matter is, for virtually all litigants within the Ninth Circuit, the decisions of the Ninth Circuit are the final word. How would you like knowing that you were going to court and that the appellate court which would oversee your day in court was reversed 90 percent of the time when it was considered by the Supreme Court, but you only had a three-tenths of 1 percent chance of getting an injustice in your case reversed because the Supreme Court only takes three-tenths of 1 percent of the cases? I think America deserves to have more confidence in its judicial system than that.

There is an activist circuit in desperate need of therapy and help. After a thorough review of its record, it is my judgment that Professor Fletcher would do more harm than good in the Ninth Circuit, would move that court further outside the judicial mainstream.

There has been a great deal of discussion about the applicability of Federal antinepotism statutes to this nominee. I commend individuals for raising this issue. It is critical to the respect for the mainstream. It is the view of the mainstream that the Ninth Circuit be printed in the Record. Without objection, it is so ordered. The Senator from Pennsylvania is recognized.

Mr. SPECTER. I thank the Chair. (The remarks of Mr. SPECTER pertaining to the introduction of S. 2580 are located in today's RECORD under the headings "Statements on Introduced Bills and Joint Resolutions.")

The PRESIDING OFFICER (Mr. SMITH of Oregon). Twenty-three minutes and 16 seconds.

Mr. SPECTER addressed the Chair.

Mr. SPECTER. Mr. President, I ask unanimous consent that I may speak for up to 5 minutes on the serious question of steel imports and introduce a piece of legislation.

Mr. LEAHY. Mr. President, does the Senator ask for that time outside the time of the Fletcher matter?

Mr. SPECTER. Mr. President, I do. The PRESIDING OFFICER (Mr. ASHCROFT). Without objection, it is so ordered. The Senator from Pennsylvania is recognized.

Mr. SPECTER. I thank the Chair. (The remarks of Mr. SPECTER pertaining to the introduction of S. 2580 are located in today's RECORD under the headings "Statements on Introduced Bills and Joint Resolutions.")

The PRESIDING OFFICER. The Senate will now resume debate of the nomination of Judge Fletcher.

Mr. LEAHY. Mr. President, I ask the Chair, how much time is available to this side, the proponents of the Fletcher nomination?

The PRESIDING OFFICER (Mr. SMITH of Oregon). Twenty-three minutes and 16 seconds.

Mr. LEAHY. I yield myself such time as I may need.

We heard discussion about the Ninth Circuit. There was a suggestion that it is reversed all the time.

In the year ending March 31, 1997, they decided 7,955 matters; in the year ending March 31, 1996, 7,813 matters; in 1995, 7,955 matters. Well, 99.7 percent of those matters were not overturned.

I ask unanimous consent that an article by Judge Jerome Farris of the Ninth Circuit be printed in the Record.

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

Professor Fletcher's articles and answers to written questions "articulate their constitutional views as a condition of their confirmation."

Fletcher's writings focus on relatively esoteric subjects, they display a disturbing tendency toward activism on the issues addressed.

He has criticized the current limitations on standing and has advocated an approach that would focus more on the legislative intent--an inherently dubious guide--and would afford standing to plaintiffs excluded by the current doctrine.

Likewise, he has written that the procedural history of an amendment's enactment can lessen the presumption of constitutionality that would otherwise attach to the enactment. Frankly, we ought to be evaluating the constitutionality on the basis of the Constitution, not the procedural history. This is particularly disturbing in light of the Ninth Circuit's apparent tendency to apply a presumption of unconstitutionality to popular initiatives and other legislation the judges dislike on policy grounds.

In an opinion piece written in the midst of a U.S. Supreme Court confirmation process, Professor Fletcher wrote that "the Senate must insist nominees articulate their constitutional views as a condition of their confirmation."
The Ninth Circuit—Most Maligned Circuit in the Country—Fact or Fiction? (By Hon. Jerome Farris)*

*Footnotes at end of article.

The Honorable Jerome Farris argues that the reason for the court's reversals is not that a high percentage of Ninth Circuit cases accepted for review are not because the Circuit is "too liberal." Rather, Judge Farris emphasizes the high volume of cases handled by the Ninth Circuit and its willingness to take on controversial issues. He suggests that any objective observer would conclude that the Ninth Circuit is functioning well and the system is working precisely as the Framers of the United States Constitution intended.

The shell game has survived over the centuries because there are always brains that are not merely willing, but delighted, to be deceived. If the game is played often enough and mindlessly enough, one can come very close to fooling "all of the people of the time.

The Ninth Circuit—most maligned circuit in the country—fact or fiction? It is absolutely true that the United States Supreme Court accepted twenty-nine cases from the Ninth Circuit for review in 1997 and reversed twenty-eight of those decisions, affirming only one. In 1996, the Supreme Court reviewed twelve Ninth Circuit cases and reversed ten. In 1995, the Supreme Court reviewed fourteenth Ninth Circuit decisions and reversed thirteen. That period, the Ninth Circuit had so many decisions reversed or so high a percentage of reversals accounted for.

According to these statistics, the Supreme Court reversed sixty-six percent of the Ninth Circuit cases it reviewed in 1997, an all-time high.

In the year ending March 31, 1997, the Ninth Circuit decided 8701 matters. In the same period ending in 1996, the Ninth Circuit decided 7813 matters. In 1995, the Ninth Circuit decided 7923 matters. If one considers the number of Ninth Circuit decisions reversed by the Supreme Court against the total number of cases decided by the Ninth Circuit, an entirely different picture emerges. Under this analysis, the Supreme Court let stand as final .97 percent of the Ninth Circuit's 1996 cases. No circuit in history has so many cases, and no circuit in history has had so low a percentage of cases reversed.

The fact is that one statistic is right and that the other statistic is wrong, but that statistics can be deceiving and can be used to paint almost any picture one wants. Courts issue "opinions"; they do not decide right and wrong in an absolute sense. Courts cannot determine right and wrong in an absolute sense because the law is not absolute.

Deciding a legal rule is not like figuring out an immutable law of physics—a court always strives for "the right answer," but because the law has a life of its own, time determines what is right on occasion reverse themselves for just that reason.

Any Ninth Circuit judge worthy of the title would want to revisit the decisions that were taken for review to determine whether in any single instance Supreme Court precedent was ignored. One cannot expect newspaper reporters to make that kind of review. News reporters cannot analyze the facts, and newsmen cannot analyze the facts. It is my view that no responsible "expert" would comment before making such a review. What the review would show is that the number of cases is in the domain of the public.

In 1997, the Supreme Court unanimously reversed twenty cases (eight of those decisions). In the one case, the Ninth Circuit case that the Supreme Court affirmed (the vote was eight to one), the majority held that the opinion properly followed Supreme Court precedent. In one case that the Supreme Court unanimously reversed, the Ninth Circuit followed a Tenth Circuit precedent, however, decided the issue a different way and the Supreme Court reversed the decision. In Saratoga Corp. v. Martin & Co., 2 a six to three reversal, Justice Scalia, joined by Justice Thomas, noted in dissent that "an impressive line of lower court decisions applied exactly the same law, has, like the Ninth Circuit, precluded liability in analogous situations."

In eight of the reversed Ninth Circuit cases, the Supreme Court reversed conflicts between the circuits: Old Chief v. United States; California Division of Labor Standards Enforcement v. Dillingham Construction; United States v. Brockamp; Regents of the University of California v. Doe; 3 Inter-Modal Rail Employees Ass'n v. Atchison, Topka, & Santa Fe Railway; 4 United States v. Hyde; 5 King Distributors, Inc. v. L'anza Research International, Inc., 6 The Supreme Court stated that the Ninth Circuit failed to follow Supreme Court precedent. 7 In one case, the Supreme Court reversed an earlier decision. However, what we write are opinions. The sin is not being wrong, but being wrong when the guidance was clear and when there was a deliberate failure to follow the guidance. Two cases illustrate the dilemma of circuit courts: Washington v. Glucksberg, 17 regarding the constitutionality of laws prohibiting physician-assisted suicide, and Oregon v. Veterans' Administration, 8 regarding Supreme Court precedent. 3 In one case, the Supreme Court reversed both of these Ninth Circuit decisions.

The Brady Act was widely discussed public and received much political interest. At issue was whether the Brady Handgun Violence Prevention Act, 9 The Supreme Court reversed both of these Ninth Circuit decisions.

The Supreme Court also reversed itself in many well-known cases. This term it reversed a decision regarding public school teachers in parochial schools. The term before it overturned itself Senator Daniel K. In one case, the Supreme Court decided that the Circuit was "too liberal." In another, the Court decided that Congress was "too liberal." The Supreme Court was right and that Congress was wrong? Or do these results prove that the Supreme Court reversals—no way meant to be comprehensive—actually constitutes a high reversal rate considering that the Supreme Court current averages about eighty to ninety decisions a year, or one percent of the number of cases that the Ninth Circuit hears. This comparison suggests that the Supreme Court should have reversed one hundred Ninth Circuit cases a year in order to reverse the Ninth Circuit at as high a rate as the Supreme Court reverses its Circuit decisions.

In other instances, Congress has decided that the Supreme Court had the wrong answer and enacted legislation to effectively override the decision. The Religious Freedom Restoration Act of 1993 (RFRA) and the 1982 Voting Rights Act Amendments. The Supreme Court upheld the constitutionality of the 1982 Voting Rights Act Amendments and found RFRA unconstitutional.

Do these results prove that Congress was right and that the Supreme Court was wrong? Or do these results prove that the Supreme Court was right and that Congress was wrong? Congress of course not. Rather, these results provide examples of the checks and balances designed in the Constitution to make our government run properly. Similarly, when the Supreme Court reverses an appellate court decision, it does not mean that the decision was wrong in an absolute sense, and more importantly, it does not mean that the appellate court was not functioning properly in its role in the judiciary and in the United States government.

Part of the cause of the misperception about the court and writing law as formalism is the training of lawyers at law school. Most law schools begin teaching law in a formalistic manner: the student learns the law, and there are no classes where the practical gets carried on as law students enter the legal profession. Lawyers often argue before
me that there is only one possible result ("The law dictates this result!"). This is rarely true, and is never true in complicated cases. There are always some arguments for each of the cases, and factors other than these factors contribute to the Supreme Court's review and reversal of more Ninth Circuit cases than cases from any other circuit.

Some observers contend that the Ninth Circuit is reversed so often because it is the most liberal circuit in the country and because the Supreme Court is currently conservative. This hypothesis also provides ammunition to those now arguing that the Ninth Circuit should be split (a topic for another article). However, these observers have failed to review the facts. Of the opinions signed by Ninth Circuit judges that were reversed this year by the Supreme Court, seven were by Democratic presidential appointees, and nine were authored by Republican presidential appointees. Apparently the Supreme Court is an equal opportunity reverser.

To function properly, each court must do its duty to the best of its ability. Parties must be able to rely on the full resolution of cutting-edge issues in each court to which the issues are submitted. There is always the risk of reversal, but that risk should not—cannot—drive the system. The Supreme Court is there to test the question of physician-assisted suicide and the issue of the Brady Act because it had decisive opinions to write. These courts can close their eyes when issues are closed, and they certainly may be for the immediate future. History reminds us, though, that serious controversial issues are revisited from time to time. This comment is written by a circuit judge whose life would certainly have been different had the Dred Scott decision not been revisited.

I make no prediction for the future of any of the Ninth Circuit reversals, but one commentator was not so cautious. Writing while twenty-three, and otherwise disposing of three.

What is important to remember is that opinions, unlike arithmetic solutions, may vary. Our system under the Constitution is designed to put an end to variations because the Supreme Court makes the final decision. The other courts can dispose of cases, but when each court is disposed of, the issue is put to rest. The Supreme Court, in its duty to the best of its ability. Parties must be able to rely on the full resolution of cutting-edge issues in each court to which the issues are submitted. There is always the risk of reversal, but that risk should not—cannot—drive the system. The Supreme Court is there to test the question of physician-assisted suicide and the issue of the Brady Act because it had decisive opinions to write. These courts can close their eyes when issues are closed, and they certainly may be for the immediate future. History reminds us, though, that serious controversial issues are revisited from time to time. This comment is written by a circuit judge whose life would certainly have been different had the Dred Scott decision not been revisited.

I make no prediction for the future of any of the Ninth Circuit reversals, but one commentator was not so cautious. Writing while twenty-three, and otherwise disposing of three. The Nineteenth Circuit dealt with more cases than any other circuit. It is not surprising, then, that the Ninth Circuit would deal with more complicated and important issues than any other circuit. This year it contributed to the Supreme Court's review and reversal of more Ninth Circuit cases than cases from any other circuit. The Nineteenth Circuit dealt with more cases than any other circuit. It is not surprising, then, that the Ninth Circuit would deal with more complicated and important issues than any other circuit. This year it contributed to the Supreme Court's review and reversal of more Ninth Circuit cases than cases from any other circuit.

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To function properly, each court must do its duty to the best of its ability. Parties must be able to rely on the full resolution of cutting-edge issues in each court to which the issues are submitted. There is always the risk of reversal, but that risk should not—cannot—drive the system. The Supreme Court is there to test the question of physician-assisted suicide and the issue of the Brady Act because it had decisive opinions to write. These courts can close their eyes when issues are closed, and they certainly may be for the immediate future. History reminds us, though, that serious controversial issues are revisited from time to time. This comment is written by a circuit judge whose life would certainly have been different had the Dred Scott decision not been revisited.

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overturned as unconstitutional have to resign? Maybe not the first time they vote for something declared unconstitutional; maybe they shouldn't have to leave the first time, because everybody is allowed a mistake. If they did it a second time, do they have to go, too? I come from a tolerant State. I belong to a religion that believes in redemption and forgiveness. So we will let them get away with two.

We are in the baseball season. Suppose they vote for three unconstitutional things, they were popular but they get overturned as unconstitutional. Well, we are now considering perspectives beyond religion and politics, we are going to baseball. Three times, three strikes—are you out? Let's be a little careful when we use some of these analogies about who should or should not serve on a court depending on how many times they get reversed.

Senators may not want to go back and ask how many times they voted for something, how many times they have wonderful speeches in favor of something, how many times they sent out press releases, sent feeds back to their TV station, maybe used them in their reelection ads, and then, guess what? The U.S. Supreme Court overturned that legislation as unconstitutional.

Especially, I say to some of my friends on the other side, when the majority of those voting to declare those laws unconstitutional were Republican members of the U.S. Supreme Court, reported by Republican Presidents, and extolled as great conservatives. In each one of the cases I have referenced, I agreed with them. They were the true conservatives. What they wanted to conserve was the Constitution of the United States.

Sometimes when we want to stand up here and tell how conservative we are, we ought to say: Are we conservative with regard to the Constitution of the United States? Are we prepared to conserve the U.S. Constitution?

I recall one day on a court-stripping bill on this floor years ago an effort was made to pass a court-stripping bill, a bill to withdraw jurisdiction from the courts over certain matters of constitutional remedies, because the polls showed how popular it would be. One Friday afternoon, three Senators stood on this floor and talked that bill into the grave.

I was proud to be one of those three Senators. As I walked out with the other two—one, the Senator from Connecticut, then an independent, Senator Lowell Weicker; the third Senator who had joined with us to talk down that court-stripping bill, my good friend, now deceased, Senator Barry Goldwater of Arizona. Senator Goldwater put his arms around the shoulders of both of us, and we were both a little bit taller than he, and said, "I think we are the only three conservatives in the place."

I can't speak for Senator Weicker, how he might have felt about that; I took it as a heck of a compliment—not because I go back and claim to be a conservative in my politics back home. I only claim to be a Vermonter, doing the best I can for my State. When I stand up for the U.S. Constitution, as I have so many times for the first amendment, I try to keep alive what is best in our country.

Professor William Fletcher is a fine nominee. He is a decent man. He was first nominated to the U.S. Court of Appeals for the Ninth Circuit, May 7, 1995. I was delayed until past Mother's Day. I now know of any judicial nominee who has had to endure the delay and show the patience of this nominee. He was nominated May 7, 1995. We are only a few months away from 1998.

I have spoken on many occasions about how the Republican Senate is rewriting the record books in terms of delaying action on judicial nominees, but Professor Fletcher's 41 months exceeds the 33-month delay in the consideration of J. Richardson H. Paez and Anabelle Rodriguez; or the 26 months it took to confirm Ann Aiken; or the 24 months it took to confirm Margaret McKeown; or the 21-month delay before confirmation of Margaret Morrow and Hilda Tague who, I guess, found, unfortunately, in this Senate, that if you are either a woman or a minority, you seem to take a lot longer to get through the Senate confirmation process.

In the annual report on the judiciary, the Chief Justice of the Supreme Court observed:

Some current nominees have been waiting a considerable time for a Senate Judiciary Committee vote or a final floor vote. The Senate confirmed only 17 judges in 1996 and 36 in 1997, well under the 101 judges it confirmed in 1994.

He went on to note:

The Senate is surely under no obligation to confirm any particular nominee, but after the necessary time for inquiry it should vote him up or vote him down.

Mr. President, 3½ years is a long time to examine a nomination and to leave a judgeship vacant. Even at the pace of the U.S. Senate, 3½ years is a long enough for us to make up our mind.

Around Mother's Day in 1996, the Judiciary Committee did report the nomination of Professor Fletcher to the Senate, but that year the majority, Republican majority, decided not to vote on any nominees to courts of appeals, so the nomination was not considered by the Senate. The committee vote, though, in 1996 was more than 2-1 in favor, including Senator Hatch, Senator Specter, Senator DeWine, and Senator Simpson. This year, the vote was delayed until past Mother's Day. The vote was taken May 21, 1998. The committee's second consideration of the nominee resulted in a vote of 2-1. I knew I should not like J. judge Betty Binn Fletcher. They don't agree with her decisions. In our federal judicial system, there are mechanisms for holding judges accountable. There are panels of judges at the courts of appeals. There are en banc considerations. There is ultimately the controlling authority of the U.S. Supreme Court. J. Judge Fletcher's decisions are subject to review and reversal, just like every other judge.

No one should turn their anger with Judge Betty Fletcher into a reason to delay or oppose the appointment of Professor William A. Fletcher. No one should try to get back at Judge Betty B. Fletcher through delay of the confirmation of her son.

Senator Republicans have continued their attacks against an independent Federal judiciary and delayed in filling longstanding vacancies with qualified persons being nominated by the President. Professor Fletcher's nomination has been a casualty of their efforts. Forty-one months—41 months—and two confirmation hearings have been enough time for examination to bring the Senate to a final vote. Professor Fletcher is a fine person and an outstanding nominee who has had to endure years of delay and demagoguery as some chose to play politics with our independent judiciary.

Professor Fletcher has the support of both Senators from California. The ABA gave him the highest rating. He is supported by many judges and lawyers and scholars from around the State, the Ninth Circuit, and the country. I commend the distinguished chairman of the Senate Judiciary Committee, the senior Senator from Utah, Senator Hatch, and many other Republican Senators who have continued to support this fair-minded nominee.

I look forward to Senate action this afternoon and I look forward to the fact that he will be confirmed.

Mr. President, I withdraw the remainder of my time.

I yield the floor.

Mr. THURMOND. Mr. President, I rise today in opposition to the nomination of William Fletcher for the Ninth Circuit Court of Appeals.

When this nomination was first considered in the Judiciary Committee in 1996, I opposed it because I believed that the anti-nepotism statute, 28 U.S.C. 458, prohibited him from serving on the Ninth Circuit based on the fact that his mother, Betty Fletcher, is a judge on the same court. There has been some dispute about whether this statute applies to judges rather than only inferior court employees, and the Senate yesterday passed legislation by Senator Kyl to clarify that the statute does apply to judges. However, the revision is prospective in nature and does not apply to Professor Fletcher. In my view, Professor Fletcher's nomination should not have existed before the Senate's clarification. Thus, I must oppose this nomination because I believe it violates the anti-nepotism laws.
Moreover, I have serious reservations about Professor Fletcher’s judicial philosophy. I believe we have a duty to oppose nominees who do not have a proper respect for the limited role of a judge in our system of government. One of the most influential advocates for an activist Federal judiciary in this century was Supreme Court Justice William Brennan. He believed that the Constitution was a living document and that judges should interpret the Constitution as though its words change and adapt over time. I have always believed that this view of the Constitution is not only wrong but dangerous to our system of government. The words of the Constitution do not change. They have an established meaning that should not change based on the views of a judge. They should change only through an amendment to the Constitution. It is through the amendment process that the people can determine for themselves what the Constitution says, rather than unaccountable, unelected judges making the decisions for them.

Professor Fletcher has written in strong support of Justice Brennan and his approach to judicial philosophy. In a 1991 law review article, he praised Justice Brennan for his quote, “sense that the Constitution has meaning beyond the bare words of the text.” He stated that some parts of the Constitution are, “almost... constitutional truths in search of a text.” He even approvingly quoted Justice Brennan’s famous statement regarding Constitutional interpretation that, quote, “the ultimate question must be what do the words of the text mean in our time.”

I firmly believe that the role of the judge is to interpret the law as the legislature intended, not to interpret the law consistent with the judge’s public policy objectives. A judge does not make the law and is not a public policy maker. The role of Judge Fletcher has been critical of the modern Supreme Court for its lack of political and governmental experience. In a 1987 law review article, he criticized recent landmark Supreme Court decisions on the separation of powers, saying the Court, quote, “read the Constitution in a literalistic way to upset what the other two branches had decided, under the political circumstances, was the most workable arrangement.” What is convenient in a political sense is irrelevant, a proper interpretation of the Constitution.

Moreover, Professor Fletcher has been nominated to the Ninth Circuit, and the Supreme Court routinely finds it necessary to reverse the Ninth Circuit. Indeed, in recent years, the Ninth Circuit has been reversed far more often than any other circuit. This trend will be corrected only if we confirm sound, mainstream judges to this critical circuit. I do not see that problem with Justice Brennan’s nominee, the one here, who even characterizes himself as being in his words, quote, “fairly close to the mainstream.”

If Professor Fletcher is confirmed, I sincerely hope that he turns out to be a sound, mainstream judge and not a judicial activist from the left. I hope he helps to improve the dismal reversal rate of the Ninth Circuit. However, I will evaluate judges based on the record we have before us. As I read Professor Fletcher’s record, it does not convince me that he is an appropriate addition to the Court of Appeals. Therefore, because of my interpretation and the anti-nepotism statute and my concerns about judicial activism, I cannot support this nominee.

Mr. BAUCUS. Mr. President, I rise today to also express my strong support for the nomination of William A. Fletcher to the U.S. Court of Appeals for the Ninth Circuit. Mr. Fletcher has proven himself superbly qualified for this position. A man of deep personal integrity, of sound judgement and a well-referred Law School, Mr. Fletcher’s nomination is certainly deserved and given that five judgeships remain vacant on the Ninth Circuit, his confirmation is well past due.

Mr. Fletcher’s qualifications for this position are truly remarkable. Mr. President. He is a graduate of Harvard University and a Rhodes Scholar. William Fletcher earned his law degree from Yale, clerked at the United States Supreme Court, and has dedicated himself to a career of exploring complex legal theories as a professor and as an esteemed author. Fletcher has been a professor at Boalt Hall since 1977 where he was awarded the Bancroft Teaching Award in 1993, an honor bestowed annually upon the five finest faculty members on the Berkeley campus. Fletcher has also served as a visiting professor at the University of Michigan, Stanford Law School, Harvard Law School, and the University of Cologne, and he has served as an instructor at the Salzburg Seminars.

Professor Fletcher’s scholarly works include influential law review articles that have proved useful to both academics and practitioners. His works include published articles relating to the topics of civil procedure and federal courts, such as standing and the Eleventh Amendment, sovereign immunity and federal common law. In exploring the law and authoring these esteemed articles, Fletcher demonstrates his uncanny powers of analysis and steadfast objectivity.

In addition, if Mr. President, William Fletcher’s nomination enjoys broad support across political and ideological spectrums. He has been endorsed not only by an extensive array of his peers throughout the country, but also by non-partisan observers and the American Bar Association, all of whom comment on the centrist, pragmatic approach he brings to the law. I am completely confident that Mr. Fletcher is the best possible candidate to the U.S. Court of Appeals for the Ninth Circuit.

So again Mr. President, I would like to express my unequivocal support for William A. Fletcher as a highly qualified nominee to the U.S. Court of Appeals for the Ninth Circuit. I will conclude by quoting one of Mr. Fletcher’s colleagues in saying “If Willy Fletcher presents a problem [for the judiciary committee], there is no academic in America who should get a court appointment.”

Mr. SESSIONS. Mr. President, how much time remains? The PRESIDING OFFICER. The Senator from Alabama has 6 minutes 40 seconds.

Mr. SESSIONS. Mr. President, there have been several speakers, including the Senator from Ohio and the Senator from Missouri, who have talked about the unique circumstances that are at foot here in dealing with the Ninth Circuit, and that we have a responsibility and a duty to make sure that we use our advise and consent authority wisely to improve the courts in America, and the Ninth Circuit is in need of, severe need of reform. It has been reversed in nearly 90 percent of its cases in the last 2 years—an unprecedented record that no circuit, to my knowledge, has even been suggested to have persecuted. The New York Times has referred to the Ninth Circuit Court of Appeals—which includes California and most of the west coast—and they said that a majority of the Supreme Court considers the Ninth Circuit a rogue circuit.

Now, some Senators suggest this is politics. Mr. President, I was elected by the people of my State to come here, and one of my duties is to evaluate Federal judges. I have affirmed and voted for the overwhelming majority of the Clinton nominees. I am willing to vote on this one. I have agreed to this nomination to come up and be voted on. But I want to have my say. I am concerned about this. I don’t think this is politics.

As a matter of fact, let me quote to you from an article that Mr. Fletcher, the nominee, wrote a few years ago referring to the confirmation process involving Justice Clarence Thomas. What he said about the role of the Senate was this:

Does the Senate have the political will— That is us, me—to come down here and do the unpleasant duty of standing up and—\ And talk about a gentleman who is characterized, I am sure, and a nice fellow— talking about the unpleasant fact that he may not be the right nominee for the court?

He said:

Does the Senate have the political will to insist that its constitutional advise and consent role become a working reality?

Mr. President, I have been here 2 years. One nominee withdrew before a vote, and we hadn’t voted on any nominees. So we are not abusing our advise and consent power. As a matter of fact, I do think it is important enough in using it to ensure that the nominees to the Federal bench are mainstream nominees.
That is what we are talking about. He said, “This is Mr. Fletcher, who wrote this article. He is an academic, a professor, so he can sit around and find time to write these articles. We are not dealing with a proven practitioner, a man who has served as a judge or Federal judge, as we normally have. We are dealing with a nominee who has never practiced law in his life, has never tried a lawsuit, has never been in court and had to answer to a judge. Yet, he is going to be supervising, who lives the largest Federal circuit in the country. This is what he wrote:

The Senate must be prepared to persuade the public that an insistence on full participation by choosing judges is not a usurpation of power.

That is all we are doing. We are telling the President of the United States—and it is going to get more serious with additional nominees to this court—that we have to have some mainstay nominees. We have to do something about the Ninth Circuit, where 27 out of 28 cases were reversed in the term before last, and 13 out of 17 were reversed in the last term. That has been going on for 15 or 20 years. It is no longer a problem anymore. It is an open, acknowledged problem in American jurisprudence. The U.S. Supreme Court is trying to maintain uniformity of the law.

For example, this summer, the Ninth Circuit was the only circuit to rule that the Prison Litigation Reform Act—passed here to improve some of the horrendous problems we were having with litigation by prisoners—was unconstitutional. Every other circuit that addressed the issue upheld the constitutionality of this act, including the First, Fourth, Sixth, Eighth, and Eleventh Circuit have affirmed the constitutionality of the Prison Litigation Reform Act. But not the Ninth Circuit. It is out there again.

As a matter of fact, I have learned that they utilize an extraordinary amount of funds of the taxpayers on defense of criminal cases. In fact, they have approved one-half of the fees for court-appointed counsel in the entire United States. There are 11 circuits in America. This one is the biggest, but certainly not more than 20. 25 percent of the country—probably less than that. They did half of the court-appointed fees because they are turning criminal cases into protracted processes where there is no finality in the judgment—a problem that America is coming to grips with, the Supreme Court is coming to grips with, and the people of this country are coming to grips with. That is just an example of what it means to have a problem there.

Mr. President, I will just say this: This nominee was a law clerk, in addition to not practicing, and he clerked for Justice Brennan, who was widely recognized as the epitome of judicial activism. His mother is on this court today, the Ninth Circuit, and she

is recognized as the most liberal member of the court. Perhaps one other is more liberal. It is a problem we have to deal with.

I would like to mention this. In talking about the confirmation process, he made some and unwise comments about Justice Thomas in a 1991 article. He questioned, I think fundamentally, the integrity of Justice Thomas. What kind of standard do we need to apply here? He believed a very high standard. This is what he said:

I judge Clarence Thomas did have a record, although not distinguished enough to merit President Bush’s accolades. But Thomas backed away from that record, pretending he meant none of what he had written, and said that he never talked about Roe v. Wade with anyone and, of course, he didn’t talk dirty to Anita Hill either.

The PRESIDING OFFICER. All of the Senator’s time has expired.

Mr. SESSIONS. Mr. President, I think that was an unkind comment. I don’t believe he is the right person for this circuit, and I object to his nomination.

I yield the floor.

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

The PRESIDING OFFICER. The Senator has 11 minutes 4 seconds.

Mr. LEAHY. Mr. President, Mr. Fletcher has waited a long, long time—nearly 35 years—for this moment. He has been voted on by the Senate Judiciary Committee by an overwhelming margin twice. He is strongly supported by both Republicans and Democrats in this body. He has waited long enough.

I yield back the remainder of my time so we can go to a vote on Professor Fletcher.

The PRESIDING OFFICER. The question is on agreeing to the nomination. Are the yeas and nays requested?

Mr. LEAHY. Mr. President, I think the other side has forgotten to ask for the yeas and nays.

To protect them, I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second?

There is a sufficient second.

The yeas and nays were ordered.

The PRESIDING OFFICER. The question is, Will the Senate advise and confirm the nomination of William A. Fletcher, of California, to be a United States Circuit Judge for the Ninth Circuit? On this question the yeas and nays have been ordered, and the clerk will call the roll.

The assistant legislative clerk called the roll.

Mr. FORD. I announce that the Senator from Ohio (Mr. GLENN) and the Senator from South Carolina (Mr. HOLINGS) are not in their seats.

The result was announced—yeas 57, nays 41, as follows:

[Rollcall Vote No. 309 Ex.]

YEAS—57

Collins
Conrad
D’Alesandro
Dodd
Domenici
Dorgan
Durbin
Feingold
Ford
Gibbs
Harkin
Hatch

Collins
Conrad
D’Alesandro
Dodd
Domenici
Dorgan
Durbin
Feingold
Ford
Gibbs
Harkin
Hatch

Inouye
Jeffords
Johnson
Kennedy
Kerry
Kohl
Landrieu
Lautenberg
Levin
Leiberman
Lugar
Mack
Mikulski

Moynihan
Murray
Reid
Robb
Rockefeller
Roth
Sarbanes
Smith (OR)
Specter
Stevenson
Torricelli
Weisselstein
Wyden

The nominations considered and confirmed en bloc are as follows:

THE JUDICIARY

H. Dean Buttram, J., of Alabama, to be United States District Judge for the Northern District of Alabama.

Inge Pryzt Johnson, of Alabama, to be United States District Judge for the Northern District of Alabama.

Robert Bruce King, of West Virginia, to be United States Circuit Judge for the Fourth Circuit.

The PRESIDING OFFICER. The Senator from Virginia.

Mr. WARNER. Mr. President, I would like to address the Senate.

The PRESIDING OFFICER. The Senator from Virginia cannot be heard.

Please come to order.

The Senator from Virginia.

Mr. WARNER. Mr. President, I see our distinguished colleague from West Virginia has risen. May I retain the floor?

Mr. BYRD. Absolutely. Parliamentary inquiry.

The PRESIDING OFFICER. The Senator from West Virginia.

Mr. BYRD. Mr. President, has the motion been made to reconsider the vote by which the nominees were confirmed?

The PRESIDING OFFICER. By the agreement, that has been laid on the table and the President is to be immediately notified of the Senate’s action.

Mr. BYRD. Very well, has the Senate returned to legislative session?
The PRESIDING OFFICER. It has not.

Mr. WARNER. Mr. President, I wish to address the Senate.

Mr. BYRD. Mr. President, somebody should ask the Senate return to legislative session.

Mr. WARNER. Mr. President, I wish to accommodate the Senate. I understand that there is a need to move to something very quickly to the House of Representatives. Am I correct? If so, I would be happy to yield the floor, with the understanding at the conclusion of that I could regard recognition.

Mr. BYRD. Is this a legislative matter or an executive matter?

NOTICE
Incomplete record of Senate proceedings. Except for concluding business which follows, today's Senate proceedings will be continued in the next issue of the Record.

ORDERS FOR FRIDAY, OCTOBER 9, 1998

Mr. JEFFORDS. I ask unanimous consent that when the Senate completes its business today, it stand in recess until 9:30 a.m. on Friday, October 9. I further ask that the time for the two leaders be reserved. I further ask there be 15 minutes to be equally divided between Senators NICKLES and LIEBERMAN prior to the vote in relation to H.R. 2431.

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

RECESS UNTIL 9:30 A.M.
TOMORROW

Mr. JEFFORDS. Mr. President, if there is no further business to come before the Senate, I ask unanimous consent that the Senate stand in recess under the previous order.

There being no objection, the Senate, at 9:20 p.m., recessed until Friday, October 9, 1998, at 9:30 a.m.

ENVIRONMENTAL PROTECTION AGENCY

TIMOTHY FIELDS, JR., OF VIRGINIA, TO BE ASSISTANT ADMINISTRATOR, OFFICE OF SOLID WASTE, ENVIRONMENTAL PROTECTION AGENCY, VICE ELLIOTT PEARSON LAWS, RESIGNED.

CONFIRMATIONS

Executive nominations confirmed by the Senate October 8, 1998:

THE JUDICIARY

WILLIAM A. FLETCHER, OF CALIFORNIA, TO BE UNITED STATES CIRCUIT JUDGE FOR THE NINTH CIRCUIT.

H. DEAN BUTTRAM, JR., OF ALABAMA, TO BE UNITED STATES DISTRICT JUDGE FOR THE NORTHERN DISTRICT OF ALABAMA.

INGE PRYTZ JOHNSON, OF ALABAMA, TO BE UNITED STATES DISTRICT JUDGE FOR THE NORTHERN DISTRICT OF ALABAMA.

ROBERT BRUCE KING, OF WEST VIRGINIA, TO BE UNITED STATES CIRCUIT JUDGE FOR THE FOURTH CIRCUIT.

NOMINATIONS

Executive nominations received by the Senate October 8, 1998:

FEDERAL MARITIME COMMISSION

JOHN A. MORAN, OF VIRGINIA, TO BE A FEDERAL MARITIME COMMISSIONER FOR THE TERM EXPIRING JUNE 30, 2001, VICE MING HSU, TERM EXPIRED.

DEPARTMENT OF LABOR

KENNETH M. BRESNANAN, OF VIRGINIA, TO BE CHIEF FINANCIAL OFFICER, DEPARTMENT OF LABOR, VICE EDMUNDO A. GONZALES, RESIGNED.

DEPARTMENT OF THE TREASURY

TIMOTHY F. GEITHNER, OF NEW YORK, TO BE AN UNDER SECRETARY OF THE TREASURY, VICE DAVID A. LIPTON.

GARY GENSLER, OF MARYLAND, TO BE AN UNDER SECRETARY OF THE TREASURY, VICE JOHN D. HAWKE, JR.

EDWIN M. TRUMAN, OF MARYLAND, TO BE A DEPUTY UNDER SECRETARY OF THE TREASURY, VICE TIMOTHY F. GEITHNER.

FEDERAL MARITIME COMMISSION


WITHDRAWAL

Executive message transmitted by the President to the Senate on October 8, 1998, withdrawing from further Senate consideration the following nomination:

FEDERAL MARITIME COMMISSION

EXTENSIONS OF REMARKS

A TRIBUTE TO SERGEANT ARTHUR EUGENE HIBBETTS

HON. JERRY LEWIS
OF CALIFORNIA
IN THE HOUSE OF REPRESENTATIVES
Wednesday, October 7, 1998

Mr. LEWIS of California. Mr. Speaker, I would like to bring to your attention today the outstanding and dedicated career of Sergeant Arthur Eugene Hibbetts of Barstow, CA. Sergeant Hibbetts is retiring from the Barstow Police Department after a long and distinguished career with the City of Barstow.

Sergeant Hibbetts has served the Barstow Police Department for 32 years. He was hired on October 31, 1966 and will retire officially on October 31, 1998. He served as a police patrol officer from 1969 to 1974 and focused on undercover and general investigation work as well as traffic accident investigation. In 1974 he served as a detective and focused on major crimes including homicide, robbery, burglary, narcotics, theft and fraud. Later that same year, he became the patrol sergeant and served as the watch commander and supervisor of patrol officers. In 1986, Sergeant Hibbetts was promoted to detective sergeant and served as the supervisor of detective and the clerical staff of the investigation division. In 1989, he became patrol traffic sergeant and has served since then as the watch commander and supervisor of the uniform patrol and traffic program.

Sergeant Hibbetts received his education at Barstow Community College, the San Bernardino County Sheriff’s Academy, and the FBI National Academy. Over the years, Sergeant Hibbetts has received extensive police training from numerous law enforcement organizations and has received professional certification from the FBI and the California Commission on Peace Officer Standards and Training.

Mr. Speaker, please join me and our colleagues in recognizing the incredible contributions and achievements of this remarkable man. Sergeant Hibbetts has served the City of Barstow for 30 years with distinction and honor. I know that the entire City of Barstow is proud of his fine work and many achievements. It is only fitting that the House of Representatives pay tribute to him today.

HOMETOWN HERO: COACH BILLY BOB EVANS

HON. PETE SESSIONS
OF TEXAS
IN THE HOUSE OF REPRESENTATIVES
Wednesday, October 7, 1998

Mr. SESSIONS. Mr. Speaker, in a year of world-breaking home runs, it is easy to lose sight of record setters in our own hometowns.

Therefore, I rise in recognition of a Texas hometown hero, Coach Billy Bob Evans, who has been setting records of his own for more than four decades. He is a role model with a unique coaching style and strong leadership for others to follow.

Coined the Millennium Man, Coach Evans has just won his 1000th girls volleyball game at Leon High School, defeating North Zulch 15-0, 15-1, Mr. Evans is the first coach in the entire state of Texas to reach that milestone and only the second in the Nation. His career win/loss record is 1001 to 174.

As coach of Leon’s Lady Cougars, Mr. Evans has spent 43 years coaching three generations of Leon athletes. Following his first coaching job for boys and girls basketball at Fair Oaks High School, Mr. Evans returned home to Jewett. In 1954, Mr. Evans became the coach of boys and girls’ athletics at Jewett-Marquez Consolidated, now Leon High School.

As Leon’s only girls volleyball and basketball coach, Mr. Evans has guided his Lady Cougars through 18 state volleyball tournament appearances, 8 state championships, with his most recent title in 1991. He has won district in volleyball for the past 25 consecutive years.

Billy Bob Evans is part of Texas history. Mr. Evans says there is no special formula for his success and believes it takes more than talent to build a good athletic program. In his own words, Coach Evans says it takes determination, focus, and technique to form a winning team.

I applaud Billy Bob Evans for his commitment to students and their ability to succeed. I want him to know that this Congressman and the people of the Fifth District of Texas are honored to be part of his legendary career and we wish him much success in his years ahead.

SUPPORT FOR INTERNATIONAL CENTERS FOR ENVIRONMENTAL SAFETY

HON. MICHAEL D. CRAPO
OF IDAHO
IN THE HOUSE OF REPRESENTATIVES
Wednesday, October 7, 1998

Mr. CRAPO. Mr. Speaker, I rise to express my strong support for the establishment of International Centers for Environmental Safety (ICES). The United States Department of Energy (DOE) and the Russian Ministry of Atomic Energy are currently responsible for overseeing components of the world’s largest stockpiles of nuclear weapons, materials, and infrastructures. It is within the responsibilities of these two agencies to address the environmental impacts of nuclear activities resulting from the cold war. It is my understanding that these two agencies have recognized their responsibilities and are discussing the formation of ICES to address these important areas of responsibility.

The establishment of ICES enjoys strong support among DOE officials and representatives in the field. The primary mission of ICES would be to resolve environmental issues associated with the production and management of nuclear weapons materials, decommisioning and decommissioning of nuclear facilities, and restoration of associated sites. ICES would be particularly helpful in assisting Russia decontaminate and decommission its obsolete nuclear submarine fleet, especially its spent nuclear fuel. The centers will draw upon the wealth of knowledge, expertise and technologies within the existing scientific infrastructures to accomplish these objectives.

In March of 1998, Russian Minister Adamov proposed to former Secretary of Energy Pena that ICES be established in the United States and Russia. Minister Adamov proposed that these centers be modeled after the International Nuclear Safety Centers that were established under former Secretary O’Leary and former Minister Mikhailov in January, 1996. Minister Adamov suggested that the Idaho National Engineering and Environmental Laboratory (INEL) and the Russian Research and Development Institute of Power and Engineering serve as the host sites for the centers. Subsequent discussions have been held between Minister Adamov and Secretary Richardson. I agree that the INEL is the optimal site for this new mission because of its facilities and technical expertise working with spent nuclear fuel and other radioactive materials.

Mr. Speaker, I urge Congress to support DOE’s efforts to deal with the important environmental impacts associated with the cold war and to support the creation of ICES.

TRIBUTE TO THE HONORABLE JOSEPH M. MCDADE, MEMBER OF CONGRESS

SPEECH OF
HON. JOE SKEEN
OF NEW MEXICO
IN THE HOUSE OF REPRESENTATIVES
Thursday, October 1, 1998

Mr. SKEEN. Mr. Speaker, I rise today to pay special recognition to the gentleman from Pennsylvania (Mr. McDADE) who announced his retirement from Congress at the end of the 105th Congressional session earlier this year. I am pleased to have served with Chairman McDADE throughout my career in the House of Representatives. Working together, we have served as members of the minority and majority party in Congress and have always held principle over politics. We’re going to miss Mr. McDADE next session. Throughout his distinguished 36-year career in the House of Representatives, he served his constituents from Central Pennsylvania and the United States with honor and distinction. I was especially grateful to serve with Mr. McDADE on the House Appropriations Committee, in particular, the House Interior Appropriations Subcommittee and the National Security Appropriations Subcommittee. I’ve always appreciated his easy-going style and his warmth and wisdom and his ability to work in a bipartisan fashion. He was a great American and a great Congressman.
THE THREAT OF NUCLEAR MISSILE ATTACK

HON. DOUG BEREUTER
OF NEBRASKA
IN THE HOUSE OF REPRESENTATIVES
Wednesday, October 7, 1998

Mr. BEREUTER. Mr. Speaker, this Member would ask his colleagues to consider carefully the following editorial from the October 6, 1998, edition of the Norfolk Daily News, entitled “Defense System Is Needed in U.S.”

[From Norfolk Daily News, Oct. 6, 1998]

DEFENSE SYSTEM IS NEEDED IN U.S.

TREATY DOESN’T BAR UNITED STATES FROM DEVELOPING ANTI-MISSILE WEAPONS

A bipartisan commission headed by Donald Rumsfeld, a former U.S. Secretary of Defense, recently concluded that nuclear missiles from rogue nations would strike American cities with “little or no warning” in just a matter of a few years.

At the same time, intelligence agencies are saying that the United States has nothing to worry about from such missile attacks.

What is one to believe?

The Heritage Foundation, a Washington-based public policy research institute, thinks it is a matter of time. It would be wise to heed the findings of the Rumsfeld commission and take the steps necessary to ensure the United States has an effective missile defense system. We agree.

The Soviet Union may be no more, but the threat of a missile attack on the United States is as real as ever. China is a bona fide nuclear power with missiles already aimed at the United States, and India and Pakistan have detonated nuclear devices as well. In addition, North Korea and Iran have been developing nuclear power with missiles already aimed at the United States. And a number of countries already possess missiles capable of striking U.S. allies and troops stationed abroad.

All of this prompts Edwin Feulner, president of Heritage Foundation, to make two points:

1. Those who argue that the 1972 ABM Treaty bars the United States from having a military defense system are mistaken. The great achievement of the Strategic Defense Initiative is that it was designed to prevent the deployment of missile defenses. But the Soviet Union no longer exists. That makes the treaty null and void.

2. A missile defense system doesn’t need to spur flashbacks of Star Wars and President Reagan’s Strategic Defense Initiative as it was proposed in 1983. Since then, defense experts have been able to devise an effective missile defense system that could be operational simply by using the U.S. Navy’s existing fleet of guided-missile cruisers.

Those two points should help further the cause of establishing a missile defense system. For it is now one clear missile able to reach the United States, millions could die within minutes. As Mr. Feulner has said, building such a defense system is not just a defense consideration, it’s a moral imperative.

TRIBUTE TO SISTER IRENE KRAUS

HON. SANDER M. LEVIN
OF MICHIGAN
IN THE HOUSE OF REPRESENTATIVES
Wednesday, October 7, 1998

Mr. LEVIN. Mr. Speaker, I rise today to con-sacrific the memory of a woman whose life was spent treating the sick in my state of Michigan and throughout the nation, Sister Irene Kraus, a Daughter of Charity of St. Vincent de Paul.

Sister Irene was a pioneer in the health care industry. She was the first woman to chair the American Hospital Association, she also chaired the Catholic Health Association and was inducted into the Healthcare Hall of Fame of the American Hospital Association. The members of honors bestowed upon this extraor-dinary woman are too great to list in full. Sister Irene’s many accolades include: the American College of Healthcare Executives Gold Medal Award for Excellence in Hospital Administration, the B’nai B’rith International National Health Care Hall of Fame, the American Hospi-tal Association Distinguished Service Medal.

I became personally acquainted with Sister Irene while serving on the Lay Advisory Board at Providence Hospital in Southfield, Michigan. As President and Chief Executive Officer of Providence Hospital, Sister Irene provided the leadership and vision necessary to implement a health care policy and value system based on respect, advocacy for the poor, quality care, simplicity and inervenese. It was this literally divine combination which made Southfield’s Providence Hospital, and the many other institutions guided by her, so valuable to their respective communities.

Underlying her many professional accomplishments, however, was her ability to look beyond organizational structures, to recognize every individual’s need for medical and mental health care, and find practical avenues toward prevention and treatment. She did not hesitate to seek answers beyond the conventional wis-dom of the day. Her combination of functional command, common sense and diplomacy often persuaded her colleagues to support her ground-breaking approach to policy.

Her rare combination of compassion, clear thinking and spirited leadership will be sorely missed by all those whose lives she has touched. Our family will miss her as a person whom we had the privilege of knowing and working with; like with so many others, she left an indelible imprint on our lives.

On Friday, October 9, a Memorial Service will be held to honor Sister Irene at Providence Hospital. Southfield. Only the session in Congress will prevent my joining in this observance. I will be there fully in spirit.

INTRODUCTION OF THE AUTISM STATISTICS, SURVEILLANCE, RESEARCH, AND EPIDEMIOLOGY ACT OF 1998 (ASSURE)

HON. CHRISTOPHER H. SMITH
OF NEW JERSEY
IN THE HOUSE OF REPRESENTATIVES
Wednesday, October 7, 1998

Mr. SMITH of New Jersey. Mr. Speaker, today I am introducing legislation to improve the quality of research on pervasive developmental disorders like autism—The Autism Statistics, Surveillance, Research, and Epidemiology Act of 1998 (ASSURE)—will provide critical support for the Centers of Disease Control and Prevention’s (CDC) ongoing efforts to better quantify the incidence and prevalence rates of autism and its related develop-mental disorders.

This legislation was crafted in close co-operation with the National Alliance for Autism Research (NAAR), the developmental disabili-ties experts at CDC, as well as with service providers from my district. It is important health care and medical research bill which I urge all members to support.

According the Centers for Disease Control and Prevention, “autism is a serious life-long developmental disability characterized by impaired social interactions, an inability to com-municate with others, and repetitive or restric-tive behaviors.” It is estimated that autism af-fects one out of every 500 children, although precise rates are unknown. There is also a general consensus that autism rates seem to be increasing, although it is not known whether there is an increase in the prevalence of autism or in the ability to recognize the developmental disability (i.e., bet-ter diagnosis), or an actual increase in develop-oped cases of autism.
public health officials to possibly prevent autism once scientists better understand which environmental exposures are most likely to cause children to develop autism in the womb. The idea is that each Center established under this legislation would develop a certain niche of autism expertise. Such areas could include: specific genetic markers, early prenatal maternal drug and other exposures; and investigating other autism spectrum disorders. Mr. Speaker, CDC has already established a pilot program—an autism epidemiology center—near Atlanta, Georgia. The limited but promising results from this initiative points to the fact that current understanding of autism is essential to lead to better surveillance and monitoring of developmental disabilities like autism are critical to providing answers and hope to the parents of nearly 500,000 autistic persons in America.

A TRIBUTE TO THE HONORABLE JERRY SOLOMON

SPEECH OF
HON. JOE SKEEN
OF NEW MEXICO
IN THE HOUSE OF REPRESENTATIVES
Tuesday, October 6, 1998

Mr. SKEEN. Mr. Speaker, I rise today to pay special recognition to the gentleman from New York (Mr. SOLOMON) who announced retirement from Congress at the end of the 105th Congressional session earlier this year. I am pleased to have served with Chairman SOLOMON throughout most of his career in the House of Representatives. Working together, we have served as members of the minority and majority party in Congress and have always held principle over politics.

We're going to miss Mr. SOLOMON next year. Under his tenure as Chairman of the Rules Committee since 1995, he has conducted himself and his panel with the utmost of duty and respect for all colleagues in the House of Representatives. Prior to being selected to serve as Chairman of the Rules Committee in 1995, he served with distinction as the Assistant Speaker of the House, the House Veterans Affairs Committee and the House Veterinarians Affairs panel.

I would also like to commend Mr. SOLOMON for his steadfast support and active leadership for a strong national defense throughout his entire membership in the House of Representatives. We're proud of the service with the United States Marines during the Korean War. Prior to coming to Congress, Mr. SOLOMON served five years as supervisor of the Town of Queensbury and five years as a Warren County legislator in the New York State Legislature, before being elected to Congress in 1978.

As an active member of the House Task Force on National Defense Policy, Mr. SOLOMON is the former chairman and is still a member of the Prisons of War/Missing in Action Task Force. Since 1982, Congressman SOLOMON has served as a congressional delegate to the North Atlantic Assembly, the political arm of the NATO Alliance. Presently, he serves as Vice President of that Assembly.

I send my heartfelt thanks for your leadership in the House of Representatives and best wishes to you and your family during your days of retirement.

TRIBUTE TO THE HONORABLE SIDNEY R. YATES

SPEECH OF
HON. JOHN JOSEPH MOAKLEY
OF MASSACHUSETTS
IN THE HOUSE OF REPRESENTATIVES
Thursday, October 1, 1998

Mr. MOAKLEY. Mr. Speaker, I rise today to pay tribute to my colleague, a truly great Member of Congress, Sid YATES, who will be leaving this House after forty-eight years of distinguished service.

Sid began serving his country like I did, the Navy in World War II. He was then elected as the Assistant Attorney General and as the commerce commissioner of the State of Illinois. First elected to Congress in 1948, before many of us had even started our political careers, Sidney served proudly through the 87th Congress until former president John Kennedy appointed him as ambassador to the United Nations. Sidney remained in his United Nations position shortly afterwards to regain the title he truly loved, and will hold until next January, Congressman from the ninth congressional district of Illinois.

Sid is an exemplary Member of the House Appropriations Committee and a great Carroll. Mr. Speaker, I rise today to pay tribute to my colleague, a truly great Member of Congress, Sid YATES, who will be leaving this House after forty-eight years of distinguished service.

As a member on the Subcommittee for the Department of Interior and related agencies, Sid has gotten funding for dozens of national parks, seashores, and wildernesses.

All of us here in Congress will miss Sid as our champion for the arts and for the protection of our parks, seashores, and wildernesses. He's the other member that will have a hard time living up to the legend of Sid YATES. His calm, reasoned thinking and stalwart defense of the environment will be long remembered after his retirement.

Mr. Speaker, it has been a pleasure and an honor to serve with SIDNEY YATES and I wish him a long and happy retirement.

PERSONAL EXPLANATION

HON. LUCILLE ROYBAL-ALLARD
OF CALIFORNIA
IN THE HOUSE OF REPRESENTATIVES
Wednesday, October 7, 1998

Ms. ROYBAL-ALLARD. Mr. Speaker, in order to attend the funeral services for former Los Angeles Mayor Tom Bradley, I was not present for roll call votes 480, 481, and 482. Had I been present, I would have voted nay on roll call 480, and yea on roll call votes 481 and 482.
Mr. MCCOLLUM. Mr. Speaker, today I am introducing a bill for the relief of Robert Anthony Broley. After enactment of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA), Immigration Judges lost most discretion in granting suspension of deportation of certain criminal aliens. Any relief must be sought from Congress. The case of Robert Anthony Broley is, in my opinion, sufficiently compelling to have Congress grant him relief from pending deportation.

Robert is the son of Robert M. Broley and Barbara Broley. Mrs. Broley was born in Canada but is a U.S. citizen, having been naturalized in 1962. Mr. Broley is also a naturalized U.S. citizen. The son, Robert Anthony Broley, was born in Canada in 1966 and remains a Canadian citizen.

Robert Anthony Broley entered the United States with his parents at the age of 2 in November 1968. He lived with his parents in the United States until they accepted employment in Canada when he was nine. Robert Anthony Broley was admitted again in October, 1978 and, for the most part, he has remained here since. He has an American citizen son, Matthew.

Robert Anthony Broley had personal problems beginning with his senior year in high school. He stole checks from his parents in 1990. In 1992 he was convicted of Driving Under the Influence. He stole furniture from his family in 1993 in order to sell it for cash. His parents felt the need to turn him in to the authorities in order to help Robert in the long run. He served 5 months in prison and was released in October, 1993 and given probation, which he violated by returning to Canada.

His father finally convinced Robert Anthony Broley to return to the United States in order to accept the consequences of his actions. While attempting to enter the United States to turn himself in for violating his probation, he was apprehended and is currently serving a term for parole violation with a release date of March 20, 1999. Once released, he is deportable under Section 212(a) and 237(a) of the Immigration and Naturalization Act (as amended by IIRIRA).

While serving time in prison, Robert was involved in a very serious accident that has left his face permanently disfigured. His family feels that their son has completed changed and has suffered for his crimes and that his deportation will hurt Matthew, Robert's American citizen son.

In view of Robert Anthony Broley's situation, insofar that he was arrested because his family felt it would be for his own good, I feel great sympathy for his family's struggles. They never intended for him to be deported. Therefore, I am introducing a private relief bill on behalf of Robert Anthony Broley. I urge my colleagues to support this bill.
under funded in recent years as appropriators have tried to balance our federal budget. Our proposal breathes new life into these programs by ensuring that a constant source of funds will be available to our towns and states to meet their conservation and recreation needs.

Finally, to assist states in meeting the increased demand for funding programs used for non-game species of wildlife, our bill would reinvest ten percent of the revenues gained from OCS development into a new wildlife and education program. The funds would be distributed through the Federal Aid in Wildlife Restoration Fund, also known as Pittman-Robertson, which has been a model framework for wildlife conservation and recreation projects since its inception in 1939. However, unlike similar proposals that have been suggested to meet non-game wildlife needs, our proposal does not include a new excise tax on sporting goods to fund the program.

Mr. Speaker, the “Conservation and Reinvestment Act of 1998” creates a responsible framework for meeting current and future conservation needs while yielding environmental, recreational and economic benefits for all Americans. I realize that we have very little time remaining in this Congress, but I urge all of my colleagues to take a close look at this proposal and work with the cosponsors of this bill to improve upon it so that we can reintroduce, consider, and enact legislation during the 106th Congress.

CONGRESS UPHOLDING COMMITMENT TO VETERANS

HON. DAVID DREIER
OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, October 7, 1998

Mr. DREIER. Mr. Speaker, I believe that there is no better advocate for our nation’s veterans than Vice Admiral James B. Stockdale. Throughout his military career and in his current role, Admiral Stockdale has tirelessly worked on behalf of those who served our country in the Armed Forces. While a prisoner of war in North Vietnam, Stockdale independently helped to save the lives of fellow POWs. Even while held captive, he continued to assist POWs by obtaining medical supplies and offering help to those in need.

In a recent speech on the steps of the U.S. Capitol, which I submit for the record, Admiral Stockdale urged Congress to uphold the nation’s commitment to our veterans. Mr. Speaker, I believe that we have indeed heeded that advice. Last month, the House approved the Defense Authorization conference report which allows military retirees to join the Federal Employees Health Benefit Plan. Furthermore, yesterday the House approved the fiscal year 1999 VA/HUD Appropriations conference report, which provides $12.1 billion for veterans programs, $439 million more than was requested by President Clinton. In short, I believe that Congress is following Admiral Stockdale’s leadership by approving legislation that honors those who valiantly served our country.

SPEECH DELIVERED BY VICE ADMIRAL JAMES B. STOCKDALE
THE CAPITOL STEPS, WASHINGTON, DC, SEPTEMBER 22, 1998

Thank you very much for that warm introduction and for the opportunity to join you here today.

Over the years, I have come to Washington many times for many reasons—but on this visit, we come together to focus the nation’s attention on our responsibilities to the men and women who have nobly worn the uniform of their Country—the valiant Soldiers, Sailors, Marines, and Air Force personnel who have answered their Country’s call to service.

In the history of this wonderful republic, we have celebrated those who have been willing to put their lives on the line—to pay the ultimate sacrifice to protect the ideals that made America great. To protect the basic freedoms that characterize the majesty of the American experiment in defining the relationship between citizens and their government.

As a nation, as a people, we have never hesitated to ask our fellow citizens to do the uniform of their country for—for to protect against forces detrimental to the interests of the United States. We have asked of our sons and daughters to endure the horrors of war and to serve as agents of peace. We have, for 200 years, always asked, and they have always answered. Any alternative would be unthinkable. But an integral part of this bargain has been a fundamental understanding—a MORAL CONTRACT—that we will not turn away, we will not abrogate our obligations to them after they have done their part for us. For our ideals, and for the preservation of our great nation.

Now, we stand here together with the recognition that this sacred compact has been shattered. With a heavy heart, I have come to this place, to our nation’s Capitol, to ask the Congress of the United States to honor America’s traditional commitment—a hitherto unquenched commitment—to its military veterans.

For generations, our Presidents have approved the promise of free, lifetime medical care for military veterans. Legislative and administrative authority made these promises law. As far back as 1799, the U.S. Government offered free medical and hospital care to Sea men and Marines. In 1995 this all changed.

Now the government says that Veterans over the age of 65—many of whom fought in World War II and Korean Wars—are no longer eligible for treatment at military hospitals. Rather than fulfilling its historical contract with our fighting men and women, the Government now demands that these retirees must personally supplement Medicare benefits to obtain basic health care.

I am here today to convey this message for everyone who has worn the great uniform of the United States. To urge the Government to do the right thing for all of its retired military service men and women. Many of them are old. Many are sick, and many simply cannot afford to pay the costs of supplemental health care on military retirement pay.

A great American once said, “Old soldiers never die—they merely fade away.” I am confident that General Douglas MacArthur would agree with me that they should surely be allowed to ‘‘fade away with dignity.’’ Today, there are a million and a half retired military men and women, each with a dependent, 3 million all together, who simply cannot afford health insurance and are not receiving the benefit of the bargain—the United States Government made with them when they signed up to serve their Country. There are all too many heartbreaking examples of retired GI’s who have had to sell their homes, liquidate their savings, or suffer the indignities of inadequate medical care because of the Government’s current position. This is shameful. This is un-American. And this is totally unacceptable. I come to you today in asking our Congressional leaders—Senators Lott and Daschle, and Speaker Gingrich and Minority Leader Gephardt to right this wrong.

To enact legislation to provide lifetime retirement medical care for those Americans—and their dependents—who were willing to put their lives on the line for their Country. Over the last 200 years, America has asked and received so very much from its fighting men and women—now they are asking us for so little in return. For the opportunity to see a doctor. For medical treatment. For medicine.

As the richest, most powerful nation on Earth, I believe the United States of America can and should do the right thing for the people who have performed so sacri fice and burden to ensure the existence of a society we so enjoy—and a Country we so love.

I hope together, we can right this terrible wrong!

God Bless the United States of America, and God bless and protect the men and women of the United States military services. Thank you very much.

HONORING RICHARD EDLER
OF ILLINOIS

IN THE HOUSE OF REPRESENTATIVES

Wednesday, October 7, 1998

Mr. WELLER. Mr. Speaker, I rise today to honor the work and dedication of Mr. Richard Edler, who retired after 35 years and 6 months of service from the U.S. Treasury Department—Internal Revenue Service Collection Division on August 28, 1998.

Mr. E., as he is lovingly called by his counterparts at the I.R.S., has made large contributions to the Internal Revenue Service. Over the 35 years, Richard has been a Revenue Officer, a Compliance Officer, and has held various volunteer assignments including being the employee coordinator for the flu shots at the Olympia field office.

Mr. E. has also done a lot to help out his coworkers during his time at the Internal Revenue Service. Richard was the only person who arrived at the office prior to 6 a.m. every morning. He was always there to make sure to inform the employees if the parking lot conditions was clear of snow or flooding during inclement weather.

Richard Edler’s commitment and impact on the Internal Revenue Service, and his service to his coworkers is not only deserving of congressional recognition, but should serve as a model for other government employees to follow.

I urge this body to identify and recognize others in their congressional districts whose actions have so greatly benefited and enlightened America’s communities.
TRIBUTE TO IFAD'S TWO DECADES OF OPERATIONS: SMALL, EFFECTIVE INTERNATIONAL FINANCIAL INSTITUTION TURNS TWENY

HON. TONY P. HALL
OF OHIO
IN THE HOUSE OF REPRESENTATIVES
Wednesday, October 7, 1998

Mr. HALL of Ohio. Mr. Speaker, this year an extraordinary organization, the International Fund for Agricultural Development (IFAD), celebrates twenty years of successful work to help the rural poor. I was pleased to recently participate in a workshop marking this milestone, in which IFAD gathered public and private sector representatives to find new ways to work together and advance in fight against rural poverty. I would like to share the recommendations made by the workshop participants, and to recognize IFAD for its many achievements in helping the impoverished citizens of the world.

For twenty years, IFAD has effectively pursued its mission of combating rural poverty and hunger in developing countries. Since 1977, IFAD has financed innovative projects that provide poor farmers with the technical assistance, equipment and supplies they need to increase food production and incomes. Throughout its work, IFAD emphasizes community-based approaches that enable the poor themselves to identify local solutions to poverty. For example, IFAD has helped 489 projects in 111 countries that have already touched the lives of over 200 million poor rural people around the world.

IFAD viewed its Twentieth Anniversary as an opportunity to take stock and prepare for challenges that lie ahead. The nature of poverty is becoming more and more complex. As governments work to create a "lateral" dialogue among NGO Working Groups linked to multilateral organizations such as the World Bank's, IFAD seeks to convene NGO working groups on MFIs in post-conflict countries and "reconstructing" economies.

Recommendations of the Popular Coalition to Eradicate Poverty and Hunger

1. IFAD should promote among governments and other policy-making entities the use of alternative regulations specific to the microfinance industry, for the regulatory environment presently overseeing large, well-capitalized financial institutions may not reflect the unique nature and purpose of MFIs.
2. IFAD could develop a training agenda to promote "best practices" among MFIs, especially for those MFIs (e.g., local and indigenous NGOs) that do not have access to international best practice literature and curricula.
3. A FAO-World Bank Advisory Group could have a role in the effort.
4. IFAD should create microlend workshops in regions around the world.
5. IFAD's NGO Working Group should work to create a "lateral" dialogue among other NGO Working Groups linked to multilateral organizations such as the World Bank's.
6. IFAD should convene NGO working groups on MFIs in post-conflict countries and "reconstructing" economies.
7. IFAD should continue to explore new instruments and innovations for mobilizing and facilitating savings of the rural poor.
8. IFAD should engage in applied research on what is working in the field of microfinance (e.g., engaging in a dialogue with Ms. Marguerite Robinson of the Harvard Institute for International Development, an expert who has advised governments worldwide on MFIs).
9. IFAD should continue to explore linkages between microfinance, land tenure and desertification.

Recommendations of the Popular Coalition to Eradicate Hunger and Poverty Working Group

1. How can the Popular Coalition broaden the leadership of the organization from NGO's, governments, multilateral institutions, private sector, and faith communities, and the private sector?
2. IFAD should convene the General Assembly from which a broad based steering committee would be chosen. Care should be taken to ensure that representatives from all faith communities (Muslim, Buddhist, Christian, Jewish, Hindu, and others) are chosen, as well as representatives from private sector industry.
3. Beyond having overarching input from the new Steering Committee noted above, there is a need to develop more specific strategies for greater involvement of the private sector and faith communities.

Action: IFAD should convene the General Assembly from which a broad based steering committee would be chosen. Care should be taken to ensure that representatives from all faith communities (Muslim, Buddhist, Christian, Jewish, Hindu, and others) are chosen, as well as representatives from private sector industry.

Beyond having overarching input from the new Steering Committee noted above, there is a need to develop more specific strategies for greater involvement of the private sector and faith communities. How can this be achieved?

2. IFAD should continue to reinforce linkages to non-governmental organizations (NGOs) and private sector.
3. Because of its grassroots perspective, IFAD has a comparative advantage in identifying barriers to the development of microfinance institutions (MFIs). IFAD should capitalize on that perspective to inform and improve the policy environment for microfinance, especially in countries so as not to create confusion, but will not be overly simplistic.
4. IFAD should consider organizing working groups to encourage private sector engagement in the sector. Possible activities include selling products, providing training, and facilitating private sector investment in MFIs. IFAD could also consider providing grants to match private sector grants for purposes of developing MFIs.

5. IFAD should promote among governments and other policy-making entities the use of alternative regulations specific to the microfinance industry, for the regulatory environment presently overseeing large, well-capitalized financial institutions may not reflect the unique nature and purpose of MFIs.
6. IFAD could develop a training agenda to promote "best practices" among MFIs, especially for those MFIs (e.g., local and indigenous NGOs) that do not have access to international best practice literature and curricula.
7. A FAO-World Bank Advisory Group could have a role in the effort.
8. IFAD should create microlend workshops in regions around the world.
9. IFAD's NGO Working Group should work to create a "lateral" dialogue among other NGO Working Groups linked to multilateral organizations such as the World Bank's.
10. IFAD should convene NGO working groups on MFIs in post-conflict countries and "reconstructing" economies.

Recommendations of the Popular Coalition to End Desertification Working Group

1. Discourage support, as a group, U.S. ratification of the Convention to Combat Desertification before the end of the 105th Session. Reasons:
   - It provides the leadership the world expects from the United States on such issues, and will provide the U.S. an opportunity to influence decisions at the Second Conference of Parties to the Convention; it is good for U.S. business, and for the U.S. university/academic community where desertification expertise resides.
   - The humanitarian need is urgent.
   - The practical need is also urgent: biodiversity is declining, food sources are dwindling; National security could be threatened by environmental flash points; other natural disasters where desertification is a factor, and in conflicts over water and other scarce natural resources.
   - Migration within nations and across borders is prompted by spreading deserts, causing conflict within and among nations; desertification is linked to global climate change and amelioration could help slow global warming.
   - The treaty's provisions interlink with U.S. obligations under existing treaties, such as national environmental action plans, measures to promote women's rights and sustainable development, and so on;
   - The treaty would enable the use of revolutionary strategies and methods to combat the spread of deserts; and
   - It would improve coordinated work with U.S. partners in other areas including foreign aid programs, and global cooperation is an avowed U.S. policy goal.

2. Raise awareness and understanding among the media and the U.S. private sector that there is support for the CCD. The treaty is not about "deserts," for example, as media reports have said, but about preservation of drylands in their current useful state for agriculture.

3. Mobilize scientific analysis of the relationship between desertification and other...
phenomena such as fires, climate change, damage to the ozone layer, etcetera.

4. Change U.S. trade policies to discourage actions abroad that contribute to desertification

5. Support coordination between scientists, government agencies, NGOs and localities to develop useful technologies and methodologies to prevent and combat desertification.

HONORING THE CONTRIBUTIONS OF JESSE HOLMAN JONES

HON. KEN BENTSEN
OF TEXAS
IN THE HOUSE OF REPRESENTATIVES

Wednesday, October 7, 1998

Mr. BENTSEN. Mr. Speaker, I rise to honor the efforts of Houston Endowment Inc. to highlight the life of Jesse Holman Jones, who during his lifetime was widely known as one of the most powerful leaders in the nation, and because of his vast contributions to the growth of the City of Houston, became known as “Mr. Houston.”


Jesse H. Jones was born in Tennessee but moved to Texas at the age of seventeen, first working in a lumberyard for his uncle, then later establishing his own 60 lumberyards across the Southwest. As an extension of the lumberyards, he began building small houses south of downtown Houston, which he financed for working class families by offering 20-year mortgages, a new concept at the time. He eventually progressed to commercial structures, and in 1907 he announced that he would build the city’s three tallest buildings. The nine-story Bristol Hotel, Houston’s first “skyscraper”, elevated Houston’s stature; the 10-story Texas Company Building helped make Texaco and the petroleum industry a permanent part of the city’s business community. Within 25 years, he had transformed Houston’s Main Street and downtown into the region’s most prominent business district, filled with office buildings, movie theaters, hotels, apartment buildings, department stores, and parking garages.

Mr. Jones’ role in developing Houston’s economy was as important as his role in building its skyline. He invested in local banks and became Chairman of the National Bank of Commerce, later to become Texas Commerce Bank and today’s Chase Bank of Texas. His portrait still hangs in the majestic lobby of the bank’s flagship office. Through his banking interests, Mr. Jones helped industrialize and internationalize Houston. He supported other growing industries, such as the radio and television industry, while convincing the federal government to enter into a public-private partnership to build the Houston Ship Channel, which today includes the Port of Houston, the nation’s second busiest port. Such public-private partnerships were unheard of at the time.

Mr. Jones attracted the attention of President Woodrow Wilson and accepted the position of Director General of Military Relief for the American Red Cross. After the war, Mr. Jones helped reorganize the Red Cross from a loose-knit group of local societies into the permanent international relief agency it is today. In addition, in 1928 as Finance Chairman of the Democratic National Committee, he brought the party’s national convention to Houston, the first major political convention to be held in the South since before the Civil War.

When the stock market crashed and the nation plunged into the Great Depression, Mr. Jones called the city’s business leaders together and worked out a plan that prevented any bank failures in Houston during the Great Depression. Mr. Jones’ business and financial insight were called upon when President Herbert Hoover asked him to serve on the board of the newly created Reconstruction Finance Corporation (RFC). President Franklin Roosevelt expanded the RFC’s powers and made Mr. Jones its chairman. The Federal Housing Administration (FHA), the Federal National Mortgage Association (Fannie Mae), and the Export-Import Bank are only a few of the many enduring agencies created by Mr. Jones and the RFC.

Mr. Jones would go on to be Secretary of Commerce during the “New Deal” and today scholars give Jesse Jones credit for saving the American capitalist economy, for mobilizing industry in time to fight and win World War II, and for radically changing the relationship between government, business and citizens. After 14 years of public service in Washington, DC, Jesse Jones had won the respect of Democrats and Republicans alike, as he exerted his authority with diplomacy, patience and equity. He and his wife, Mary Gibbs Jones, returned to Houston in 1946 and began to focus on philanthropy. By the time Jesse Holman Jones passed away on June 1, 1956, Houston Endowment Inc., the foundation he created in partnership with his wife, Mary, had helped more than 4,000 students through scholarship programs in 57 colleges and universities. Just months before he passed away, the town of 40,000 he came to in 1898 had obtained its one millionth citizen.

Mr. Speaker, I commend Houston Endowment Inc. for reminding Houstonians of the life of Jesse H. Jones, one of our most prominent citizens.

CONFERENCE REPORT ON H.R. 4101, AGRICULTURE, FOOD AND DRUG ADMINISTRATION, AND RELATED AGENCIES APPROPRIATIONS ACT, 1999

SPEECH OF HON. RON PACKARD
OF CALIFORNIA
IN THE HOUSE OF REPRESENTATIVES
Friday, October 2, 1998

Mr. PACKARD. Mr. Speaker, I would like to express my extreme disappointment in the President’s threats to veto the FY 99 Agriculture Appropriations bill. This is legislation which will provide much needed aid for cashed-strapped farmers this fall.

American farmers are by far the most productive in the world. These hard working men and women epitomize every value that makes America great. They run their business on a dream and hard work with a constant concern over the weather conditions, hoping for a good crop. During a bad season, some pray daily to be able to put food on the table for their families. Now, after a season of low commodity prices and bad weather, the Democrats are looking to eliminate the emergency aid to those who grow our nation’s food supply by urging the President to veto the FY 99 Agriculture Appropriations Act. This is unacceptable.

The fact is, the House more than doubled the only request received from the President, from $1.8 billion to $4.2 billion for emergency aid to help farmers. It is irresponsible for the President to play partisan politics with people’s lives.

Mr. Speaker this is no time to play politics. I urge the President to rise above the temptation to exploit this issue for his political advantage and sign the FY 99 Agriculture Appropriations Act into law.

TRIBUTE TO THE HONORABLE JERRY SOLOMON

SPEECH OF HON. BOB STUMP
OF ARIZONA
IN THE HOUSE OF REPRESENTATIVES
Tuesday, October 6, 1998

Mr. STUMP. Mr. Speaker, I’ve been pleased to call JERRY SOLOMON of New York my friend for 20 years.

JERRY SOLOMON was the guy you always wanted on your side in a legislative battle. You always knew where he stood. You always knew his word was his bond.

It was as if he never left the Marine Corps, and in his mind he probably never did. JERRY SOLOMON wore an American flag pin on his lapel and his love of country on his sleeve. Few members could match his tenacity and his sense of loyalty. Never were those qualities more on display than when the House acted on national defense and veterans matters.

More recently we’ve seen another side of JERRY SOLOMON. It was his sense of fair play. His chairmanship of the Rules Committee made him the legislative traffic cop in the House. He took his role seriously, and his integrity earned him the respect of majority and minority alike.

His ideal was Ronald Reagan, whose determination to rebuild our military found its staunchest House advocate in JERRY SOLOMAN. Our sons and daughters in the military have always been very special to him. He wanted nothing but the best for them both during and after their service.

Veterans have no greater friend than JERRY SOLOMON. He enjoyed a close relationship with that other giant of veterans’ legislation, our former colleague and committee chairman Sonny Montgomery of Mississippi. Their collaboration was a golden period for America’s veterans and an inspiration for those of us who followed them.

JERRY SOLOMON’s proudest moment was that brisk October day at Fort McNair in 1988 when President Reagan signed into law his bill elevating the Veterans Administration to a full, cabinet-level department. That will be the lasting legacy and monument.

We will miss his passion, his perseverance, and his patriotism. “Semper Fi” was never just
a slogan for JERRY SOLOMON. It was his atti-
tude towards his fellow Marines, his fellow vet-
erans, his family, his friends, his district, his coun-
try, and this House.

We are coming to the end of an era, and this
House just won’t be the same without him.

Well done, JERRY. There’s life after Con-
gress. May yours be full and rewarding.

POW/MIA RECOGNITION DAY

HON. JIM GIBBONS
OF NEVADA

IN THE HOUSE OF REPRESENTATIVES
Wednesday, October 7, 1998

Mr. GIBBONS. Mr. Speaker, I insert for the
RECORD a proclamation designating Septem-
ber 19, 1997, as POW/MIA Recognition Day.

RECOGNIZING THE 75TH BIRTHDAY
OF MR. SANFORD GILBERT KAHN

HON. JOHN EDWARD PORTER
OF ILLINOIS

IN THE HOUSE OF REPRESENTATIVES
Wednesday, October 7, 1998

Mr. PORTER. Mr. Speaker, I rise today to
honor a special member and one of my constitu-
ents on his 75th birthday: Sanford Gilbert Kahn. Mr. Kahn is a veteran of World War II
and is truly one of the unsung heroes of that
conflict. A 20th Air Force bomber pilot and
weatherman, Mr. Kahn flew thirteen successful missions and was awarded with two medals.

TRIBUTE TO THE HONORABLE JO-
SEPH M. MCDADE, MEMBER OF CONGRESS

SPEECH OF
HON. JOHN JOSEPH MOAKLEY
OF MASSACHUSETTS

IN THE HOUSE OF REPRESENTATIVES
Thursday, October 1, 1998

Mr. MOAKLEY. Mr. Speaker, I rise today to
pay tribute to my colleague, JOE MCDade.

JOE MCDade arrived here 10 years before I
did. As he retires this year, the entire country
will be the worse for the loss of his service.
In their wisdom, the people of the 10th dis-
trict of Pennsylvania first elected JOE MCDade
to Congress in 1963 and every other year
thereafter. After 35 years, J OE will be leaving
Congress in wishing him well in his retirement.

The National Institute of Allergy and Infecti-
ous Diseases has been responsible for many of our most important advances. NIAID began
researching and honoring the 50th anniversary of
the National Institute of Allergy and Infectious Diseases. An identical resolution is being in-
troduced in the Senate by my distinguished
colleague, Senator MACK.

As a member of the House Appropriations
Subcommittee with jurisdiction over the Na-
tional Institutes of Health, I have a great inter-
est in biomedical research and efforts to im-
prove the quality of our public health. In this
century, much has been accomplished, includ-
ing the eradication of smallpox and the near-
eradication of polio, the control of other infec-
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Wednesday, October 7, 1998

Mr. GIBBONS. Mr. Speaker, I insert for the
RECORD a proclamation designating Septem-
ber 19, 1997, as POW/MIA Recognition Day.
the Division of Tropical Diseases of the NIH. In 1955, Congress renamed the Institute as the National Institute of Allergy and Infectious Diseases, recognizing the need for a coordinated scientific research program on infectious, allergic, and immunologic diseases.

Research supported by the Institute has resulted in numerous important advances, including the development of vaccines that have prevented the death of millions of Americans, new treatments to fight the human immunodeficiency virus (HIV), and novel interventions that have reduced the burden of childhood asthma.

Much remains to be done, however. Infectious diseases remain the world's leading cause of death, and the third leading cause of death in the United States, and immune-mediated diseases such as asthma are a leading cause of disability and lost productivity. NIAID continues to lead the way in developing new ways to reduce the toll of these diseases.

I am introducing this resolution today to demonstrate the support of the United States House of Representatives for the NIH, and all of the dedicated professionals who have devoted their lives to improving the quality of the Nation's health.

REMARKS ON THE ATLANTA BRAVES
HON. NEWT GINGRICH
DF GEORGIA
IN THE HOUSE OF REPRESENTATIVES
Wednesday, October 7, 1998

Mr. GINGRICH. Mr. Speaker, I gladly accept the challenge of my distinguished colleague, Duke Cunningham. While I respect his personal faith about the San Diego Padres, I also know that sometimes faith is not enough. And this year that saying will have to comfort the gentleman from California as he watches the Atlanta Braves win the National League Championship.

My dear Colleague from San Diego offered three reasons for his faith in the San Diego Padres. I would like to offer my reasons for knowing the Atlanta Braves will win:

(1) Cy Young award winner John Smoltz is 17 and 3 with a 2.90 era and
(2) Cy Young award winner Tom Glavine is 20 and 6 with a 4.47 era
(3) Four time Cy Young award winner Greg Maddux is 18 and 9 with a 2.22 era
(4) Danny Neagle is 16 and 11 with a 3.55 era, and
(5) Rookie Kevin Millwood is 17 and 8 with a 4.08 era

The Braves may have Greg Vaughn, but the Atlanta Braves have Andres Galarraga with 44 home runs, Javier Lopez and Chipper Jones with 34, and Andruw Jones with 31—not to forget three other players with over 100 home runs.

The Braves' team batting average against the Padres was .259 vs. .209 for the Padres. The Braves outscored San Diego 34 to 29, had 17 more hits, five more home runs, 3 more stolen bases, and 8 more strikeouts.

And while Tony Gwynn is indeed impressive, he only batted .321 this year, while the Braves starters include Chipper Jones (.313), Andres Galarraga (.305), and Gerald Williams (.305). The Braves also out hit the Padres at almost every position, including pitcher.

Atlanta, the beautiful “capital” of the South, is blessed with many benefits, but having the Braves as their home team is one of the best. It is hard to beat Southern culture and great baseball.

In light of this, I not only accept the distinguished gentleman's challenge, I raise him: If the San Diego Padres win, I will give 100 pounds of fabulous southern BBQ to a homeless shelter in the gentleman's district.

And of course, if the Braves win, I will ensure that the gentleman from California's seat on the Appropriations Committee is secure despite this direct challenge. Now if the Padres win... . .

U.S. NEEDS FAST TRACT AUTHORITY TO REMAIN GLOBAL LEADER
HON. JIM RAMstad
OF MINNESOTA
IN THE HOUSE OF REPRESENTATIVES
Wednesday, October 7, 1998

Mr. RAMstad. Mr. Speaker, two weeks ago I spoke before this House in favor of renewing fast track authority. I called for my colleagues to choose statesmanship over politics and vote for this important legislation simply because it is the right thing to do and they know it.

I was deeply saddened that we did not have the support of the White House and many key Democrats in that fight—Democrats who typically understand the importance of fast track for opening new markets for U.S. farmers and exporters. I was saddened they were too concerned about the timing of passing the legislation and not the fact that their constituents need it, America's farmers need it, small businesses need it and consumers need it.

Mr. Speaker, I am more than saddened today. I am completely perplexed and frustrated. Yesterday, President Clinton spoke before International Monetary Fund and World Bank officials and called for expanded trade for next year and strategies to spur economic growth. I am very glad to hear him say these things, but his speech is a bit hypocritical. It moves me to ask why the President will promote fast track authority renewal in January and wouldn't just two weeks ago? How is it the President can say it is “inexcusable and reckless to hold up [IMF] money based on other issues at a time when the world needs U.S. leadership?”

President Clinton's failure to be engaged in the recent fast track debate directly contributed to its demise at a time when U.S. exporters needed his leadership—and the international economy needs U.S. leadership. I am introducing this resolution today to demonstrate the support of the United States House of Representatives for the NIH, and all of the dedicated professionals who have devoted their lives to improving the quality of the Nation's health.

TRIBUTE TO DR. MARY P. SMITH, AN ARDENT LEMONADE MAKER
HON. DONALD M. PAYNE
OF NEW JERSEY
IN THE HOUSE OF REPRESENTATIVES
Wednesday, October 7, 1998

Mr. PAYNE. Mr. Speaker, if we are lucky we have come in contact with a person who instinctively makes lemonade out of the lemons life has thrown at them. There is such a woman in my district who is being honored on Thursday, October 8. She is Dr. Mary Smith. Thirty years ago Dr. Smith saw a need for day care programs in Pennsylvania Avenue. America needs to be a strong leader out in the global market place. We need to set the parameters of debates and make sure we are included in market access agreements that would benefit our farmers and business leaders. America needs fast track trade authority and a President who truly wants it.

TRIBUTE TO RICHARD K. BOYD, JR.
Mr. WHITFIELD. Mr. Speaker, I rise to pay tribute to a friend and distinguished former Kentuckian, Mr. Richard K. Boyd, Jr., who is retiring this month after 32 years of dedicated service with Westvaco Corporation.

As Manager of Government Relations and various executive capacities during his career at Westvaco, Mr. Boyd diligently exercised his professional stake in civic affairs. As a private citizen of Kentucky for 24 years, he faithfully demonstrated his deep sense of personal responsibility for civic involvement.

For much of his career, Dick Boyd lived and worked in Wickliffe, Kentucky, where he and his wife Malinda raised their three daughters—Anne, Gretchen and Rebecca. His arrival in Wickliffe pre-dates the Westvaco Fine Papers and Coated Paper mill and is credited with contributing to the economic development of western Kentucky.

The growth of the mill and the company's good relationship with the community and the Commonwealth of Kentucky are a part of the legacy of Dick Boyd's career and his life in our state.

In 1988, Dick served in Kentucky State Government as Deputy Secretary of the Cabinet for Economic Development. His dedication to family, friends and neighbors is worthy of recognition.

Dick Boyd has performed his duties representing Westvaco and its operations in the First Congressional District of Kentucky with honest and integrity. He is a valued friend and a good citizen whose national corporate responsibilities have never diminished his concern for and dedication to the economic and civic progress of the people of western Kentucky. On their behalf, I take this opportunity to congratulate Richard K. Boyd, Jr. on his successful and distinguished career and extend best wishes for his retirement.
Newark, New Jersey. She used her vision, commitment and steadfastness to establish Babyland Nursery, Inc. Babyland Nursery, Inc., now known as Babyland Family Services, Inc. has evolved into a model for urban day care throughout the nation.

In 1988, Dr. Smith stood with 26 children in a seven-room basement apartment in central city Newark to establish one of the first day care programs in the United States and the first non-profit interracial day care center in New Jersey to provide day care for children from 2 1/2 months to five years old. If we go back to 1988, we will remember it was a time that women while moving into the workforce had very limited resources for child care. This sometimes meant that these families had to depend on public assistance for survival rather than become self-sufficient. Today, we see the benefit of providing safe, clean, and educat-able day care services. The lack of day care was a lemon to Dr. Smith. She took her knowledge, skills and foresight to make some lemonade that has quenched the thirst of day care need for countless families and children.

Babyland Family Services, Inc. has evolved to comprise 11 different facilities offering 20 separate programs that benefit over 1,500 children, women and families each year. It has a staff of over 200, volunteer support of almost 700 and a reputation that extends to the international arena.

Mr. Speaker, I am sure my colleagues will want to join me in thanking Dr. Mary Smith and Babyland as they are recognized for their hard work and dedication to the health, well-being and education of children from urban areas. I also want to encourage all citi-zens to become interested in helping the fu-ture, our children, thus ensuring a brighter fu-ture for them and the generations to come.

STOP STALLING ON PATIENT PROTECTIONS

HON. FORTNEY PETE STARK
OF CALIFORNIA
IN THE HOUSE OF REPRESENTATIVES
Wednesday, October 7, 1998

Mr. STARK. Mr. Speaker, I rise today to share the words of A.G. Newmyer III with my colleagues. Mr. Newmyer is the Chairman of the Fair Care Foundation, a consumer advoca-cy organization working to protect people's access to affordable, quality health care, and a national board member of the Epilepsy Foundation.

This week he participated in an event with Senators KENNEDY, DURBIN and TORRICELLI to urge that the Senate quit stalling on the issue of patients' rights. His words bear repeating. He urges that the Senate quit stalling on the issue of patients' rights. His words bear repeating. Those of you who cover this debate may re-call that Tracy Buccolotz from MN was the first public witness before the President's commission on health care. Tracy has epilepsy and led a rather normal life until her health plan started playing games with her life. She explained to the commission, when she came to Washington to testify, that she had been waiting eight months for permis-sion to see her neurologist, despite the lit-tle and promises of her plan. I'd like to make three brief points this morning.

First, patient satisfaction statistics are pure nonsense. If I asked each of you how you would rate your life insurance, you'd think I was nuts. You'd tell me that you think it's fine, right? You're right. The same thing's true for the 80% of Americans who have no significant medical need in any one year. I urge the press to focus on satisfaction among patients who have faced a serious medical need.

Second, to those members who say they don't want to interfere in the insurance mar-ket, let's be serious. The user isn't the cus-tomer. Most patients get insurance at work and have very little choice. When the person making the purchase decision isn't the user making the decision, that's an anomaly. And it needs to be fixed now. Finally, I know of no other segment of our society where some people elect to engaged in predatory behavior knowing that the vic-tims can't go to court. No patients want more lawsuits. Patients want health plans to stop horsing around. Patients want to fix a system where some people prosper by deny-ing care. The key is ERISA reform, which is why its being fought so hard by for-profit managed care plans.

I leave you with this thought. Steve Wiggins, CEO of Oxford, made $29 million the year before he was fired. Last year, with his company 1/10 down the toilet, he left with $9 million in severance. The CEO of Aetna-United took home $17,693,000 during the past three years.

Do you really think those plans can't af-ford for people with seizures to have easy access to decent care?

INTERNATIONAL CAPITAL FLOW AND IMF POLICY

HON. MICHAEL G. OXLEY
OF OHIO
IN THE HOUSE OF REPRESENTATIVES
Wednesday, October 7, 1998

Mr. OXLEY. Mr. Speaker, I would like to bring to the attention of my colleagues a col-lumn published today by James K. Glassman of the American Enterprise Institute. As the International Monetary Fund and the World Bank hold their annual meetings this week, his thoughts are especially timely.

As the international financial community continues to struggle to find a solution to the growing Asian contagion, some commentators are beginning to call for international capital controls. The underlying argument behind this position is that the free flow of capital has contributed to our current problems and that bar-riers must be erected to prevent this flow in the future.

However, as Mr. Glassman makes clear, “capital does not flee sound economies.” Rather, investors move their resources in re-sponse to changes in the market conditions of a given economy—they move money out of investments in economies as risk rises and into investments where the risk level is more ac-ceptable. Thus, capital is efficiently allocated. Efforts to limit this movement, then, are inher-ently heavy-handed and counterproductive.

Again, Mr. Speaker, I commend the follow-ing column by Mr. Glassman to my col-leagues.

JUDGING FROM THE PANICKY pronouncements of politicians, journalists and financiers, you would think we were on the brink of another Great Depression. On Friday, President Clinton stated that the financial system was in a "precarious state." He added that capital was "irrevocably stupid." The cover of Newsweek trumpets "The Crash of '99." And the folks whose misnomers are now clogging Washington for the 53rd annual meeting of the Inter-national Monetary Fund and the World Bank—Super Bowl Week for the global credit set—are rushing to erect a new, complex ar-chitecture, backed by new money, to keep the world from crashing down around them.

But not so fast. Before we make the errors of haste, let’s recall that never in history have businesses been better run. Never have markets been freer and wealth more abun-dant. Never has technology for communicat-ing, producing and healing been so widely available. Rarely has inflation been less threatening. Rarely have the raw materials of industrial growth—from copper to wheat to oil—been so cheap. Rarely has the world been so peaceful.

The truth is, the international economy was neither as terrific as practically every-one said it was in the spring, nor is it as ter-rifically bad as practically everyone believed. So, let’s cool it before we do something irrevocably stupid.

While countries such as Brazil have unde-niable short-term troubles, the solutions are not mysterious. They need sounder curren-cies, linked to the dollar, less public spend- ing, lower taxes and less regulatory red tape, borders that are more open to trade and capital, and governments that are more candid, less corrupt and less apt to meddle in the private sector.

None of these improvements requires the ministrations of the IMF. Markets enforce a more efficient discipline: A country that com-plies with conditions will be rewarded, its cap-ital will get that capital, which is contin-ually scouring the globe, seeking the best re-turns. Talk of “contagion” is nonsense: cap-ital does not flee sound economies, as mon-e-}arty historian Anna Schwartz shows clearly.

Still, the financial bureaucrats gliding down Washington’s streets in their limousines this week think differently. They believe that, since the world is on the brink, smart people—i.e., like them—need to do some-thing to save it.

That’s the danger. British Prime Minister Tony Blair wants a “new Bretton Woods,” birthplace of the IMF and World Bank. The problem with another Bretton Woods is that it assumes that these institutions can actu-ally have a beneficial effect today on econo-mies in trouble. The opposite seems the case.
The IMF bears responsibility for Asia’s troubles. With the U.S. Treasury in 1995, it delivered unprecedented sums to bail out banks and investors who made reckless loans to Mexico. That rescue then encouraged investors to make riskier extensions of credit to Asia, Russia and Latin America. That led to overcapacity—too many factories unprofitably producing consumer goods, cars and clothes, often under government direction—and to the current crisis.

Instead, incredibly, “the free market and the unregulated flow of capital across borders are being vilified as causes of this disaster,” writes economist John Makin of the American Enterprise Institute. The French and the British, for example, have given the IMF more power, and plans to restrict capital flows abound.

Still, someone has kept his head. Treasury Secretary Robert Rubin has advanced a sensible proposal: Make credit available to sound countries that may be suffering liquidity problems (that is, need cash) but that haven’t fallen into deep crisis. I’d like to expand this idea and obviate the need for an IMF altogether. Set up a streamlined international lending institution that would have constant access to available funds, under these four conditions: (1) Loans would be made only at “penalty rates” higher than the 4.5 percent that Korea recently paid. (2) Nations borrowing money must put up their best collateral, such as U.S. Treasury bills or gold. (3) Borrowers must allow foreign banks to operate within their borders and be able to purchase their domestic banks. The best way to reform a rotten financial system is to admit good, free-market bankers. (4) Borrowers must subscribe to a new bankruptcy convention that would allow creditors to restructure the debts of these borrowers, similar to those in the United States and Europe. Lenders have to know that they can seize assets in a default.

At the same time, the world’s financial moguls need to: (a) pressure Japan, another villain in the tale of Asia’s collapse, to fix its banking system immediately and reflate the yen; (b) reaffirm the importance of free trade and reject restrictions on the flow of capital; and (c) use the World Bank to alleviate the suffering of innocents in countries such as Indonesia, victims of economic crimes committed by leaders including the IMF.

As for the extra money that the IMF wants and Congress has failed to approve: for credit under its stand-by arrangements, as Japan reorganizes its banking sector, yes; otherwise, no. Right now, withholding cash is the best leverage for reform that we’ve got.

**COMMEMDING THE MEMBERS OF THE MARINE SECURITY GUARD**

HON. MARTIN FROST
OF TEXAS

IN THE HOUSE OF REPRESENTATIVES

Wednesday, October 7, 1998

Mr. FROST. Mr. Speaker, I rise today to bring to the attention of the House the bravery and heroics of the members of the Marine Security Guard at our embassies in Nairobi, Kenya and Dar Es Salaam, Tanzania. With the situation at both embassies now somewhat stabilized, I want to take the moments and attempt to paint a picture of the events leading up to the blasts as well as provide you with a commander’s perspective of the actions of our Marines subsequent to the explosions.

On Friday morning, 8 August 1998 at 10:30 am local Kenyan time (03:30 EST), Corporal Gordon Gonite was stationed in the American Embassy in Nairobi, Kenya and Dar Es Salaam, Tanzania. With the situation at both embassies now somewhat stabilized, I want to take the moments and attempt to paint a picture of the events leading up to the blasts as well as provide you with a commander’s perspective of the actions of our Marines subsequent to the explosions.

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With no thought for their own lives, having no idea what else may happen, or whether or not the shattered structure would cave in on them, the Marines immediately re-acted after the blast, took up their positions, and began searching for Sergeant Aliganga. He ran to the elevator shafts behind post one, which were completely destroyed, and fell two floors down into the shaft. He was knocked unconscious, suffering multiple lacerations and bruises. Sergeant Briehl managed to climb out of the elevator shaft and continued his search for Sergeant Aliganga. Sergeant Aliganga, who was in the lobby from Bujumbura for a dental appointment, as well as Sergeant Harper, who was on COT leave from Nairn in Accra, immediately reached with the Marines and manned posts around the embassy.

At this time, we had Gunny Sergeant Cross, Gunny Sergeants Russel, Jiminez, Briehl, Outt, Harper, and Corporal Gontie on board. These Marines immediately made their way through the rubble, fire and smoke looking for survivors.

By 10:30, the Marines had made their way to the embassy. As the Marines swarmed the embassy moments after the blast, the building was still going through the chancery to insure all personnel were safely out of the embassy. No direction was given. Corporal Johnson, who was in the office from Bujumbura to receive eye surgery, was flying glass. While Cynthia was injured from flying glass. While Cynthia was injured from flying glass. While Cynthia was injured from flying glass. While Cynthia was injured from flying glass. While Cynthia was injured from flying glass. While Cynthia was injured from flying glass.

As you finish reading this synopsis, the Marines from Nairobi and Dar Es Salaam, augmented by Sergeant Smith and Corporal Cornell from Paris, Sergeant Smith and Corporal Cornell from Paris, Sergeant Aliganga from Bonn, Sergeant Lawlor from Rome, are making preparations.

By 10:40 am, a truck bomb exploded outside the embassy. The blast site was the hardest hit areas as it was one floor up and only about 50 feet from the blast site. Twelve inch slabs of reinforced concrete were piled up to the ceiling, while desks, computers, and file cabinets were re-covered to form hardline doors, which are located on the opposite side of the embassy. The building was shelled by the blast, which occurred over 1000 meters away, the embassy was secure with MSGs maintaining 24 hour security on the building until the arrival of the FAST team.

By 10:00, a number of Army special forces NCOs had volunteered to stand post to give the Marines a much needed break. By this time, Corporal Johnson took security for the entire building. Corporal Johnson then continued his search for survivors. By 14:30 local time, after 27 hours and fifty minutes of relentless digging with their bare hands, the body of Sergeant Aliganga was recovered from the rubble. One and the Marines fell back to their secondary positions.

Corporal Johnson took security for the mission personnel at the rear of the embassy. The hardline doors, which are located on the opposite side of the embassy, were forced open by the blast. Emergency fire exits on the opposite side of the building were knocked down and safes were moved and in some cases, the force of the blast threw buildings. The Marines had to bust through walls in order to get to areas unattainable during their sweep. Within four hours of the explosion, Corporal Johnson, Corporal Boudah from Dubuque, Corporal Smith and Corporal Cornell from Paris, Sergeant Smith and Corporal Cornell from Paris, Sergeant Aliganga from Bonn, Sergeant Lawlor from Rome, were making preparations.
Recently, General Shelton issued a communication to this Congress about the global threat of ballistic missile attack. Mr. Speaker, the Shelton letter was alarming, not only because it describes a very real threat, but because it reiterates the need for an effective national missile defense system and national missile defense system. 

You are relying for our defense on an Intelligence Community that has repeatedly failed to predict and warn of critical ballistic missile threats. You are recklessly placing the lives and safety of tens of millions of Americans at risk.

President Clinton canceled the Brilliant Pebbles program in 1993, which would have deployed advanced ballistic missile defenses. Yet President Clinton cut the Space Based Laser technology program in 1993, an advanced technology program which the Air Force advocates. History is repeating itself.

The President provides a record report of his administration's efforts to protect the American people from international weapons of mass destruction. Yet the report is a policy failure.

Recently, President Clinton announced that the United States would build a new missile defense system. This is the most recent example of a series of decisions made by President Clinton that are based on a false premise: that the United States is facing a crisis in its ability to provide a credible missile defense.

The President's decision to pursue a new missile defense system is based on the premise that the United States is facing a crisis in its ability to provide a credible missile defense. This is a false premise. The United States is not facing a crisis in its ability to provide a credible missile defense. The United States is capable of providing a credible missile defense system.

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You are using the statement of “absolutely the best technology” to delay the deployment of a strong and effective ballistic missile defense. You are needlessly placing the lives of tens of millions of Americans at risk of destruction by long-range ballistic missiles. You are attempting to deceive Congress.

Additional Funding—You claim that additional funding of ballistic missile defense programs will not buy back any time in its already scheduled deployment. You contradict the Navy’s report on its Theater Wide ballistic missile defense program, which points out how additional funding can bring deployment as early as 2002 rather than 2006. You contradict the experience of the Space Based Laser program, where lack of funding, especially under President Clinton, has restrained progress. Your views are invalid.

President Clinton is starving the funding of the Space Based Lasers, precluding their deployment. The Joint Clinton canceled Brilliant Pebbles. Yet funding can revive those programs. Still you deny the American people a defense against long range ballistic missiles.

ABM Treaty—You and the Chiefs of Staff believe adherence to the ABM Treaty is consistent with our national security interests. But you violated the treaty by installing the massive buildup of the Soviet nuclear missiles, and the Soviet Union flagrantly violated its provisions. You have been silent about these violations and control agreements.

Furthermore, in April 1991, Dr. Henry Kissinger, author of the 1972 ABM Treaty, repudiated the treaty for being inconsistent with our national security interests, writing, “Limitations on strategic defense will have to be reconsidered in the light of the Gulf War experience. No responsible leader can henceforth leave his civilian population vulnerable.”

You are irresponsible with American lives, leaving American citizens vulnerable to swift, massive destruction by long-range ballistic missiles.

Position of the Joint Chiefs of Staff—The Joint Chiefs of Staff recommend the deployment of a ballistic missile defense at 25 U.S. cities to save the lives of 30 to 30 million U.S. citizens. The Joint Chiefs of Staff believe it is worthwhile deploying a ballistic missile defense to save the lives of tens of millions of Americans.

The Joint Chiefs of Staff believes that the deployment of a ballistic missile defense will limit the ability of a ballistic missile attack to damage our population, industry, and military.

The Joint Chiefs of Staff believes that the deployment of a ballistic missile defense will provide the U.S. a strategic advantage that will enable us to peacefully settle crises around the world.

These views of the Joint Chiefs of Staff for the deployment of a ballistic missile defense, confident in our technological ability to build an effective ballistic missile defense, provide timely advice for Congress although made 1996.

In spite of the increasing dangers we face, and in spite of the advances in ballistic missile defense technology we have had in 32 years, you find the advice of the Joint Chiefs of Staff to be without merit.

Summary—There is no substitute for a strong defense against long-range ballistic missiles. Our defense policy and policy of leadership of the American people defended from long-range ballistic missiles is indispensable.

You, the joint Chiefs of Staff, and President Clinton are needlessly risking the lives of tens of millions of Americans. You are inviting a nuclear Pearl Harbor. But the defense of the American people from the threat of long-range ballistic missiles will not admit delay.

It is inconceivable, sir, to arrive at any other conclusion but that you are culpable of dereliction of duty, leaving the lives of tens of millions of Americans undefended from long-range ballistic missile attack.

Your Commander-in-Chief President William J. Jefferson Clinton and his assistant Vice-President Al Gore are also derelict in their duty to defend American lives.

Very truly yours,

Bob Schaffer
Member of Congress.

TRIBUTE TO THE HONORABLE SIDNEY R. YATES

SPEECH OF

HON. NITA M. LOWEY
OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

Thursday, October 1, 1998

Mrs. LOWEY. Mr. Speaker, I rise to pay tribute to my good friend and colleague, Sid Yates.

Since first joining this Congress a remarkable fifty years ago, Sid has been a paragon of consistent and eloquent advocacy for our Nation for the better through quiet perseverance and boundless idealism.

I have had the pleasure of serving with Sid on the Appropriations Committee and have watched in admiration as he successfully funded scores of worthwhile projects, many of enormous benefit to our environment. Years from now, when our children and grandchildren enjoy scenic vistas and waterways, when they walk along gleaming lakefronts and thrill to the diversity of our Nation’s wildlife, they will have Sid Yates to thank. He has always understood our powerful moral obligations to be custodians of the great outdoors.

Just as important has been Sid’s championship of the arts. In the midst of controversy and contention, Sid has always been a tireless and eloquent defender of the NEA. To those who would inflame public passions about the controversial margins of the artistic world, Sid responded with a calm affirmation of the arts’ central role in our national life. How many orchestras and exhibitions, how many performances and plays, owe their very existence to Sid’s faithful leadership? Indeed, the NEA itself might have been overwhelmed by its critics had not Sid Yates been a member of this Congress.

For me, it has also been a great honor to sit with Sid Yates on Appropriations’ Foreign Operations Subcommittee. There, he has been an articulate spokesperson for American leadership around the world and a fierce defender of Israel’s interests. It is entirely fitting that Sid’s first election to Congress should occur in the very year of Israel’s declaration of statehood. And that, from this high vantage, Sid should be able to watch Israel’s development from a threatened outpost between the desert and the sea, to a modern, thriving nation, bursting with technology, artistry, and innovation. Sid Yates played no small role in Israel’s inspiring progress.

Mr. Speaker, Sid Yates leaves this House diminished by his departure, yet wiser for his service. I know that Sid Yates’ integrity and courage will remain a model to countless public servants for many years to come.

SIDNEY R. YATES
MEMBER OF CONGRESS

SPEECH OF

HON. ROBERT A. UNDERWOOD
OF GUAM

IN THE HOUSE OF REPRESENTATIVES

Wednesday, October 7, 1998

Mr. UNDERWOOD. Mr. Speaker, today I wish to commend the efforts of the many citizens on Guam who organized and actively took part in “Project Hagåtña.” This island-wide initiative has connected generations on Guam with our Chamorro heritage and has instilled in us our common values as a people longing to strengthen our identity and culture as native pacific-islanders. Project Hagåtña Project Hagåtña incorporates a multi-faceted approach by sponsoring scores of events that built upon our cultural backgrounds and renewed our energy to learn our history. The events were planned in conjunction with the Centennial of the Spanish American War.

As my colleagues may know, the Guam legislature recently changed the name of our capital city from “Agana” to “Hagåtña” (Guam Public Law 24-19) in hopes of restoring and promoting our ancestral village names while at the same time trying us to our cultural roots.

I would like to commend the following individuals for their remarkable efforts in coordinating Project Hagåtña: Lourdes C.N. Ada, Benigno-JosepUmagat, John San Nicolas, Josuas Perez, Benidio Edubalad, Teresita N. Taitano, Robert J. Umagat, John Carica, Donna Paulino, Lelani Farrales, Lourdes Alonso, Kennedy Jim, Mayleen San Nicolas, Josuas M. Hayes, Clotilde R. Perez, Patrick S. Ledy, and Peter Alexis Ada.

My congratulations to the people of Guam on the success of Project Hagåtña, may its work continue to remind us of our unique cultural place in the world and strengthen our heritage.

H.R. 4717: DRAFT OF THE CONSERVATION AND REINVESTMENT ACT OF 1999

HON. DON YOUNG
OF ALASKA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, October 7, 1998

Mr. YOUNG of Alaska. Mr. Speaker, since July 17, 1998, Congressman John Dingell, W.J. “Billy” Tauzin, Richard Baker, Chris John, and I have been circulating a discussion draft and asking for comments to help further this legislative proposal. Our proposal is based on the idea that funds derived from outer continental shelf or OCS activities should be shared with coastal states impacted by the development, as well as reinvested into conservation. Today, we, along with several of our colleagues, will be introducing H.R. 4717.

To set the stage we must digress to the topic of oil and gas revenues paid to the Federal Treasury by companies involved in producing the federal mineral estate. Currently, would-be oil and gas operators on our public lands, and in federal waters, must bid for a
lease at auction, pay rent on this tract if successful with their bid, and pay a royalty on each cubic foot of natural gas and barrel of oil produced. The receipts from oil and gas development offshore, in states like New Mexico and Wyoming, are shared with the state which hosts the activity. Generally, half of the revenues the federal government receives from mineral development is shared with these public and land states.

However, oil and gas produced in the federal waters of the OCS is not shared in this manner with adjacent states. There have been numerous attempts to address this inequity. Most have failed at the hands of large states like California and Florida with the help of the environmental community opposed to OCS revenue-sharing because they perceived it as incentive for new oil and gas production. One of the first negotiations took place between Louisiana Governor Earl Long and President Truman. Governor Long has a long history of quotable and embittered stories, but this one is told as follows: Governor Long approached President Truman regarding the issue of revenue from oil and gas activity just along with his state boundaries. President Truman, sympathetic, came back with an offer of 50% of the revenues to be shared with impacted adjacent states, such as Louisiana. Governor Long, in typical Earl Long style replied that if Louisiana could not get its share of OCS oil and gas revenue, it wanted nothing at all. And since that day Louisiana and the other coastal states received just that.

Which brings us to where we are today. With more than 90% of the offshore federal production occurring off the coast of Louisiana, no state is more energized when this issue of revenue sharing is brought up. Past proposals had formulas which favored producing coastal states such as Louisiana and Texas, which have been supportive of responsible development of OCS oil and gas resources. Some previous proposals even penalized states like Florida and California who annually seek a moratorium on OCS leasing. Not so, this time. We all realize the necessity of keeping our large states supportive of in order to have major legislation passed into law.

It seems appropriate to thank those individuals and groups involved with this bill introduction. The proposal has been a process-driven, seeking input from a diverse array of individuals and groups. Countless meetings and information exchanges occurred throughout the summer and into the fall. Any success realized today, with this bill introduction, came from the diversity of the participants and our determination to stay true to an open process and dialogue. Today, you find Congressman who run the shop and get the job done together supporting this bill. You see the same with the groups who have come out to support this endeavor and I look forward to continuing this collaboration.

Since July, when Congressman Dingell, Tauzin, Baker and Joho and I began circulating a discussion draft, posted it to the House Resources Committee website, we have been affirmatively seeking comments on the specifics of this idea. I can’t stress enough our desire for critical input. Most of our discussion draft ideas were based upon existing reports or projects that have been successfully making this proposal realize it’s legislative potential. Today, we are moving into the next step in our process by introducing this bill.

Yes, the 105th Congress is nearly finished, but we felt it worthwhile to formally introduce a legislation for thorough scrutiny until the 106th Congress meets. And the citizens of Alaska so willing, I intend to come back and re-introduce the Conservation and Reinvestment Act. Given the current understanding, today’s introduction does not signal the end our dialogue. I am committed to working with all interested individuals and groups to improve this bill next Congress, should compelling arguments for further amendments. I am committed to the development of a legislation and a coalition to support this proposal. The legislation has been four months ago into the 106th Congress, and working together, we can build a coalition sufficient to enact the “Conservation and Reinvestment Act of 1999” into law.”

The first title of the Conservation and Reinvestment Act will redistribute 27% of the total OCS receipts in a given year and is based on a Minerals Management Service’s advisory committee’s report. This report was prepared by the Administration and local government officials, and oil and gas industry representatives, and is available at our web site. A key component of the legislation is to establish a Coastal Administration and a committee to provide for the development of conservation programs. The committee’s report was prepared in a given year and is based on the OCS receipts in a given year and is based on the OCS receipts. The committee took a pragmatic approach, by suggesting only revenues from off oil and gas development be considered. While this reduces budget enforcement Act-induced concerns, it was troublesome to the environmental community because it left the state such revenue-sharing would be a strong incentive for new development. Hence, our bill utilizes all revenue, from both existing production and new leases. With this change not only will the funding levels increase to benefit environmental programs included in our bill, but we wanted it clear that the goal of providing funds to areas impacted by development which factors in the amount of development adjacent to a given state.

The second title of the Conservation and Reinvestment Act, again, reinvests 23% of the OCS funds into land-based conservation efforts, with a focus on the Land and Water Conservation Fund (LWCF). More than 30 years ago, the LWCF Act created a unique partnership between Federal, State and local governments by authorizing matching grants for the acquisition and development of recreation and conservation resources. Similarly, the Urban Park and Recreation Recovery Program (UPARR), created in 1978, provided Federal funds to distressed urban areas to rehabilitate and construct recreation areas. Together, these programs have provided nearly $3 billion in capital investment needs nationally over the next five years for land acquisition and new construction. Nonetheless, despite the successes of the state-side LWCF matching grant and UPARR programs and the continuing demand for recreation and conservation resources, neither program has been funded over the past three years.

Title two of our bill would revitalize the LWCF and UPARR programs by providing matching grants to federal, state, local, and urban governments for the acquisition and development of conservation and recreation resources. Together, our bill provides an additional $900 million level. This bill will recommit Congress to the vision that revenues earned from the depletion of a nonrenewable resource should be invested in permanent assets that will provide continuing recreation and conservation needs of all Americans.

The 23% for land-based conservation would be distributed as follows:

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The 23% for land-based conservation would be distributed as follows:
It is important to point out that the funds allocated for State and local conservation and recreation projects could fund one-half of the projects’ costs and all expenditures would have to be consistent with the States’ comprehensive outdoor recreation plans. Also, the stated, territories, the District of Columbia, Indian tribes, and Alaska Native Village Corporations would also be eligible to receive matching grant funds.

For over six years, some segments of the conservation community have advocated the creation of an excise tax to provide funding for non-game wildlife projects and conservation education. Included in this bill is funding for wildlife conservation and education. Conservation education is critical to ensuring that people understand the interdependence between man and the environment. We are losing the idea that people and the environment that surrounds them not only can coexist, but must coexist. As the urban sprawl envelops more of the public geography and ideology, we must work to educate with the principles of sustainable use. Hiking, biking, bird-watching, canoeing, mountain climbing, and hunting are all sustainable and acceptable uses of our lands and resources. By using sound scientific principles is the only way to ensure that our use of our resources will be sustainable for future generations.

Another void this legislation helps to fill is the issue of non-game funding. This issue divides the sporting community who need unity to accomplish our common goals. The excise tax initiative, while well intentioned, was divisive as it created segmented funding for a particular species of wildlife. Our bill provides funding for both species of wildlife, game and non-game through the existing mechanism of Pittman-Robertson.

Pittman-Robertson currently allows for the flexibility to address the needs of non-game species, as well as game species. We all realize that Pittman-Robertson is currently focused on funding for game species. However, our bill will create a new subaccount, named the “Wildlife Conservation and Restoration” sub-account. The conservation and Reinvestment Act of 1998 will provide funding at higher levels than any other federal source for wildlife. Above levels proposed by the excise tax initiative. This will provide wildlife funding to help move the conservation community beyond the debate of game versus non-game funding and provide for conservation education. This funding is provided with the knowledge that many states are in need for non-game and watchable species and these functions can take place with the bill as drafted. However, we allow the flexibility for individual states to maximize their digression.

I am very active in the Congressional Sportsmen’s Caucus and am currently the chairman of the Executive Council. The Sportsmen’s Caucus is the largest Caucus in Congress and sportsmen’s champion. Far too often, our sportsmen and women are criticized for their outdoor recreation. The mass public does not understand our role in the economy and enjoyment of our heritage. The sports community, represented by those who enjoy and utilize the outdoors are a huge segment to our Nation’s economy. Members of the Caucus leadership, like Saxby Chambliss often incorporate our significance in their speeches. We should take a moment to realize how much our sportsmen contribute to the economy and environment.

If hunting and fishing were a corporation, it would rank with the Fortune 500 list. This is ahead of giant corporate companies like AT&T. Sportsmen activities support more than twice the number of workers employed by Wal-Mart. Wal-Mart, incidentally, Wal-Mart is the largest Fortune 500 employer.

Sportsmen’s assets equal, $60 billion in retail sales, $1.6 billion reported, and $8.7 billion in state and federal tax revenues. Economists estimate that these factors create a $169 billion ripple effect in our country’s economy.

Some additional facts related to the taxes the sporting community pays are also interesting:

- Tax revenues generated by sportsmen are greater than the box office total of all United States movie theaters. Also, exceed the combined box office earnings of the all-time top ten grossing films.
- Sportsmen’s sales tax revenues generated in North Dakota, South Dakota, Vermont, and West Virginia could pay for their state’s entire parks and recreation budgets.

All of you are well aware that the sporting community, especially those who engage in hunting and fishing, have been supporting the larger community of outdoor recreation for decades. Their generous contributions through the sportmen trust accounts of Dingell-Johnson and Pittman-Robertson have measurably benefited wildlife and their habitat. With that success in mind, I look forward to working with all individuals and groups to see this new subaccount passed into Law.

TRIBUTE TO PETER C. EAGLER

HON. BILL PASCARELL, JR.
OF NEW JERSEY

IN THE HOUSE OF REPRESENTATIVES

Wednesday, October 7, 1998

Mr. PASCARELL. Mr. Speaker, I would like to call to your attention the Honorable Peter C. Eagler of Clifton, New Jersey. Peter is being honored this evening by the Clifton Democratic Club for his many years of invaluable service to the community.

Peter Eagler is a lifelong resident of the City of Clifton. In 1972, he graduated from Paul VI High School whereupon he entered Fairleigh Dickinson University as an undergraduate. He graduated from Fairleigh in 1976 with a Bachelor of Arts degree in Political Science and Russian Area Studies.

Peter has been employed by the New Jersey Highway Authority in Woodbridge since 1977 and is also a Coordinator for the PNC Bank Art Center, formerly the Garden State Art Center. He previously worked as an Assistant Coordinator for the Art Center and as a Coordinator of Heritage Festivals.

Peter’s career in politics began back in 1974 when he was first elected to serve on the Clifton Democratic County Committee. He then became an active participant in several campaigns in North Jersey including being County Chairman for Jimmy Carter’s Presidential campaign, County Coordinator for Jim Florio’s 1977 bid for Governor, member of the Steering Committee for Gloria Kolodziej’s campaign for City Council, and County Coordinator for both Gary Hart’s Presidential Primary bid and Senator Lieberman’s 1994 Presidential campaign. Peter also served Jim Florio’s campaign again in 1989, as an advisor to the campaign’s Ethnic Coordinator.

In 1990, Peter ran for a seat on the Clifton City Council and was elected. In 1994 and, again in 1998, he was re-elected to serve on the Council. As a member of the Council, he has served, and continues to serve, as liaison to the Planning Board and the Environmental Advisory Board, Chair of the Certificate of Occupancy Committee, and a member of both the Recreational Task Force and Real Estate Committees.

In 1995, Peter ran unsuccessfully for Freeholder but ran again and was elected to the Board of Chosen Freeholders in 1996. As Freeholder, Peter served as Chairman of the Community Services, Education, and Recreation Committee. In November 1997, the Democratic Party gained a majority on the Freeholder Board and in January of 1998, Peter was chosen as the new Director of the Freeholder Board.

Outside of his political involvements, Peter is also an active member of the community. He has been President of St. John Kanty’s Parish Council (1975–1977), Administrator of Hamilton House (1981–1987), member of Passaic County’s Sesquicentennial Commission (1985–1987), the Governor’s Ethnic Inaugural Committee, the Clifton Historical Commission (1975–1990), and the Lakeview Civic Association. In December 1993, he was ordained a Subdeacon in Holy Apostles Church. Currently, Peter serves as a Trustee of Holy Archangel Broadcasting and is a Coordinator of the St. Nicholas Program at the Hamilton House Museum.

Mr. Speaker, I ask that you join me, our colleagues, and Peter’s family and friends in paying tribute to one of North Jersey’s most dedicated servants of the community, the Honorable Peter C. Eagler.

HOME HEALTH CARE PAYMENTS

HON. FORNTEY PETE STARK
OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, October 7, 1998

Mr. STARK. Mr. Speaker, on behalf of my colleagues and the scheduled 15% cut in home health agency payments should be halted. It is different from the bill being developed by some of the Republicans on the Ways and Means Committee. Our bill is revenue neutral.
Means and Commerce Committees. It does not create huge new tax breaks which will cost far more in out-years than they raise in the near term. It concentrates its relief on those who have been careful, cost-conscious providers and does not throw out money at the agencies which have been abusing Medicare by providing excessive and often questionable visits.

Our bill is identical (except for the pay-far) to the bipartisan bill which has been developed by the Senate Finance Committee, and which may pass the Senate at any moment. Our plan for simply changes the limits on the Medicare Medical Savings Account demonstration project, lowering the number of participants in the early start-up years and raising them in the out-years and extending the life of the demo. Very few people are likely to participate in this program in the early years, yet CBO charges us for the cost of a full-blown program. By starting more realistically, we will not hurt the program, but can be scored for budget savings.

Attached is a description of the formula changes our bill makes.

This is a small, do-able bill in the last hours of the 105th Congress. It does not waste money on the agencies who have created so much of the fraud, waste, and abuse problem in the home health sector. It is a reparable pay-far. It is a bill that can quickly and easily be conferenced with the Senate.

We urge other Members to join us in supporting this approach.

SUMMARY OF FORMULA CHANGES

Reduces state and regional differences for "old" agency payments; brings down the per beneficiary limits for the highest cost "old" agencies, and increases the per beneficiary limits for the lower cost "old" agencies and eliminates current 2% discount on per beneficiary limits applicable to new agencies. Raises the separate average cost per visit limits for all agencies.

CBO: budget neutral (through FY 2008).

Per Beneficiary Limits

1. "Old" agencies: payment is 50% BBA policy +50% (50% national mean +50% regional mean);
2. "New" agencies: payments are increased by 2% to equal 100% of the national median (about $3,600), which continues to be regionally adjusted for wages); and
3. Per Visit Limits: increase the per visit limits from 103% to 110%.

4. Delays for 1 year the 19% across-the-board cuts currently scheduled to go into effect on October 1, 1999.

CBO: Cost is $1 billion over 5 years.

HONORING RICHARD L. OTTINGER

HON. NITA M. LOWEY
OF NEW YORK
IN THE HOUSE OF REPRESENTATIVES
Wednesday, October 7, 1998

Mrs. LOWEY. Mr. Speaker, I rise to pay tribute to an outstanding leader, good friend, and beloved former member of this House, Dick Ottinger.

Dick represented Westchester County in the United States House of Representatives from 1965 to 1971, and again from 1975 to 1985. Throughout his service in the Congress, Dick was a model of integrity and energy. He fought for the interests of working families and consumers, for the underprivileged and for seniors—always guided by a powerful sense of justice and idealism. But Dick’s greatest passion has always been the environment. He came to Congress at a time when few in Washington devoted sufficient attention to the perilousness of our air and water, to the depletion of fossil fuels, or to the long-term relationship between economic growth and sound environmental stewardship. He left Washington with these priorities enjoying wide acceptance among lawmakers and the public alike. Dick’s contribution to the environmental cause was wide and deep—and today his legacy is as great as the American outdoors.

Mr. Speaker, Dick’s accomplishments are not limited to the arena of elected office. Public service is at the very heart of Dick Ottinger’s character, an instinct revealed in every season of his life. He was one of the founding members of the Peace Corps, a distinguished attorney, an author of numerous books and articles, and today the Dean of the Pace University School of Law as well as the Co-Director of Pace’s prestigious Center for Environmental Legal Studies.

For his extraordinary body of work, Dick Ottinger has been honored many times over. But perhaps the greatest tribute is the lasting affection and admiration of the men and women whom Dick so ably represented and about whom he continues to care so deeply.

I am pleased to recognize Dick Ottinger, together with his wife June, and to express my thanks to an outstanding role model and wonderful human being.

COMMENDING THE INCORPORATION OF THE SUABE NA TASI FOUNDATION ON GUAM

HON. ROBERT A. UNDERWOOD
OF GUAM
IN THE HOUSE OF REPRESENTATIVES
Wednesday, October 7, 1998

Mr. UNDERWOOD. Mr. Speaker, I would like to bring to the attention of my colleagues the recent formation of a particular non-profit corporation known as the Suabe Na Tasi Foundation. On August 20, 1998, this foundation was officially incorporated on Guam to increase public awareness about the waters surrounding our beautiful island and to raise the necessary funding to study and implement measures to sustain our vibrant economy while protecting our precious ocean resources.

As many of my colleagues know, Guam’s coral reefs as home to the most diverse fish populations in the world. Recent increased development have heightened the demand placed on our near-shore waters and, as a result, our reefs and ocean waters have not only been threatened but are becoming adversely impacted. Tumon Bay in particular, Guam’s most developed shoreline, has produced signs of environmental stress and human activity is the leading apparent cause. Recent studies also point to an increase in algae growth and beach sands are turning from a pure white to a polluted gray that gives way to erosion as each day passes.

In response to these growing signs of rapid development, various local governments as well as GovGuam have attempted to take constructive action to restore our environment and free it from intrusive and negative impact in the future. However, there is a single impediment standing in the way of needed progress and that is a tremendous lack of funds. The Suabe Na Tasi Foundation has stepped up to act as the engine to fund important local initiatives to save our environment and help Tumon Bay.

The people of Guam are especially grateful to Telco Taltague, a local and talented vocalist who has committed to release a compact disc to facilitate a public awareness campaign and offer the proceeds in support of the Foundation’s efforts. Telco, is a true civic leader on Guam as she has devoted her singing talent to aid not only the Suabe Na Tasi Foundation but in the past helped with the Toys for Tots campaign, Rest Homes in North Carolina, the Hawaiian Save the Waters campaign, Special Olympics, and Miss Guam Universe.

The Foundation has also completed plans to host a benefit concert with Telo and other Guam artists and musicians to release money for the restoration of Tumon Bay.

Mr. Speaker, it is an honor and privilege to commend the work of several individuals, who with their determination and energy, worked to incorporate the Suabe Na Tasi Foundation. Mr. Paul Packbier, an advocate for protecting the environment who has over twelve years of experience in environmental consulting and chairman of the Foundation, is to be praised for his efforts in organizing the foundation as well as Mr. Sinforsoro M. Tolentino, a highly respected lawyer and friend of the business community on Guam, Mrs. Beth S. Lizama, currently the Vice President of Marinas Credit Bureau and a Business Development officer for Mari-Net, also deserves recognition and are gratefully for her commitment to the Suabe Na Tasi Foundation. Without these three individuals, the Suabe Na Tasi Foundation would not have been incorporated and Tumon Bay would still be in dire need of our attention and care.

The Suabe Na Tasi Foundation is the first organization of its kind, and we on Guam eagerly await its benefits and look forward to proudly preserving our environmental resources. Let us continue as an island community to share our talents and energy for the betterment of Guam. Si Yu’os Ma’ase to the contributors and founders of the Suabe Na Tasi Foundation. May your organization and dedication to protecting our environment serve as a model for other communities across the United States to emulate.

HONORING THE RETIREMENT OF COMMANDER JAMES E. BURD

HON. ROBERT A. BORSKI
OF PENNSYLVANIA
IN THE HOUSE OF REPRESENTATIVES
Wednesday, October 7, 1998

Mr. BORSKI. Mr. Speaker, I would like to extend my deepest congratulations to Commander James E. Burd, the Commanding Officer of the Naval Air Technical Services Facility, on his retirement.

Commander Burd was born in Harrisburg and raised in Pittsburgh, Pennsylvania. In 1975 he graduated from the United States Naval Academy and he obtained of his pilot wings a year later.
He was initially assigned to a Helicopter Combat Squadron and flew an H–46D helicopter aboard the USS White Plains (AFS–4), USS Midway (CV–41), and USS Niagara Falls (AFS–3) in the Pacific and Indian Oceans. In 1980, Commander Burd received his Masters Degree in Aeronautical Engineering from the Naval Postgraduate School. He also attended the Defense Systems Management College where he issued over 2,200 individual engineering safety clearances for almost every aircraft and aviation weapon system in the Navy and Marine Corps inventory, in addition to the prototype and classified systems successfully employed during Desert Storm. While aboard the USS Shasta (AE–33), he demonstrated true heroism by helping to save an aircraft from a ditching situation. By 1984, he was appointed as an Aeronautical Engineering Duty Officer, yet he still found the time to volunteer as a Detachment Officer in Charge of a helicopter deployment aboard USS Flint (AE–32).

Commander Burd continued to advance his career in the Navy when he was promoted to the position of Project Officer for the Presidential Helicopter Program and qualified as Aircraft Commander in the CH–53A. Eventually, he became the Vertical Flight Program Director for the Naval Air Development Center in Warminster, Pennsylvania.

After returning to San Diego in 1984, he became the Helicopter Class Desk Officer on COMNAVAIRPAC. Commander Burd now had the enormous responsibility of being in charge of more than 700 Navy and Marine Helicopters stationed throughout the Pacific Fleet. He continued to excel in his career and by 1994 he was designated as the first 3.3 Technical Department Head of the Naval Aviation Systems TEAM.

Incredibly, Commander Burd's personal awards are as impressive as his career's track record. He has been honored with the Meritorious Service Medal along with two Navy and Marine Corps Commendation Medals. He also received four separate citations for valorous service in its observance. He was initially assigned to a Helicopter Class Desk Officer on COMNAVAIRPAC. Commander Burd now had the enormous responsibility of being in charge of more than 700 Navy and Marine Helicopters stationed throughout the Pacific Fleet. He continued to excel in his career and by 1994 he was designated as the first 3.3 Technical Department Head of the Naval Aviation Systems TEAM.

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CONGRATULATIONS TO FATHER DUENAS MEMORIAL HIGH SCHOOL AND THE ACADEMY OF OUR LADY OF GUAM ON THEIR 50TH ANNIVERSARY

HON. ROBERT A. UNDERWOOD
OF GUAM
IN THE HOUSE OF REPRESENTATIVES
Wednesday, October 7, 1998

Mr. UNDERWOOD. Mr. Speaker, fifty years ago, Bishop Appollinaris William Baumgartner's dream came to fruition. Firmly believing that the growth of Guam's Catholic Church depended on the establishment of the local clergy, he worked to ensure that young men on Guam had the opportunity to receive religious vocation training and to pursue university level education. Upon contacting the Stigmatine Fathers at Waltham, Massachusetts, work commenced on a minor seminary accommodating young Guam men aspiring to the priesthood. It was an uphill battle. At the time, the church was in the earliest stages of self-reliance. It was a challenge to survive with meager funds and at the same time support the goal of an institution that will foster Guamanian clergies, bishops and priests. Money was not the sole problem. Time and energy also went into clearing the land upon which the school would later be built. Fortunately, efforts from dedicated followers make the building construction possible.

In the summer of 1948, five Stigmatine Fathers, considered pioneers and Founding Fathers, arrived on Guam. The Father Superior, Rev. Fr. Mrs. O. Goggin, C.P.S., Leo James Garachi, C.P.S., and Elsworth Fortman, C.P.S. to form the nucleus of the teaching staff. A total of 17 Stigmatine Fathers instructed at the school until 1959 when local clergy were able to administer and staff the school. Capuchin Franciscan Friars, who were pastors of most of the parishes in the Marianas in those days, took over the school's administration.

Father Duenas Memorial School (FDMS) was named after a local priest martyred by Japanese Imperial troops during World War II for sympathizing with the Americans. FDMS opened its doors on October 1, 1948. To usher in the school's first year, a solemn high mass was celebrated in the presence of Bishop Baumgartner and attended by the parents, relatives and friends of students. Among those who filled the chapel to maximum capacity were representatives of the Guam Department of Education, Mr. Norbert Tabery and Mr. Simon Sanchez. The presence bears testimony to the respect which already existed between Catholic Schools, FDMS being the first, and the Government of Guam.

To attract more students, Bishop Baumgartner decided to admit non-seminarian students, classified then as “day-students” to FDMS. Considered as a college preparatory High School, day students attended classes during the daytime while seminarians boarded at the school. A total enrollment of less than fifty students doubled in 1949 and has since steadily grown.

Around the same time of Father Duenas Memorial's inception, Bishop Baumgartner laid the foundation of yet another of Guam's premier educational institutions. Named after Mary, the Mother of Jesus, the Academy of Our Lady of Guam (AOLG) is a female-only Catholic educational institution delivering Catholic educational service based on the Gospel values of love.

With the assistance of my aunt, Sister Mary Inez Underwood, the Academy opened its doors to 36 freshmen on September 8, 1949. First housed in a section of the Agana Cathedral Activities Hall, the students learned about developed skills in the sciences, mathematics, language and fine arts as well as the life and example of Christ.

Under the guidance of the future Archbishop of Guam, Monsignor Felixberto Camacho Flores spearheaded the construction of a permanent structure for the Academy in 1960. In 1974, the school received its first accreditation from the Western Association of Schools and Colleges. It has undergone the accreditation process successfully four times after this, the last being in March of 1996.

From an initial enrollment of 36 students in 1949, the student body now consists of over 400 young women. Under the direction of Sister Mary Inez Underwood, Sister Mary Roberta Taitano, Sister Marie Pierre Martinez, Sister Evelyn Muna, Sister Mary Mark Martinez, Sister Mary Francis Jerome Cruz, Sister Mary Helene Torres, and Sister Mary Angela Perez, the Academy has distinguished itself as one of the finest college and career-bound preparatory schools on Guam. Sister Mary Francis Jerome and Mrs. Daphne Castillo continue this tradition of excellence today.

While AOLG students are recognized islandwide for their outstanding scholastic achievement, participation in Academy Challenge, lengthen Bowls, Mock Trials, and the Debate forums, AOLG is also recognized locally and regionally for its strong interscholastic sports program, such as previous Far East Volleyball Tournament championships, tennis and golf tournaments, as well as an array of other youth athletic activities.

October 14, 1998 marks the 50th anniversary of the establishment of Father Duenas Memorial High School and the Academy of Our Lady of Guam. I commend and congratulate the founders, administrators, faculty, staff, students, alumnae of these two fine Catholic schools.

For fifty years, the schools have generated men and women who have made great contributions toward the transformation of Guam from an island ravaged by war in the forties to its present state as a political and economic center in the Western Pacific.

I wish FDMS and AOLG continued success. I am confident that these fine institutions of faith and learning will continue their commitment to excellence by providing a valuable educational opportunity to the sons and daughters of Guam.

HON. SHEILA J. JACKSON-LEE
OF TEXAS
IN THE HOUSE OF REPRESENTATIVES
Wednesday, October 7, 1998

Ms. JACKSON-LEE of Texas. Mr. Speaker, I rise today in support of honoring the Alpha Kappa Omega Chapter and Mrs. Hazel Hainsworth Young. This Resolution first recognizes the Alpha Kappa Omega Chapter on the celebration of their 70th birthday. It also recognizes the dedication and commitment of Mrs. Hazel Hainsworth to the sorority and to her community.

Throughout its storied history, the Alpha Kappa Omega Chapter has been an instrument of leadership in many civic, cultural, and charitable projects. This chapter has consistently made an effort to enhance the quality of life for all Houston residents. In the early 1930’s, it was this chapter which distributed milk to the underprivileged children of Houston. This tradition continues in the 1990’s with its devotion to improving academic achievement among African-American students. Whatever the need, this chapter has answered the call with commitment and leadership.

Mrs. Hazel Hainsworth Young serves as a vivid reminder of our sorority’s commitment to wholesome sisterly friendships and of our devoirs to serve our community. She has exemplified the true meaning of being a sister in the Alpha Kappa Alpha Sorority. She continues to be a source of inspiration, not only for me and you, but to our future members. Who better to look up to for direction and leadership, than to one of our founding sisters.

This birthday celebration allows us to reflect on our past and to look to our future. The past is filled with many Alpha Kappa Alpha sisters, who like Mrs. Hazel Hainsworth Young, dedicated themselves to the improvement of their community. These sisters have set an example which future members of this chapter can emulate.

On this occasion of your 70th year of existence, I want to commend the sisters of the Alpha Kappa Omega Chapter for their dedication to sisterhood and for their efforts to improve the Houston community. I also want to thank Mrs. Hazel Hainsworth Young for her leadership and service.

A TRIBUTE TO THE STREET-LEVEL YOUTH MEDIA PROGRAM

HON. LUIS V. GUTIERREZ
OF ILLINOIS
IN THE HOUSE OF REPRESENTATIVES
Wednesday, October 7, 1998

Mr. GUTIERREZ. Mr. Speaker, I rise today to congratulate the Street-Level Youth Media program for their designation as a recipient of the “Coming Up Taller” Award. The Annual “Coming Up Taller” Awards are sponsored by the National Endowment for the Arts and the President’s Committee on the Arts and the Humanities to showcase cultural excellence and enhance the availability of out-of-school arts and humanities programs to children, especially those with limited resources.

Street-Level provides a concrete example of how after-school, weekend and summer arts programs are effectively used by communities in prevention strategies for children and youth. Street-Level began in 1993 as a vision of a small group of artists who wanted to create a hands-on program that would provide free access to emerging technologies. Children and young adults, with the help of computers, cameras, video, radio and other programs of media art and technology, were given a forum for self-expression, communication and social change.
Today, that vision has become a reality. Through their collaboration with National Public Radio, The Field Museum of Chicago, Gallery 37 and Public Broadcasting Service, among others, Street-Level is able to serve more than 1,000 children and young adults in Chicago. Thanks to their association with these key agencies, we have been graced with historical documentaries, innovative animation and multicultural education resources.

Programs like Street-Level Youth Media deserve our recognition. Programs such as these are proactive, promote a child's creative interests and develop critical thinking skills. As we embark into the Twenty-First Century, our challenge should be to replicate exemplary programs like Street-Level so that we may have an able Twenty-First Century citizenry.

I applaud the work that you do and I am hopeful that your creative energy will follow your lives and make our world richer. Congratulations.

PERSONAL EXPLANATION
HON. JAMES H. MALONEY
OF CONNECTICUT
IN THE HOUSE OF REPRESENTATIVES
Wednesday, October 7, 1998

Mr. MALONEY of Connecticut. Mr. Speaker, I was unavoidably detained for a recorded vote earlier today. If I had been present for the rolcall vote No. 487, I would have voted "yea".

DO THE WRITE THING CHALLENGE PROGRAM
HON. FRANK RIGGS
OF CALIFORNIA
IN THE HOUSE OF REPRESENTATIVES
Wednesday, October 7, 1998

Mr. RIGGS. Mr. Speaker, not long ago, I served as host for a reception in the Cannon Caucus Room to honor the finalists in the Do the Write Thing Challenge Program. As Chairman of the Subcommittee on Early Childhood, Youth and Families of the House Education and the Workforce Committee, I want to call this initiative to the attention of my colleagues.

Do the Write is a project of the National Campaign to Stop Violence. Students in urban middle schools are encouraged to write about problems of violence and drug abuse in their communities. Through these writings, 7th and 8th graders are motivated to make a commitment to stay in school and do something about drug abuse and violence. They also increase adult awareness and involvement in programs to address these problems.

At the beginning of each school year, school superintendents in targeted cities notify middle school principals about the Do the Write Thing Challenge Program. Students are then asked to write papers relating to three questions: "How has youth violence and drug abuse affected my life?" "What are the causes of youth violence and drug abuse?" "What can I do about the youth violence and drug abuse that I see or experience?"

A panel of volunteers reads student papers. They selected male and female finalists for each school. From among these students, the best entries from each city are named national finalists. There is a local recognition ceremony for the school finalists, and a series of recognition events in Washington, D.C. for the national finalists. Local committees also work with government, businesses, and community leaders to provide opportunities for the student participants such as gainful internships, mentoring, and scholarships. These are designed to promote community service and build a new network of positive relationships for those who have accepted the Do the Write Thing challenge.

The Do the Write Thing Challenge Program is presently operating in Atlanta, Chicago, Detroit, Hartford, Houston, Las Vegas, Los Angeles, Miami, New Orleans, New York, Philadelphia, and Washington, D.C. Nationwide, over 15,000 students have submitted writings as part of the program.

Mr. Speaker, those who merit recognition are too numerous to mention, but I want to particularly thank Daniel Q. Callister, the founder and Chair of the National Campaign to Stop Violence for his leadership in the Do the Write Thing Challenge Program. I also thank Marion W. Mattingly who is working tirelessly to expand the Do the Write Thing Challenge Program to additional cities. The Council of Great City Schools, the National Association of Secondary School Principals, the National Council of Juvenile and Family Court Judges, the National Aeronauts Counsel, and the Justice Department's Office of Juvenile Justice and Delinquency Prevention are all supporting the program. Finally, special commendation goes to the Kuwait-America Foundation, the primary sponsor of the Do the Write Thing Challenge Program.

HONORING ROBIN CHANDLER DUKE
HON. NITA M. LOWEY
OF NEW YORK
IN THE HOUSE OF REPRESENTATIVES
Wednesday, October 7, 1998

Mrs. LOWEY. Mr. Speaker, I rise to pay tribute to a good friend and outstanding leader, Robin Chandler Duke.

Robin is one of those rare individuals who lends energy and dynamism to every cause with which she is involved. Through her service and advocacy, Robin has advanced compassionate public policy here and abroad, while touching countless lives.

I have had the great privilege of working at Robin's side in the critical struggle to protect a woman's right to choose. President Emeritus of the National Abortion Rights Action League, Robin has been a tireless champion of reproductive freedom—always inspiring those with whom she works and meeting even the most difficult challenge with grace, wit, and determination.

Robin is a giant among pro-choice leaders, yet this is but a small part of her varied activities. For seven years, Robin has been the National Co-Chairperson of Population Action International, which is dedicated to the promotion of voluntary family planning, effective population policies, and individual rights. In addition, Robin is actively involved in the U.S. Japan Foundation, The David and Lucile Packard Foundation, the Alan Guttmacher Institute, the United Nations Association, the Council on Foreign Relations, and the Friends of Art and Preservation in Embassies. She has represented our country in various international conferences and organizations, and remains today a shining light of principle and purpose.

Above all, Robin is a delightful human being. A paragon of elegance and poise, and yet utterly without pretension. Robin is always impressive, but never imposing. It is a joy to be her friend.

Mr. Speaker, this month Population Action International will honor Robin Chandler Duke for her service to that organization and for a lifetime of good works. Let the record reflect my enormous admiration and gratitude for this outstanding American.

GEOGRAPHY AWARENESS WEEK
HON. BOB STUMP
OF ARIZONA
IN THE HOUSE OF REPRESENTATIVES
Wednesday, October 7, 1998

Mr. STUMP. Mr. Speaker, during the week of November 15–21, the Arizona Geographic Alliance will be celebrating Arizona's Geography Awareness Week. The Alliance has worked closely with the Governor, local mayors and school superintendents to recognize the week in the public schools. The National Geographic Society, the State of Arizona, and Arizona State University supports Geography Awareness Week.

The purpose of the week of programs is to illustrate the importance of geography education. Studying geography is much more than just locating a city, state or country on a map. Students of geography learn about direction, climate, physical and social characteristics of a region, methods of travel, cultural differences, monetary systems, and environmental settings. A thorough understanding of geography offers an understanding needed for many of today's jobs. Geographic education also opens the mind to the world and experiences beyond our own boundaries.

I commend the members of the Arizona Geographic Alliance for their promotion of the importance of geography education. Hopefully, other states will join Arizona in creating a Geography Awareness Week to renew interest in our ever-changing global environment.

CELEBRATING THE 70TH BIRTHDAY OF JAMES FORMAN
HON. ELEANOR HOLMES NORTON
OF THE DISTRICT OF COLUMBIA
IN THE HOUSE OF REPRESENTATIVES
Wednesday, October 7, 1998

Ms. NORTON. Mr. Speaker, I rise to celebrate James Forman, who should have been a celebrated leader years ago. Jim, as we always called him when he was the engine and the engineer of the Student Nonviolent Coordinating Committee (SNCC), has just celebrated his 70th birthday. Jim Forman is the least known of the major civil rights leaders of the 1960s. Our colleague, John Lewis, is the best known of those of us who worked in SNCC, but John would be the first to say that it was Jim who ran SNCC.
Jim Forman was the Executive Director of the Student Nonviolent Coordinating Committee when it was at its best and at its height. This was the SNCC that pioneered the nonviolent techniques of the sit-ins at segregated lunch counters; that organized the Mississippi Freedom Democratic Party that broke segregated national convention delegations in both parties; and that originated the 1964 Mississippi civil rights summer that brought an integrated army of students into the South to break open the worst and most dangerous areas.

These historic achievements required more than young people who were willing to sit in, go to jail, or risk their lives. Jim did those and more. Jim was the sturdy hand at the helm who brought order out of movement chaos, kept everybody focused, and headed off trouble. I remember Jim as the forceful man in charge who was good at the whole range of human interactions. He could cajole, he could persuade, he could entice, and, if necessary, he would order.

SNCC was an extraordinary, collegial, decentralized movement organization. Its loose structure attracted participants, and free spirits demanded a special leader. How fortunate our band of the young and foolish were. At the moment when we needed a leader who could hold us all together until the segregated south succumbed to the rule of law, we found one—James Forman.

TRIBUTE TO THE HONORABLE GERALD SOLOMON

SPEECH OF
HON. HERBERT H. BATEMAN
OF VIRGINIA

IN THE HOUSE OF REPRESENTATIVES

Tuesday, October 6, 1998

Mr. BATEMAN. Mr. Speaker, regrettably, schedule conflicts on two occasions prevented me from joining in the tribute here on the House Floor to our departing colleague, JERRY SOLomon. I would like to have contributed comments then. Since I could not, I ask these words be included at the appropriate point in the RECORD.

JERRY SOLomon is a number of things to me. On a personal level, he is a friend, one of my best friends in the Congress. He is also a neighbor, as my wife and I live in the same area as JERRY and his wife, Freida, when she is in the area.

From my earliest days as a member of the House, JERRY was friendly, open and willing to take his time to help a new member.

Amazingly, even after he became Chairman of the Rules Committee, JERRY SOLOMON remained the same JERRY as before. He was accessible, interested and willing to help whenever his help did not conflict with his deeply held policy positions.

JERRY is a highly skilled legislator. All Members of the Congress mention that. They love their country. JERRY SOLOMON is an ardent patriot. He would be even if he was not a Marine Corp veteran, but being a Marine helps.

I have heard JERRY in the forum of the North Atlantic Assembly, where he has served so ably and effectively defended and advocated the security interest of the United States of America.

On this floor, and in the ways that the Chairman of the Rules Committee can make a difference, JERRY SOLOMON has been one of the strongest advocates for our military service, and on behalf of trying to keep us strong. He has been in the forefront of the efforts to preserve our much too threatened American Merchant Marine and American Merchant Mariners.

For all this, and for much more, I salute my friend and neighbor, JERRY SOLOMON. You will indeed be missed.

CONGRATULATING GUAM’S PARTICIPATION IN THE IV MICRONESIAN GAMES

HON. ROBERT A. UNDERWOOD
OF GUAM

IN THE HOUSE OF REPRESENTATIVES

Wednesday, October 7, 1998

Mr. UNDERWOOD. Mr. Speaker, during the first ten days of August this year, the 1998 Micronesian Games were held in the Republic of Palau. Noted for its natural beauty, friendly people and world famous dive spots, the Republic played host to the IV Micronesian Games, the largest sports event ever to be held within this group of islands. Delegations of over two thousand athletes and coaches from as far away as Kiribati and Nauru made the trip to the archipelago. Team Guam, consisting of over 200 participants and officials, came to compete with our brothers and sisters from all over the Western Pacific and to defend the medals earned during the last Micronesian Games held four years ago on Guam.

Once again, the Guam delegation performed particularly well. I would like to commend and congratulate Team Guam for their superb performance, efforts and contributions toward the success of the Games. Participating in regional competitions such as the Micronesian Games strengthens our relations with our neighbors and prepares our athletes for higher levels of competition.

I am pleased to submit for the RECORD the names of Guam athletes who have distinguished themselves by winning medals during the IV Micronesian Games.

GOLD MEDAL WINNERS

TABLE TENNIS

Men’s Single: Carlos Gumataotao.

BASKETBALL

Men’s Team: Mark Alegre, Vincent Vautista, Carmen Blas, Joey Almoguera, Joseph Cepeda, Daniel Cepeda, Richard Gutierrez, Michael Lee, Arnold Mesa, Jine Ho Han, Jesse Pahna, Mike Swaney, Paul Shimizu, Melvin F. Peters.

LAWN TENNIS

Men’s Team: Mark Arakawa, Alfred Feria, Lynn Nguyen, David L. Smith.


Women’s Individual: Linda J. Johnson.

VOLLEYBALL

Women’s Team: Debra Bell, Francine Calvo, Lucia Calvo, Dolores Cruz, Mie Endo, Sharon Mendizola, Deborah D. Pangelinan, Leticia Pangelinan, Rebecca Salas, Sonda Yatar, Michelle Cruz-Taisipic, Lisa Muna.

SOFTBALL


Women’s Team: Jennifer M. Aguon, Josephine M. Blas, Arlene Cepeda, Margaret M. Cepeda, Kauleen Cristiano, Maria B. Cruz, Carla V. Dulay, Vickie Fejeran, Darleen Rayburn, Vitolia Love, Susan Miner, Lillian Quintanilla, Luann Guzman, Marcella Riveria, Arlinda Sablan, Tara Steffy, Monica Fernandez.

ATHLETICS

10,000m: Brent Butler.

5,000m: Brent Butler, 1.500m: Brent Butler.

800m: Neil Weare.

3,000m: Jenea Skerit, 1,500m: Sloan Seigrist, J. Jacqueline Baza, Aubrey Posadas.

10,000m: Jenea Skerit, 1,500m: Sloan Seigrist.

400m: Jaqueze Baza.


UAW MEDAL WINNERS

TEAM: Roberto Cabrera, Joseph Hobson, Kenneth Pier

INDIVIDUAL EVENT: J. J. Hobson.

SWIMMING

500m Butterfly: Musashi Flores.

500m Freestyle: Musashi Flores.

10,000m Freestyle: Brent Butler.

1,500m Freestyle: Ben Hernandez.

1,500m: Sloan Seigrist.

SWIMMING

500m: Jenea Skerit.

UAW MEDAL WINNERS

TEAM: Roberto Cabrera, Joseph Hobson.

INDIVIDUAL EVENT: J. J. Hobson.

ATHLETICS

10,000m: Brent Butler.

5,000m: Brent Butler, 1.500m: Brent Butler.

800m: Neil Weare.

3,000m: Jenea Skerit.

1,500m: Sloan Seigrist.

800m: Jenea Skerit.

400m: Jaqueze Baza.

Long Jump: Jenea Skerit.
Mr. PAUL. Mr. Speaker, I would like to offer my congratulations to thirteen young men and women from Fayette County who will this weekend be honored by the Fayette County 4-H club in my district. Being awarded the Gold Star will be Michelle Kielosz; Ashley Dittert, and Vickie Sanders. Receiving the Silver Star, Bradley Kielosz and Billie Jo Murphy. And finally, the “Outstanding Sub Junior” award will go to Heather Kristynick and Brandon Otto. These fine young people should be commended for their dedication to the fine principles of 4-H. I know I speak for all the constituents of the 14th District when I offer them congratulations and best wishes for continued success.

Mr. STARK. Mr. Speaker, as more Medicare beneficiaries join managed care plans, public fears about the effects of financial incentives to physicians demand renewed attention. Under current regulations, Medicare+Choice plans cannot make more than 25% of physicians' total payment dependent on financial incentives to alter practice behavior. This regulation only catches those organizations at the high end of the spectrum since most incentive plans effect less than 25% of total compensation. A recent editorial in the September 3, 1998 New England Journal of Medicine states that the intensity of incentives in a capitated compensation system clearly affects the extent of physicians' conflict of interest. Bonuses and withheld amounts paid out in lump sums when a specific target is attained can create especially intense conflicts of interest if the physician is close to qualifying for the extra money near the end of a contract period.

An article in the August, 1998 issue of the Journal of Health Polities, Policy and Law states that “more than 60 percent of managed care plans withhold a portion of physicians' salaries to cover expenditures that exceed target projections for use of specialists or hospitals. Furthermore, most plans withhold more than 11 percent of physicians' salaries and some even withhold more than 30 percent”. The Journal advocates precautionary measures to protect and reassure the public trust, including limiting financial incentives.

Survey data of HMO managers suggests that physicians’ decision making is influenced when financial incentives are between 5–10 percent of income. “Half of the respondents believed that a bonus of 5–15% would affect ordering behavior,” according to “Data Watch: HMO Managers’ Views on Financial Incentives and Quality” by Hillman, Pauly, Kerman, and McKeown in the Winter 1991 issue of Health Affairs. Clearly there is a need to further reduce the allowable percentage of physicians financial incentives. If managed care programs continue to reward physicians who provide fewer services to patients, physicians will fail to be advocates of patients.

The bill I am introducing today will reduce provider incentives to limit patient services by diminishing financial rewards to physicians who provide minimal services. This bill seeks to eliminate the current ethical dilemma facing physicians by further reducing from a maximum of 25% to a maximum of 10% the percentage of physicians' salaries that are dependent on financial incentives. The rising number of Medicare HMO's make protecting patients by ensuring quality health care essential.
Thursday, October 8, 1998

Daily Digest

HIGHLIGHTS

The House agreed to H. Res. 581, authorizing the Committee on the Judiciary to investigate whether sufficient grounds exist for the impeachment of the President of the United States.

Senate passed Internet Tax Freedom Act.


Senate

Chamber Action

Routine Proceedings, pages S11831-S11885

Measures Introduced: Nineteen bills and four resolutions were introduced, as follows: S. 2577-2595, S. Res. 292 and 293, and S. Con. Res. 125 and 126. (See next issue.)

Measures Reported: Reports were made as follows:

S. 109, to provide Federal housing assistance to Native Hawaiians, with an amendment in the nature of a substitute. (S. Rept. No. 105-380)

Report to accompany S. 777, to authorize the construction of the Lewis and Clark Rural Water System and to authorize assistance to the Lewis and Clark Rural Water System, Inc., a nonprofit corporation, for planning and construction of the water supply system, passed by the Senate. (S. Rept. No. 105-381)

Special report entitled “Further Revised Allocation to Subcommittees of Budget Totals for Fiscal Year 1999”. (S. Rept. No. 105-382)

S. Res. 260, expressing the sense of the Senate that October 11, 1998, should be designated as “National Children’s Day”.

S. Res. 271, designating October 16, 1998, as “National Mammography Day”.

S. 2024, to increase the penalties for trafficking in methamphetamine in order to equalize those penalties with the penalties for trafficking in crack cocaine.

S. Con. Res. 83, remembering the life of George Washington and his contributions to the Nation. (See next issue.)

Measures Passed:

Internet Tax Freedom Act: By 96 yeas to 2 nays (Vote No. 308), Senate passed S. 442, to establish a 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 exactions that would interfere with the free flow of commerce via the Internet, after taking action on further amendments proposed thereto, as follows:

Adopted:

McCain/Wyden Modified Amendment No. 3719, to make changes in the moratorium provision, as amended. Pages S11847-65

McCain/Wyden Modified Amendment No. 3711, to define the term “discriminatory tax”. Pages S11847-53

Also, Amendment No. 3718, agreed to on October 7, 1998, was further modified. Page S11853

Aviator Continuation Pay: Senate passed S. 2584, to provide aviator continuation pay for military members killed in Operation Desert Shield. (See next issue.)

Eney, Chestnut, Gibson Memorial Building: Committee on Rules and Administration was discharged from further consideration of S. Con. Res. 120, to redesignate the United States Capitol Police headquarters building located at 119 D Street, Northeast, Washington, D.C., as the “Eney, Chestnut, Gibson Memorial Building”, and the resolution was then agreed to. (See next issue.)
Noncitizen Benefit Clarification: Senate passed H.R. 4558, to make technical amendments to clarify the provision of benefits for noncitizens, and to improve the provision of unemployment insurance, child support, and supplemental security income benefits, clearing the measure for the President.

(See next issue.)

Vietnam Veterans of America 20th Anniversary: Senate agreed to S. Res. 207, commemorating the 20th anniversary of the founding of the Vietnam Veterans of America.

(See next issue.)

Torture Victims Relief Act: Senate passed H.R. 4309, to provide a comprehensive program of support for victims of torture, after agreeing to the following amendment proposed thereto: (See next issue.)
Jeffords (for Grams) Amendment No. 3792, to provide funds for assistance for domestic centers and programs for the treatment of victims of torture.

(See next issue.)

Persian Gulf War Veterans Act: Senate passed S. 2358, to provide for the establishment of a presumption of service-connection for illnesses associated with service in the Persian Gulf War, and to extend and enhance certain health care authorities relating to such service, after agreeing to committee amendments.

(See next issue.)

Next Generation Internet Research Act: Committee on Commerce, Science, and Transportation was discharged from further consideration of H.R. 3332, to amend the High-Performance Computing Act of 1991 to authorize appropriations for fiscal years 1999 and 2000 for the Next Generation Internet program, to require the Advisory Committee on High-Performance Computing and Communications, Information Technology, and the Next Generation Internet to monitor and give advice concerning the development and implementation of the Next Generation Internet program and report to the President and the Congress on its activities, and the bill was then passed, clearing the measure for the President.

(See next issue.)

Federal Research Investment Act: Senate passed S. 2217, to provide for continuation of the Federal research investment in a fiscally sustainable way, after agreeing to a committee amendment in the nature of a substitute.

(See next issue.)

Muhammad Ali Boxing Reform Act: Senate passed S. 2238, to reform unfair and anticompetitive practices in the professional boxing industry, after agreeing to a committee amendment in the nature of a substitute.

(See next issue.)

Automated Entry-Exit Control System Extension: Senate passed H.R. 4658, to extend the date by which an automated entry-exit control system must be developed, clearing the measure for the President.

(See next issue.)

Drug Free Borders Act: Senate passed H.R. 3809, to authorize appropriations for the United States Customs Service for fiscal years 2000 and 2001, after agreeing to a committee amendment in the nature of a substitute.

(See next issue.)

Glacier Bay National Park Boundary Adjustment Act: Senate passed H.R. 3903, to provide for an exchange of lands located near Gustavus, Alaska, after taking action on the following amendment proposed thereto: (See next issue.)
Jeffords (for Murkowski) Amendment No. 3794, to make technical and clarifying changes.

(See next issue.)

Mahatma Gandhi Memorial: Committee on Energy and Natural Resources was discharged from further consideration of H.R. 4284, to authorize the Government of India to establish a memorial to honor Mahatma Gandhi in the District of Columbia, and the bill was then passed, clearing the measure for the President.

(See next issue.)

National Observances: Senate passed S. 2524, to clarify without substantive change laws related to Patriotic and National Observances, Ceremonies, and Organizations and to improve the United States Code.

(See next issue.)

Community-Designed Charter Schools: Committee on Labor and Human Resources was discharged from further consideration of H.R. 2616, to amend titles VI and X of the Elementary and Secondary Education Act of 1965 to improve and expand charter schools, and the bill was then passed, after agreeing to the following amendment proposed thereto: (See next issue.)
Jeffords (for Coats) Amendment No. 3795, in the nature of a substitute.

(See next issue.)

Neotropical Migratory Bird Conservation Act: Senate passed S. 1970, to require the Secretary of the Interior to establish a program to provide assistance in the conservation of neotropical migratory birds, after withdrawing the committee amendments, and agreeing to the following amendment proposed thereto: (See next issue.)
Jeffords (for Chafee) Amendment No. 3796, in the nature of a substitute.

(See next issue.)

Black Patriots Foundation: Committee on Energy and Natural Resources was discharged from further consideration of S. 2427, to amend the Omnibus Parks and Public Lands Management Act of 1996 to extend the legislative authority for the Black Patriots Foundation to establish a commemorative work, and the bill was then passed.

(See next issue.)
Water Resources Development Act: Senate passed S. 2131, to provide for the conservation and development of water and related resources, to authorize the Secretary of the Army to construct various projects for improvements to rivers and harbors of the United States, after agreeing to a committee amendment in the nature of a substitute, and the following amendments proposed thereto: (See next issue.)

  Jeffords (for Chafee) Amendment No. 3798, to make certain technical corrections. (See next issue.)

  Jeffords (for Chafee) Amendment No. 3799, to provide for further water resource programs. (See next issue.)

Rhinoceros and Tiger Conservation Act: Senate passed S. 361, to amend the Endangered Species Act of 1973 to prohibit the sale, import, and export of products labeled as containing endangered species, after agreeing to a committee amendment in the nature of a substitute, and the following amendment proposed thereto: (See next issue.)

  Jeffords (for Chafee) Amendment No. 3797, of a technical nature. (See next issue.)

Ireland Cultural and Training Program: Senate passed H.R. 4293, to establish a cultural and training program for disadvantaged individuals from Northern Ireland and the Republic of Ireland, clearing the measure for the President. (See next issue.)

Passage Vitiated: Senate vitiating passage of the following bills:

  Glacier Bay National Park Boundary Adjustment Act: H.R. 3903, to provide for an exchange of lands located near Gustavus, Alaska. (Passed October 2, 1998) (See next issue.)

  Lewis and Clark Rural Water System Act: S. 777, to authorize the construction of the Lewis and Clark Rural Water System and to authorize assistance to the Lewis and Clark Rural Water System, Inc., a nonprofit corporation, for planning and construction of the water supply system. (Passed October 7, 1998.) (See next issue.)

Freedom From Religious Persecution Act: Senate began consideration of H.R. 2431, to establish an Office of Religious Persecution Monitoring, and to provide for the imposition of sanctions against countries engaged in a pattern of religious persecution, taking action on the following amendment proposed thereto: (See next issue.)

  Nickles Amendment No. 3789, in the nature of a substitute. (See next issue.)

  Prior to this action, the cloture motion was vitiated. (See next issue.)

  A unanimous-consent agreement was reached providing further consideration of the bill on Friday, October 9, 1998, with a vote to occur thereon at 9:45 a.m. (See next issue.)

Financial Services Act: Senate resumed consideration of H.R. 10, to enhance competition in the financial services industry by providing a prudential framework for the affiliation of banks, securities firms, and other financial service providers, with a committee amendment in the nature of a substitute. (See next issue.)

VA/HUD Appropriations Conference Report: By 96 yeas to 1 nay (Vote No. 307), Senate agreed to the conference report on H.R. 4194, making appropriations for the Departments of Veterans Affairs and Housing and Urban Development, and for sundry independent agencies, boards, commissions, corporations, and offices for the fiscal year ending September 30, 1999, clearing the measure for the President. Pages S11833–47

Head Start/Low-Income Energy Assistance/Community Services Block Grant Authorizations—Conference Report: Senate agreed to the conference report on S. 2206, to amend the Head Start Act, the Low-Income Home Energy Assistance Act of 1981, and the Community Services Block Grant Act to authorize and make improvements to those Acts, and to establish demonstration projects that provide an opportunity for persons with limited means to accumulate assets. Pages S11865–72

WIPO Copyright Treaties Implementation Act—Conference Report: Senate agreed to the conference report on H.R. 2281, to amend title 17, United States Code, to implement the World Intellectual Property Organization Copyright Treaty and Performances and Phonograms Treaty, clearing the measure for the President. (See next issue.)

Intelligence Authorizations Conference Report: Senate agreed to the conference report on H.R. 3694, to authorize appropriations for fiscal year 1999 for intelligence and intelligence-related activities of the United States Government, the Community Management Account, and the Central Intelligence Agency Retirement and Disability System, clearing the measure for the President. (See next issue.)

Carl D. Perkins Tech-Prep Education Act Conference Report: Senate agreed to the conference report on H.R. 1853, to amend the Carl D. Perkins Vocational and Applied Technology Education Act. (See next issue.)

Crime Identification Technology Act: Senate concurred in the amendment of the House to S. 2022, to provide for the improvement of interstate criminal justice identification, information, communications, and forensics, clearing the measure for the President. (See next issue.)
Energy Conservation Reauthorization Act: Senate concurred in the amendments of the House to S. 417, to extend energy conservation programs under the Energy Policy and Conservation Act through September 30, 2002, with the following amendment: (See next issue.)

Jeffords (for Murkowski/Akaka) Amendment No. 3793, to extend certain programs under the Energy Policy and Conservation Act and the Energy Conservation and Production Act. (See next issue.)

Commercial Space Act: Senate concurred in the amendment of the House to the amendment of the Senate to H.R. 1702, to encourage the development of a commercial space industry in the United States, clearing the measure for the President. (See next issue.)

Nominations Confirmed: Senate confirmed the following nominations:

By 57 yeas to 41 nays (Vote No. 309EX), William A. Fletcher, of California, to be United States Circuit Judge for the Ninth Circuit. Pages S11872-85

Robert Bruce King, of West Virginia, to be United States Circuit Judge for the Fourth Circuit.

H. Dean Buttram, Jr., of Alabama, to be United States District Judge for the Northern District of Alabama.

Inge Prytz Johnson, of Alabama, to be United States District Judge for the Northern District of Alabama.

Nominations Received: Senate received the following nominations:


Kenneth M. Bresnahan, of Virginia, to be Chief Financial Officer, Department of Labor.

Timothy F. Gethner, of New York, to be an Under Secretary of the Treasury.

Gary Gensler, of Maryland, to be an Under Secretary of the Treasury.

Edwin M. Truman, of Maryland, to be a Deputy Under Secretary of the Treasury.

Timothy Fields, Jr., of Virginia, to be Assistant Administrator, Office of Solid Waste, Environmental Protection Agency.

Nominations Withdrawn: Senate received notification of the withdrawal of the following nomination:

John A. Moran, of Virginia, to be a Federal Maritime Commissioner, which was sent to the Senate on October 5, 1998.

Messages From the House: (See next issue.)

Executive Reports of Committees: (See next issue.)

Statements on Introduced Bills: (See next issue.)

Additional Cosponsors: (See next issue.)

Amendments Submitted: (See next issue.)

Authority for Committees: (See next issue.)

Additional Statements: (See next issue.)

Record Votes: Three record votes were taken today. (Total—309)

Pages S11847, S11857-58 (continued next issue)

Recess: Senate convened at 9:30 a.m., and recessed at 9:20 p.m., until 9:30 a.m., on Friday, October 9, 1998. (For Senate’s program, see the remarks of the Acting Majority Leader in today’s Record on page S11885.)

Committee Meetings

NOMINATIONS

Committee on Armed Services: Committee ordered favorably reported 1,731 routine nominations in the Army, Navy, Marine Corps, and Air Force.

DOE POSITION ELEVATION

Committee on Armed Services: Committee concluded hearings to review the recommendation to elevate the position of the Director, Office of Non-Proliferation and National Security of the Department of Energy, after receiving testimony from Rose E. Gottemoeller, Director, Office of Non-Proliferation and National Security of the Department of Energy.

NOMINATIONS

Committee on Banking, Housing, and Urban Affairs: Committee ordered favorably reported the nominations of William C. Apgar, Jr., of Massachusetts, to be Assistant Secretary for Housing and Federal Housing Administrator, Saul N. Ramirez, Jr., of Texas, to be Deputy Secretary, Cardell Cooper, of New Jersey, to be Assistant Secretary for Community Planning and Development, Harold Lucas, of New Jersey, to be Assistant Secretary for Public and Indian Housing, and Ira G. Peppercorn, of Indiana, to be Director of the Office of Multifamily Housing Assistance Restructuring, all of the Department of Housing and Urban Development.

NOMINATION

Committee on Commerce, Science, and Transportation: Committee concluded hearings on the nomination of Ashish Sen, of Illinois, to be Director of the Bureau of Transportation Statistics, Department of Transportation, after the nominee, who was introduced by
Representative Danny Davis, testified and answered questions in his own behalf.

**NOMINATIONS**

Committee on Environment and Public Works: Committee ordered favorably reported the nominations of Robert W. Perciasepe, of Maryland, to be an Assistant Administrator for Air and Radiation of the Environmental Protection Agency, Isadore Rosenthal, of Pennsylvania, and Andrea Kidd Taylor, of Michigan, both to be Members of the Chemical Safety and Hazard Investigation Board, and William Clifford Smith, of Louisiana, to be a Member of the Mississippi River Commission.

Prior to this action, committee concluded hearings on the nomination of Mr. Perciasepe, after the nominee testified and answered questions in his own behalf.

**COLUMBIA/SNAKE RIVER SYSTEM SALMON RECOVERY**

Committee on Environment and Public Works: Subcommittee on Drinking Water, Fisheries, and Wildlife concluded oversight hearings to examine scientific and engineering issues relating to Columbia/Snake River system salmon recovery, after receiving testimony from Col. Eric Mogren, Deputy Commander, Northwestern Division, U.S. Army Corps of Engineers; Danny Consenstein, Columbia Basin Coordinator, National Marine Fisheries Service, National Oceanic and Atmospheric Administration, Department of Commerce; Daniel D. Roby, Oregon Cooperative Fish and Wildlife Research Unit, U.S. Geological Survey-Biological Resources Division, and Department of Fisheries and Wildlife/Oregon State University, Corvallis; Joseph Cloud, Department of Biological Sciences/University of Idaho, Moscow; and Richard K. Fisher, Jr., Voith Hydro, Inc., York, Pennsylvania.

**AFGHANISTAN**

Committee on Foreign Relations: Subcommittee on Near Eastern and South Asian Affairs concluded hearings to examine recent events in Afghanistan, after receiving testimony from Karl Frederick Inderfurth, Assistant Secretary of State for South Asian Affairs; A. Abdallah, Representative of the Islamic State of Afghanistan to the United States; Zalmay Khalilzad, RAND Corporation, Washington, DC; and Barnett Rubin, Council on Foreign Relations, New York, New York.

**BUSINESS MEETING**

Committee on the Judiciary: Committee ordered favorably reported the following business items:

- The nominations of David O. Carter, to be United States District Judge for the Central District of California, William J. Hibbler, to be United States District Judge for the Northern District of Illinois, Yvette K. Kane, to be United States District Judge for the Middle District of Pennsylvania, Robert S. Lasnik, to be United States District Judge for the Western District of Washington, Norman A. Mordue, to be United States District Judge for the Northern District of New York, James M. Munley, to be United States District Judge for the Middle District of Pennsylvania, Alex R. Munson, to be Judge for the District Court for the Northern Marianas Islands, Margaret B. Seymour, to be United States District Judge for the District of South Carolina, Aleta A. Trauger, to be United States District Judge for the Middle District of Tennessee, Francis M. Allegra, of Virginia, Lawrence Baekir, of Maryland, Lynn Jeanne Bush, of the District of Columbia, Edward J. Damich, of Virginia, Nancy B. Firestone, of Virginia, and Emily Clark Hewitt, of Massachusetts, each to be a Judge of the United States Court of Federal Claims, Margaret Ellen Curran, to be United States Attorney for the District of Rhode Island, Byron Todd Jones, to be United States Attorney for the District of Minnesota, Harry Litman, to be United States Attorney for the Western District of Pennsylvania, Denise E. O'Donnell, to be United States Attorney for the Western District of New York, and Donnie R. Marshall, of Texas, to be Deputy Administrator of the Drug Enforcement Agency, Department of Justice;
- S. 2024, to increase the penalties for trafficking in methamphetamine in order to equalize those penalties with the penalties for trafficking in crack cocaine;
- S. Con. Res. 83, remembering the life of George Washington and his contributions to the Nation;
- S. Res. 257, expressing the sense of the Senate that October 15, 1998, should be designated as "National Inhalant Abuse Awareness Day";
- S. Res. 271, designating October 16, 1998, as "National Mammography Day"; and
- S. Res. 260, expressing the sense of the Senate that October 11, 1998, should be designated as "National Children's Day".

**NATIONAL SECURITY INFORMATION**

Committee on the Judiciary: Subcommittee on Technology, Terrorism, and Government Information concluded hearings to examine the use of classified evidence in certain immigration exclusion case proceedings, after receiving testimony from Paul W. Virtue, General Counsel, Immigration and Naturalization Service, Department of Justice; Warren Mark, Information for Democracy, former Central Intelligence Agency Case Office, and R. James
Woolsey, Shea & Gardner, former Director of Central Intelligence, both of Washington, D.C.

INTELLIGENCE
Select Committee on Intelligence Committee held closed hearings on intelligence matters, receiving testimony from officials of the intelligence community.
Committee recessed subject to call.

House of Representatives

Chamber Action


Reports Filed: Reports were filed today as follows:
Conference report on H.R. 2281, to amend title 17, United States Code, to implement the World Intellectual Property Organization Copyright Treaty and Phonograms Treaty (H. Rept. 105-796);
Report in the matter of Representative Jay Kim (H. Rept. 105-797);
H. Res. 580, providing for consideration of H.R. 4274, making appropriations for the Department of Labor, Health and Human Services, and Education, and related agencies, for the fiscal year ending September 30, 1999 (H. Rept. 105-798);
H. Res. 586, waiving points of order against the conference report to accompany H.R. 3150, to amend title 11 of the United States Code (H. Rept. 105-799);
Conference report on H.R. 1853, to amend the Carl D. Perkins Vocational and Applied Technology Education Act (H. Rept. 105-800);
H.R. 3888, to amend the Communications Act of 1934 to improve the protection of consumers against "slamming" by telecommunications carriers, amended (H. Rept. 105-801);

Journal: The House agreed to the Speaker's approval of the Journal of Wednesday, October 7 by a yea and nay vote of 325 yeas to 72 nays with 9 voting "present", Roll No. 495.

Recess: The House recessed at 10:23 a.m. and reconvened at 10:55 a.m.

Impeachment Resolution: The House agreed to H. Res. 581, authorizing and directing the Committee on the Judiciary to investigate whether sufficient grounds exist for the impeachment of William Jefferson Clinton, President of the United States, by a recorded vote of 258 ayes to 176 noes, Roll No. 498.

Rejected the Boucher motion to recommit the resolution to the Committee on the Judiciary with instructions to report the resolution back with an amendment to strike the first section and insert provisions to conduct an inquiry and if appropriate to act upon the Referral from the Independent Counsel; to review the constitutional standard for impeachment; and investigate whether sufficient grounds exist for the House to exercise its constitutional power to impeach the President. Following the conclusion of its inquiry the Committee shall make its recommendations sufficiently in advance of December 31, 1998 for the House to consider them (rejected by a yea and nay vote of 198 yeas to 236 nays, Roll No. 497).

Hand-Enrollment Resolution: The House passed H.J. Res. 131, waiving certain enrollment requirements for the remainder of the One Hundred Fifth Congress with respect to any bill or joint resolution making general or continuing appropriations for fiscal year 1999.

H. Res. 580, the rule that provided for consideration of joint resolution, was agreed to by voice vote.

Suspensions: The House agreed to suspend the rules and pass the following measures:

Congressional Medal of Honor to Theodore Roosevelt: H.R. 2263, to authorize and request the President to award the congressional Medal of Honor posthumously to Theodore Roosevelt for his gallant and heroic actions in the attack on San Juan Heights, Cuba, during the Spanish-American War;

Science Policy Report: H. Res. 578, expressing the sense of the House of Representatives that the print of the Committee on Science entitled "Unlocking Our Future: Toward a New National
Science Policy” should serve as a framework for future deliberations on congressional science policy and funding;  

**International Child Labor Relief:** H.R. 4506, amended, to provide for United States support for developmental alternatives for underage child workers;  

**Providing Rewards for Information:** H.R. 4660, amended, to amend the State Department Basic Authorities Act of 1956 to provide rewards for information leading to the arrest or conviction of any individual for the commission of an act, or conspiracy to act, of international terrorism, narcotics related offenses, or for serious violations of international humanitarian law relating to the Former Yugoslavia.  

Agreed to amend the title;  

**Condemning Forced Abduction of Ugandan Children:** H. Con. Res. 309, amended, condemning the forced abduction of Ugandan children and their use as soldiers;  

**Veterans Employment Opportunities:** S. 1021, 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—clearing the measure for the President;  

**Federal Employee Life Insurance Programs:** Agreed to the Senate amendments to H.R. 2675, to require that the Office of Personnel Management submit proposed legislation under which group universal life insurance and group variable universal life insurance would be available under chapter 87 of title 5, United States Code—clearing the measure for the President;  

**Recognizing Importance of Children and Families:** H. Con. Res. 302, recognizing the importance of children and families in the United States and expressing support for the goals of National Kids Day and National Family Month;  

**Campaign Finance Sunshine:** H.R. 2109, to amend the Federal Election Campaign Act of 1971 to require reports filed under such Act to be filed electronically and to require the Federal Election Commission to make such reports available to the public within 24 hours of receipt;  

**Coats Human Services Reauthorization:** Conference report on S. 2206, a bill to amend the Head Start Act, the Low-Income Home Energy Assistance Act of 1981, and the Community Services Block Grant Act to reauthorize and make improvements to those Acts, to establish demonstration projects that provide an opportunity for persons with limited means to accumulate assets—clearing the measure for the President;  

**Granting Consent to the Potomac Highlands Airport Authority Compact:** S.J. Res. 51, granting the consent of Congress to the Potomac Highlands Airport Authority Compact entered into between the States of Maryland and West Virginia—clearing the measure for the President;  

**Depository Institution Regulatory Streamlining:** H.R. 4364, amended, to streamline the regulation of depository institutions, to safeguard confidential banking and credit union supervisory information; and  

**Fair Credit Reporting Act:** S. 2561, to amend the Fair Credit Reporting Act with respect to furnishing and using consumer reports for employment—clearing the measure for the President.  

**Suspensions—Votes Postponed:** The House completed debate and postponed votes on the following measures until October 9:  

**Importance of Mammograms and Biopsies:** H. Res. 565, expressing the sense of the House of Representatives regarding the importance of mammograms and biopsies in the fight against breast cancer;  

**Concerning the Inadequacy of Sewage Infrastructure:** H. Con. Res. 331, expressing the sense of Congress concerning the inadequacy of sewage infrastructure facilities in Tijuana, Mexico;  

**Efforts to Identify Holocaust-era Assets:** H. Res. 557, expressing support for U.S. government efforts to identify Holocaust-era assets, urging the restitution of individual and communal property; and  

**William F. Goodling Child Nutrition Act:** Conference report on H.R. 3874, to amend the Child Nutrition Act of 1966 to make improvements to the special supplemental nutrition program for women, infants, and children and to extend the authority of that program through fiscal year 2003.  

**Labor, HHS Appropriations:** The House began consideration of amendments to H.R. 4274, making appropriations for the Department of Labor, Health and Human Services, and Education, and related agencies, for the fiscal year ending September 30, 1999, by a vote of Roll No.
Agreed To:
The Istook substitute amendment to the Greenwood amendment to (agreed to by a recorded vote of 224 ayes to 200 noes, Roll No. 504); and
(See next issue.)
The Greenwood amendment, as amended, that prohibits Title X funding to a family planning provider that unknowingly provides contraceptives to a minor without the consent of a parent or legal guardian.
(See next issue.)
H. Res. 584, the rule that provided for consideration of the bill, was agreed to by a recorded vote of 214 ayes to 209 noes, Roll No. 502.
(See next issue.)
Agreed to table the motion to reconsider the vote on final passage by a recorded vote of 230 ayes to 192 noes, Roll No. 503.
(See next issue.)
Earlier, agreed to order the previous question by a yea and nay vote of 224 yeas to 201 nays, Roll No. 500; and agreed to table the motion to reconsider ordering the previous question by a recorded vote of 231 ayes to 197 noes, Roll No. 501.
(See next issue.)
Motion to Adjourn: Rejected the Obey motion to adjourn by a yea and nay vote of 58 yeas to 349 nays, Roll No. 499.
(See next issue.)
Presidential Veto Message—Agriculture Appropriations: Read a message from the President wherein he announces his veto of H.R. 4101, making appropriations for Agriculture, Rural Development, Food and Drug Administration, and Related Agencies programs for the fiscal year ending September 30, 1999, and explains his reasons therefore—referred to the Committee on Appropriations and ordered printed (H. Doc. 105-321).
(See next issue.)
Little Rock Central High School National Historic Site: The House passed S. 2232, to establish the Little Rock Central High School National Historic Site in the State of Arkansas—clearing the measure for the President.
(See next issue.)
Federal Properties in Dutch John, Utah: The House passed S. 890, to dispose of certain Federal properties located in Dutch John, Utah, to assist the local government in the interim delivery of basic services to the Dutch John community—clearing the measure for the President.
(See next issue.)
(See next issue.)
Senate Messages: Message received from the Senate today appears on page H 10014.

Referrals: Senate measures referred to House committees appear on pages H 10074-75.
Amendments: Amendments ordered printed pursuant to the rule appear on pages H 10077-81.
Quorum Calls—Votes: Five yea and nay votes and three recorded votes developed during the proceedings of the House today and appear on pages H 10013-14 (continued next issue). There was one quorum call (Roll No. 496).
Adjournment: The House met at 10 a.m. and adjourned at 1:40 a.m. on Friday, October 9.

Committee Meetings

U.S. Trade Issues with Canada: Committee on Agriculture Subcommittee on General Farm Commodities held a hearing on current U.S. trade issues with Canada. Testimony was heard from Representative Hill; and public witnesses.

Commodity Futures Trading Commission—Review Budget—Annual Performance Plan
Committee on Agriculture Subcommittee on Risk Management and Specialty Crops held a hearing on Review of the Commodity Futures Trading Commission's FY 2000 Budget and Annual Performance Plan. Testimony was heard from Brooksley Born, Chairperson, Commodity Futures Trading Commission; and Richard J. Hillman, Acting Associate Director, Financial Institutions and Markets Issues, General Government Division, GAO.

Will Jumbo Euro Notes Threaten the Greenback?
Committee on Banking and Financial Services Subcommittee on Domestic and International Monetary Policy held a hearing on Will Jumbo Euro Notes Threaten the Greenback? Testimony was heard from Theodore E. Allison, Assistant to the Board, System Affairs, Board of Governors, Federal Reserve System; and Gary Gensler, Assistant Secretary, Financial Markets, Department of the Treasury.

Safe Drinking Water Act Amendments Implementation
Committee on Commerce Subcommittee on Health and Environment held a hearing on the Implementation of the 1996 Safe Drinking Water Act Amendments. Testimony was heard from the following officials of EPA: J. Charles Fox, Acting Assistant Administrator, Water; and Cynthia C. Dougherty, Director, Office of Ground Water and Drinking Water; and public witnesses.
DOE'S HANFORD RADIOACTIVE TANK WASTE PRIVATIZATION CONTRACT

Committee on Commerce Subcommittee on Oversight and Investigations held a hearing on A Review of the Department of Energy's Hanford Radioactive Tank Waste Privatization Contract. Testimony was heard from Representative Hastings of Washington; Gary L. Jones, Associate Director, Energy, Resources and Science Issues, Resources, Community and Economic Development Division, GAO; the following officials of the Department of Energy: Ernest J. Moniz, Under Secretary; James M. Owendoff, Deputy Assistant Secretary, Environmental Restoration; John Wagoner, Manager, Richland Operations Office; and Walter S. Howes, Director, Contract Reform and Privatization; and public witnesses.

DEPARTMENT OF DEFENSE MODERNIZATION

Committee on National Security: Subcommittee on Military Procurement and the Subcommittee on Military Research and Development held a joint hearing on Department of Defense modernization. Testimony was heard from Jacques S. Gansler, Under Secretary, Acquisition and Technology, Department of Defense; Richard Davis, Director, National Security Analysis, National Security and International Affairs Division, GAO; and public witnesses.

NAVY SHIP DONATION PROCEDURES

Committee on National Security: Subcommittee on Military Procurement held a hearing on Navy ship donation procedures. Testimony was heard from Representative Andrews; Michael C. Hammers, Deputy Assistant Secretary (Research, Development and Acquisition), Department of the Navy; Joseph Azzolina, Assemblyman, State of New Jersey; and a public witness.

CONFERENCE REPORT—BANKRUPTCY REFORM ACT

Committee on Rules: Granted, by voice vote, a rule waiving all points of order against the conference report to accompany H.R. 3150, Bankruptcy Reform Act of 1998, and against its consideration. The rule provides that the conference report shall be considered as read. Testimony was heard from Representatives Gekas, Nadler, and Jackson-Lee.

LABOR-HHS-EDUCATION APPROPRIATIONS

Committee on Rules: Granted, by a vote of 7 to 2, a rule providing for the further consideration of H.R. 4274, making appropriations for the Departments of Labor, Health and Human Services, and Education, and related agencies for the fiscal year ending September 30, 1999, pursuant to H. Res. 564. The rule provides 1 hour of debate. The rule makes in order, before consideration of any other amendments, the amendments numbered 2 and 3 that were printed in the Rules Committee report (105-762) that accompanied H. Res. 564.

FASTENER QUALITY ACT: NEEDED OR OUTDATED?

Committee on Science Subcommittee on Technology held a hearing on the Fastener Quality Act: Needed or Outdated? Testimony was heard from Representative Manzullo; Raymond Kammer, Director, National Institute of Standards and Technology, Department of Commerce; and public witnesses.
**Joint Meetings**

**HUMAN SERVICES/HEAD START AUTHORIZATION**

Conferees on Tuesday, October 6, agreed to file a conference report on the differences between the Senate and House-passed versions of S. 2206, to amend the Head Start Act, the Low-Income Home Energy Assistance Act of 1981, and the Community Services Block Grant Act to reauthorize and make improvements to those Acts, and to establish demonstration projects that provide an opportunity for persons with limited means to accumulate assets.

**APPROPRIATIONS—TREASURY/POSTAL SERVICES**

Conferees on Wednesday, October 7, agreed to file a further conference report on the differences between the Senate and House-passed versions of H.R. 4104, making appropriations for the Treasury Department, the United States Postal Service, the Executive Office of the President, and certain Independent Agencies, for the fiscal year ending September 30, 1999.

**BANKRUPTCY REFORM**

Conferees on Wednesday, October 7, agreed to file a conference report on the differences between the Senate and House-passed versions of H.R. 3150, to amend title 11 of the United States Code.

**DIGITAL MILLENNIUM COPYRIGHT ACT**

Conferees agreed to file a conference report on the differences between the Senate and House-passed versions of H.R. 2281, to amend title 17, United States Code, to implement the World Intellectual Property Organization Copyright Treaty and Performances and Phonograms Treaty.

**CARL D. PERKINS VOCATIONAL-TECHNICAL EDUCATION ACT AMENDMENTS**

Conferees agreed to file a conference report on the differences between the Senate and House-passed versions of H.R. 1853, to amend the Carl D. Perkins Vocational and Applied Technology Education Act.

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**COMMITTEE MEETINGS FOR FRIDAY, OCTOBER 9, 1998**

(Committee meetings are open unless otherwise indicated)

**Senate**

Committee on Governmental Affairs, business meeting, to consider pending nominations, 10:30 a.m., SD–342.

**House**

Committee on Commerce, Subcommittee on Oversight and Investigations, to consider pending Subcommittee business, 9 a.m., and to continue hearings on the circumstances surrounding the FCC's planned relocation to the Portals, including the efforts of Franklin L. Haney and his representatives with respect to this matter and the circumstances surrounding the payment of fees to those representatives, 9:30 a.m., 2123 Rayburn.

Committee on Government Reform and Oversight, to consider the following draft report entitled: “Investigation of the White House Database” and to consider release of Documents, 9:30 a.m., 2154 Rayburn.

Subcommittee on National Economic Growth, Natural Resources, and Regulatory Affairs, hearing on Will the Administration Implement the Kyoto Protocol Through the Back Door? 11 a.m., 2154 Rayburn.

Committee on House Oversight, to consider pending business, 1 p.m., 1310 Longworth.

Committee on Science, oversight hearing on The Road from Kyoto—Part 4: The Kyoto Protocol's Impacts on U.S. Energy Markets and Economic Activity, 10 a.m., 2318 Rayburn.

Committee on Transportation and Infrastructure, to consider the following: H.R. 3243, Alternative Water Source Development Act of 1998; GSA leasing program; Courthouse construction resolutions; Public building resolutions; Corps of Engineers water resources survey resolutions; and other pending business, 10 a.m., 2167 Rayburn.

Committee on Ways and Means, to consider a measure concerning expiring tax provisions, 11 a.m., H–137 Capitol.

Select Committee on U.S. National Security and Military/Commercial Concerns with the People's Republic of China, executive, to continue to receive briefings, 8 a.m., H–405 Capitol.
Extensions of Remarks, as inserted in this issue

**HOUSE**

Bateman, Herbert H., V.a., E 1961
Bateman, Herbert H., V.a., E 1962
Bentsen, Ken, Tex., E 1947
Bereuter, Doug, Nebr., E 1942
Borski, Robert A., Pa., E 1957
Crapo, Michael D., Idaho, E 1941
DeLauer, Rosa L., Conn., E 1952
Dreier, David, Calif., E 1945
Evans, Lane, Ill., E 1958
Frost, Martin, Tex., E 1951
Gallegly, Elton, Calif., E 1951
Gibbons, J im, Nev., E 1948
Gingrich, Newt, Ga., E 1949
Gutierrez, Luis V., Ill., E 1959
Hall, Tony P., Ohio, E 1946
Jackson-Lee, Sheila, Tex., E 1959
John, Christopher, L.a., E 1944
Kanjorski, Paul E., Pa., E 1948
Kaptur, Marcy, Ohio, E 1953
Levin, Sander M., Mich., E 1942
McCollum, Bill, Fla., E 1944
Maloney, James H., Conn., E 1960
Northup, Anne M., Ky., E 1948
Norton, Eleanor Holmes, D.C., E 1960
Oxley, Michael G., Ohio, E 1950
Packard, Ron, Calif., E 1947
Pascrell, Bill, Jr., N.J., E 1956
Paul, Ron, Tex., E 1962
Payne, Donald M., N.J., E 1949
Porter, J ohn Edward, Ill., E 1948
Ramsdell, Jim, Minn., E 1949
Riggs, Frank, Calif., E 1960
Roybal-Allard, Lucille, Calif., E 1943
Sabo, Martin Olav, Minn., E 1958
Schaffer, Bob, Colo., E 1963
Sessions, Pete, Tex., E 1943
Skeen, Joe, N.M., E 1941, E 1943
Smith, Christopher H., N.J., E 1942
Stump, Bob, Ariz., E 1947, E 1960
Welker, Jerry, Ill., E 1945
Whitfield, Ed, Ky., E 1948, E 1949
Young, Don, Alaska, E 1954

**CONGRESSIONAL RECORD — DAILY DIGEST**

October 8, 1998

**Next Meeting of the SENATE**
**Next Meeting of the HOUSE OF REPRESENTATIVES**

9:30 a.m., Friday, October 9

9 a.m., Friday, October 9

**Senate Chamber**

Program for Friday: Senate will resume consideration of H.R. 2431, Freedom from Religious Persecution Act, with a vote to occur thereon.

Senate may also consider any conference reports or legislative or executive items cleared for action.

**House Chamber**

Program for Friday: Consideration of the conference report on H.R. 3150, Bankruptcy Reform Act (rule waiving points of order).

Consideration of Suspensions:
1. H.R. 4651, Federal Criminal Law and Procedure Minor and Technical Amendments,
2. H.R. 1197—Plant Patent Amendments Act,
3. H. Con. Res. 334—Taiwan World Health Organization,
5. S. 2094—Amending the Fish and Wildlife Improvement Act of 1978;
6. S. 2505—Title conveyance to the Tunison Lab Hageman Field Station to the University of Idaho;
8. Conference report on H.R. 1853—Carl D. Perkins Voca
tional-Technical Education Act;
9. H.R. 2616—Community-Designed Charter Schools Act

Consideration of Additional Suspensions are Expected.

**Extensions of Remarks, as inserted in this issue**

Gibbons, J im, Nev., E 1948
Gingrich, Newt, Ga., E 1949
Gutierrez, Luis V., Ill., E 1959
Hall, Tony P., Ohio, E 1946
Jackson-Lee, Sheila, Tex., E 1959
John, Christopher, L.a., E 1944
Kanjorski, Paul E., Pa., E 1948
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