

STATE SERVICE DONATIONS IN BUDGETARY SHUTDOWN

HEARING

BEFORE THE

COMMITTEE ON RESOURCES HOUSE OF REPRESENTATIVES

ONE HUNDRED FOURTH CONGRESS

FIRST SESSION

ON

H.R. 2677

A BILL TO REQUIRE THE SECRETARY OF THE INTERIOR TO ACCEPT FROM A STATE DONATIONS OF SERVICES OF STATE EMPLOYEES TO PERFORM, IN A PERIOD OF GOVERNMENT BUDGETARY SHUTDOWN, OTHERWISE AUTHORIZED FUNCTIONS IN ANY UNIT OF THE NATIONAL WILDLIFE REFUGE SYSTEM OR THE NATIONAL PARK SYSTEM

H.R. 2706

A BILL TO AUTHORIZE THE SECRETARY OF THE INTERIOR TO ACCEPT A STATE DONATIONS OF SERVICES OF STATE EMPLOYEES TO PERFORM HUNTING MANAGEMENT FUNCTIONS IN A NATIONAL WILDLIFE REFUGE IN A PERIOD OF GOVERNMENT BUDGETARY SHUTDOWN

DECEMBER 8, 1995—WASHINGTON, DC

Serial No. 104-51

Printed for the use of the Committee on Resources



U.S. GOVERNMENT PRINTING OFFICE

WASHINGTON : 1996

21-952ec ==

For sale by the U.S. Government Printing Office

Superintendent of Documents, Congressional Sales Office, Washington, DC 20402

ISBN 0-16-052400-8

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STATE SERVICE DONATIONS IN BUDGETARY SHUTDOWNS

FRIDAY, DECEMBER 8, 1995

HOUSE OF REPRESENTATIVES,
COMMITTEE ON RESOURCES,
Washington, DC.

The committee met, pursuant to call, at 10:05 a.m., in room 1324, Longworth House Office Building, Hon. J.D. Hayworth (Member of the Committee) presiding.

STATEMENT OF HON. J.D. HAYWORTH, A U.S. REPRESENTATIVE FROM ARIZONA

Mr. HAYWORTH. The Committee on Resources will come to order.

Under Rule 6-F of the committee rules, any oral opening statements at hearings are limited to the Chairman and Ranking Minority Member. This will allow us to hear from our witnesses sooner and help Members keep their schedules. Therefore, if any Members have opening statements, they can be included in the hearing record.

Last month's partial government shutdown effectively closed down the entire National Park System and National Wildlife Refuge System. In the process, it locked out thousands of park visitors and hunters, fishermen and bird watchers seeking to enjoy their national parks and wild refuges.

The economy of my State was greatly impacted by the closure of Grand Canyon National Park and other park units. As a result, Governor Fife Symington, who will testify in several minutes, made a common sense proposal which would have allowed Grand Canyon National Park to operate during the shutdown down with State employees. Unfortunately, this proposal was rejected by the Interior Department so visitors from around the world and across the Nation who came to see the grandeur were locked out.

Arizona was not alone in its efforts to keep Federal lands open. The States of Arkansas and Mississippi had an agreement with their Regional Director of the U.S. Fish and Wildlife Service to operate certain national wildlife refuges during the shutdown down. Unfortunately, this agreement was rejected by the Department's lawyers in the Washington office. This resulted in deer hunters on the refuges being forced to leave their tree stands.

Today's hearing is on two bills from both sides of the aisle, which would allow States to help keep parks and refuges open. H.R. 2677, introduced by Chairman Young, and which I am proud to cosponsor, would allow State employees to perform all authorized func-

tions within the entire National Park System and National Refuge System during government shutdowns.

H.R. 2706, introduced by Representative Blanche Lambert Lincoln of Arkansas, is very similar to Chairman Young's bill. However, it is limited to hunting activities within the National Refuge System. The lady from Arkansas will testify before us later this morning.

[The bills may be found at end of hearing.]

Mr. HAYWORTH. H.R. 2732, introduced by Congressman Bob Stump, who we are pleased to have here with us today, and cosponsored by the entire Arizona delegation, also deals with allowing States to operate units of the National Park System during government shutdowns. Unfortunately, because this bill was only introduced 2 days ago, committee rules prohibited it from being added to today's hearing schedule.

However, I expect that its sponsor will work with Chairman Young to get concepts of that bill embodied into any legislation on this issue which moves through the legislative process.

I look forward to hearing from all of today's witnesses, to provide some common ground toward keeping our parks and refuges open during any future government shutdown.

And accordingly, the Chair now recognizes the Ranking Minority Member, Mr. Vento, for any opening statement that he might have.

[The statement of Mr. Young follows:]

STATEMENT OF HON. DON YOUNG, A U.S. REPRESENTATIVE FROM ALASKA, AND
CHAIRMAN, COMMITTEE ON RESOURCES

I am pleased to convene this hearing today on my bill, H.R. 2677, the National Parks and National Wildlife Refuge Systems Freedom Act of 1995.

The purpose of this legislation is to ensure that our national parks and wildlife refuges are not closed in the future because of a lack of Federal funding to operate them.

During this past month, we witnessed the sad spectacle of the Department of the Interior closing our Nation's 369 parks and 504 national wildlife refuge units.

These lands, which comprise about 181 million acres, were acquired through the hard work of millions of American taxpayers, who paid for them with entrance fees, excise taxes, duck stamps, and income tax payments.

It is terribly wrong to close these facilities and to deny the American people the right to enjoy their beauty, splendor, and various recreational opportunities.

In the State of Arizona, Governor Fife Symington offered to operate and keep the Grand Canyon open by using the State National Guard personnel. Regrettably, the Governor's generous request was denied by the Department of the Interior and the Grand Canyon, which is visited by about 8,000 individuals a day, was closed for the first time in its history. By so doing, the Federal Government lost up to \$15,000 each day in entrance fees and businesses in Arizona lost at least \$1 million each day.

In the State of Arkansas, Americans were denied the opportunity to hunt deer in the Felsenthal National Wildlife Refuge, despite the fact that they had paid for their lottery-based permits and the State had volunteered to manage the hunt for free.

Sadly, these are just two vivid illustrations of the disaster that was caused by the closure of our parks and wildlife refuges. Instead of trying to avoid or alleviate this crisis by accepting the offers of Governor Symington and others, the Department of the Interior simply slammed the door in the faces of millions of Americans.

The National Parks and Wildlife Refuge Systems Freedom Act will require the Secretary of the Interior to accept the services of State employees to operate any parks or refuge units when the Federal Government is in a period of a budgetary shutdown.

Under the terms of H.R. 2677, a State would not be forced to operate any park or refuge within its geographic boundaries, but would simply be given the opportunity to offer their services, like Governor Symington.

Furthermore, the term "government budgetary shutdown" has been narrowly defined to only cover those circumstances when there is a failure to enact a timely appropriations bill for the Department of the Interior and there is a lack of temporary or continuing appropriation funds.

Our national parks and wildlife refuge systems must never be closed again in the future. This legislation will ensure that if there is ever another budgetary meltdown, the American people will not be denied the chance to visit the Arizona Memorial at Pearl Harbor, the Grand Canyon, the Kenai National Wildlife Refuge, the Edwin B. Forsythe National Wildlife Refuge, Yellowstone National Park, or the Washington Monument.

I look forward to the testimony of our witnesses and I want to compliment our distinguished colleagues, Jim Hansen, Jim Saxton, Ken Calvert, and J.D. Hayworth for joining with me in sponsoring H.R. 2677.

STATEMENT OF THE HON. BRUCE F. VENTO, A U.S. REPRESENTATIVE FROM MINNESOTA

Mr. VENTO. Thanks, Mr. Chairman.

I ask unanimous consent to put in the record a letter to Chairman Young from Mr. Miller, the Ranking Democrat on the committee, which expresses his concern about scheduling this bill for Floor consideration next week. I think the Chairman—

Mr. HAYWORTH. Without objection, that is so ordered.

[The information may be found at end of hearing.]

Mr. VENTO. Mr. Chairman, this hearing today, I don't know, is almost like a bad joke. The fact is, it reminds me of the story about the Boy Scout that was so eager to earn a merit badge that when crisis and problems didn't occur fast enough, they went out and created them for him. So they found out pushing people off of drop-offs to save them from drowning, and after pushing someone over in the street, picking them up and taking them out of harm's way.

The fact is that I understand the good intentions that might be behind some of this in terms of trying to help, but the fact is, we have to look at—we cannot on a step-by-step basis try to reverse the Antideficiency Act and the effect of not doing our job with regard to Interior appropriations with regard to the other five or six appropriations bills that are not being acted on by the Congress or resolved with the administration.

So the effects, while regrettable and while obviously highly inconvenient and having an adverse effect on communities, is something that all of us are concerned about. The fact is that the source of this is not going to be remedied on a step-by-step basis by trying to, as it were, to farm out or to disseminate what are essential Federal responsibilities to the States or to local governments or to the private sector, to necessarily carry out those functions because of the inaction and the inability to come to agreement with regard to fundamental Federal responsibilities.

These measures, I think, are really a feeble attempt to try to cover up the inaction or the inability of Congress, the Federal Government, to get its job done. And that job should have been done October 1st of this year. And clearly, if we are going to go through this on a piecemeal-by-piecemeal basis, what about the health programs and the education programs and many others?

What about the passports that were not issued? What about the social security recipients who were unable to begin to apply, those that were eligible, for their benefits?

As you go through it, you can create a long list of issues and trespasses that exist with regard to the inability to fund the government.

Now, beyond all of this, of course, there are many, many, serious questions in terms of the very powers of Congress. And as I sit here, it sort of amazes me that Congress, which has kept such a careful control of the monetary flow, all of a sudden is willing to find all sorts of excuses to let any administration circumvent the basic laws.

Now, of course, I know many of my colleagues have raised concerns about this with regard to the executive powers and with regard to the use of the Armed Forces, but nevertheless, this is one more major invasion in terms of congressional responsibility and power that would be frittered away for what I think are not substantial enough reasons.

Is it important? Yes. Is it national security? Does it really meet that particular test in terms of, again, the winnowing away of the powers of the United States Congress?

Now, as you know, the Majority party, I am not in the Majority party. Why do I care about this? Because inherent in our Constitution is a condition in terms of powers that are not necessarily allocated to one particular individual in that situation, to the executive.

And what you are doing by virtue of this is weakening, with all the best intentions, I suppose I could say, that particular role of the Antideficiency Act. So I think that you may say, well, this is a selected issue, but why not have a laundry list, then, of these particular issues where you can find out serious problems?

I have already enumerated some of this in my opening statement. But that is really where you are going. There is no excuse. And when you look at the very substance of what has taken place here at the Interior appropriations bill, which is the subject of our attention or should be this morning, it has been the extraneous matters added to that particular bill that have no relationship to the appropriation process and should be the domain of this particular committee that are holding up that bill. It is the Saguaro Forest. It is the mining moratorium issues. It is many other issues that hold no relationship to the appropriation process.

It is wrong. In other words, in doing the business and conducting the business of the House, it hasn't been done properly. The end result is that we have these types of problems with our national parks and serious concerns across the range, not just with parks, but with all of the various and important programs that are within the Department of Interior that need to be dealt with.

And with—some which apparently have been categorized as politically correct as exempt and nonexempt, as opposed to the phrases that were being used before. But that is going to happen again.

But the way to deal with that is to get the Interior appropriation cleaned up, to compromise on the issues, to remove the policy matters from it and to move forward with the legislation, not to try to make up for the person that you throw out of the boat and then try to save them from drowning and claiming that you are helping somebody.

This is a serious mistake and I think a misunderstanding of the whole role that you have here.

I don't think you are going to make up for the problems that you caused by trying to cover it up with this particular fig leaf.

Thank you, Mr. Chairman.

Mr. HAYWORTH. And I thank the Ranking Minority Member for his opening statement.

[The statements of Messrs. Geren, Miller, and Saxton follow:]

STATEMENT OF HON. PETE GEREN, A U.S. REPRESENTATIVE FROM TEXAS

Mr. Chairman and Members of the Committee, I appreciate the opportunity to share my thoughts with you on this important issue.

Mr. Chairman, as you know, I have the pleasure of co-chairing the Congressional Sportsmen's Caucus with you. The Caucus currently boasts 201 Members in the House and 47 in the Senate.

As co-chairman of the Caucus, I would like to commend both you, Mr. Chairman, and Congresswoman Lincoln for your leadership on this issue and for all that you do for the sportsmen and women of America.

One of the objectives of the CSC is to ensure that Americans will continue to enjoy access to public lands to enjoy outdoor pursuits. Since its creation in 1989, the Caucus has worked to protect this right on various individual refuges around the nation. However, the recent government shutdown threatened this access on a far greater scale. Our entire refuge system was closed, and as a result, many Americans found that they could not enjoy the very lands that they have bought and paid for with their tax dollars. There are currently 508 refuges in our nation's inventory. Hunting is allowed on 273 of these refuges and fishing on 263. In discussing this issue with the Fish and Wildlife Service, I have been told that agreements are in place with states on less than 10 of these refuges to continue hunting and fishing in the event of a shutdown.

Hunting and fishing are distinct American traditions. It has been part and parcel of American culture from the very beginning. In my part of the world, as in many parts of our country, hunting and fishing remain very much ingrained in our heritage. For many, the only opportunities that they have to enjoy these pursuits is on public lands. Unfortunately, many sportsmen recently found themselves at the mercy of their government. Both of these proposals will ensure that this will not happen again and will preserve these great American traditions.

However, these proposals are not only important for that reason. Many Americans rely on the economic contribution of hunting and fishing to their local economy and the national economy.

American sportsmen and women spend over \$48 billion each year. These expenditures support 1.3 million jobs; \$28.1 billion in salaries and wages; \$4.5 billion in state and Federal tax revenue. In total, these expenditures have a \$104 billion multiplier effect on the U.S. economy.

Let me illustrate just how large this economic contribution really is. U.S. sportsmen and women's expenditures exceed total U.S. exports in dollars of corn, cigarettes, soybeans, meat, lumber and metal ore combined. U.S. hunters and anglers spend more than the total gasoline expenditures of the entire Northeastern United States. In Texas alone, sportsmen and women spend more each year than all the U.S. grocery sales of beer and ale combined. And finally, more people hunt and fish in the U.S. than attend NFL football, major league baseball, and NHL hockey games combined.

Preserving the right of Americans to hunt and fish on public lands is not only crucial because of their importance to American tradition, but also because of the impact that these activities have on our economy.

Again, I applaud the efforts of both Chairman Young and Congresswoman Lincoln and I look forward to working with them on this initiative.

Thank you for granting me the opportunity to share my thoughts with you on this issue.

STATEMENT OF HON. GEORGE MILLER, A U.S. REPRESENTATIVE FROM CALIFORNIA

Mr. Chairman, the only reason we are here today is that the Republican Majority failed to do its job and pass an acceptable appropriations bill to fund our National Parks and Wildlife Refuges. This bill is nothing but an attempt to deflect criticism from the Republican failure to do its job.

H.R. 2766 has been titled the "National Park and Wildlife Refuge System Freedom Act of 1995". Freedom from what? The Republican inability to pass an acceptable Interior Appropriations Act? This bill doesn't free our National Parks or Refuges from anything. Instead, it raises more concerns than it answers. What parks or refuges would be opened? What services would be provided? Who would be liable to accidents to visitors or damage to resources? If you were really serious about this, we would be better off passing a law declaring all National Park and Wildlife Refuge employees as emergency employees for the duration of a shutdown.

I appreciate Governor Symington's interest in keeping Grand Canyon National Park open. The shutdown was a serious matter. It was serious for the many people whose social security or disability checks were at risk, the children who depend on head start, and those who couldn't get their passport applications processed. The American public and other park visitors were certainly inconvenienced by the Republicans failure to get an appropriations bill passed to adequately fund our National Parks and Wildlife Refuges.

However, H.R. 2677 and H.R. 2706 are really pretty poor solutions to this Republican failure. Now we are going to have states determine what parks and refuges are open in a shutdown and what services will be provided. I note Governor Symington's offer to assist with Grand Canyon National Park, but what about Saguaro National Park, Petrified Forest National Park, or any of the 17 other National Park units in Arizona?

Instead of proposing band-aids to deal with a serious problem, we would be better off focusing our efforts on getting an acceptable appropriations bill passed that the President can sign.

STATEMENT OF HON. JIM SAXTON, A U.S. REPRESENTATIVE FROM NEW JERSEY

Mr. Chairman, as an original cosponsor of H.R. 2677, I am pleased that our Full Committee has been convened to obtain testimony on the National Parks and National Wildlife Refuge Systems Freedom Act.

Since coming to Congress in 1984, I have proudly represented New Jersey's Third Congressional District, which includes the 40,000 acres of the Edwin B. Forsythe National Wildlife Refuge.

This Refuge, which is predominantly an estuarine marsh habitat, is one of the finest in our Nation, and over the years the size of this Refuge has increased because of broad public support. Men and women in my district have provided the financial resources to protect this barrier island ecosystem and to acquire the upland forest and fields that have enhanced the biodiversity of the Refuge. In addition, thousands of my constituents have enjoyed hunting and fishing on lands that comprise the Edwin B. Forsythe National Wildlife Refuge for generations.

Tuesday, November 14th, was a bad day for America and for every person who wanted to visit a National Park or National Wildlife Refuge unit. While my preference would be to complete action on an appropriations bill for the Department of the Interior, there must be a fail-safe or stop-gap procedure in place to avoid another public lands meltdown.

In my judgment, it was ludicrous that the Department of the Interior was unable or unwilling to accept the offer of Governor Symington to keep the Grand Canyon open by using National Guard troops.

Mr. Chairman, this was just one example of where various State officials expressed willingness to operate our National Parks and Refuges with State employees. In almost all cases, these offers were rejected.

H.R. 2677 would provide a fail-safe measure and it would help to ensure that the gates to the Edwin B. Forsythe are never again padlocked and shut in the faces of those Americans who paid for these lands with their hard-earned tax dollars.

Mr. Chairman, I look forward to hearing from our distinguished witnesses and to further action on H.R. 2677.

Thank you, Mr. Chairman.

Mr. HAYWORTH. Let me now introduce our first panel, two of my colleagues from the State of Arizona. Senator John Kyl, welcome back to the U.S. House of Representatives; Governor Fife Symington, welcome to you, sir. You have testified before this committee before and we are pleased to have you back with us today.

Senator Kyl, we know you are under time constraints in terms of legislation that you must manage on the Floor of the other body, so I would ask you to begin.

And let me just remind both of you gentlemen, and indeed all of today's witnesses, that we encourage oral testimony be limited to 5 minutes, but we assure you that your entire statement will appear in the record.

Senator Kyl.

**STATEMENT OF HON. JON KYL, A U.S. SENATOR FROM
ARIZONA**

Mr. KYL. Thank you, Mr. Chairman. And thank you Members of the committee. Since I don't have a statement, I will try to condense everything I have to say in the 5 minutes. And it is, indeed, a pleasure to get back to the House and be with some old colleagues.

I remember when I had a problem dealing with the State of Arizona, I came to Bruce Vento, then Chairman of the subcommittee, and Bruce Vento and I worked together and solved the problem for Arizona by finding a way to get it done rather than ways not to get it done. And I think that is the approach we need to take with regard to this problem here today.

Instead of finding excuses for not taking action, I think we have to look for constructive and positive ways to try to solve the problem. And fortunately, the Governor of Arizona, I think has pointed the way for us.

As the Chairman pointed out, there are a variety of bills pending, and I think it is important that the best features of all of those bills be combined in order to bring this matter to the Floor of the House as soon as possible, and we will do the same thing in the Senate.

Both Senate McCain and I have introduced a bill in the Senate, which I don't think, by the way, has some of the problems that Representative Vento has noted.

We did not seek to amend the Antideficiency Act, although we could have done that. We are looking for a more narrow approach to the problem.

Representative Vento makes the point that there are other problems that we might try to solve as well, that this isn't the only one. But borrowing the words of President Clinton in his address to the Nation regarding Bosnia, I would say that we can do something about this and what we can do, we should try to do.

There are other things that are more difficult. It would be very difficult to have the State operate veterans' benefit programs, signing people up for social security and so on. But it is not at all hard for the Federal Government to train State park personnel, for example, how to collect fees at a national park. This is not hard. Therefore, if Congress fails to do its job and the parks close down, or if the President vetoes a Continuing Resolution and the parks close down, the people shouldn't have to suffer. We ought to be able to find a way to bring those State personnel to bear on the problem of keeping the parks open.

Moreover, this is not exactly a new subject. There are intergovernmental agreements entered into all the time between State levels of government and between the Federal Government and the States. As a matter of fact, the Park Service has intergovernmental

agreements with elements of the State of Arizona, with the State Highway Patrol, for example, to deal with law enforcement.

So intergovernmental agreements between the Interior Department and the States are not at all something that has never been done. They are done all the time and this is simply another kind of intergovernmental agreement.

Now, Representative Vento makes the point that if the Federal Government would do its job, this wouldn't happen, and I guess I would say there is a converse to that. Why should people suffer just because we don't do our job?

Whether it is the President's fault or the Congress' fault, the Federal Government has failed to get a bill, an appropriation bill, in place, and, therefore, we ask the American people to suffer. That is wrong when we can do something about it, and the Governor of Arizona has offered to do something about it. Why can't we take yes for an answer?

Mr. Chairman, Members of the committee, I am going to read a letter to you that was sent to me, to Governor Symington, as a matter of fact, and to President Clinton:

"In 1992, my husband died of cancer at the age of 41. His dying request was for his ashes to be distributed at Ribbon Falls in the Grand Canyon. This was done, shortly after his death. For the past 3 years, his brothers and sisters and I and my children have planned a memorial hike so that we could all visit this special site. Family members from Connecticut, New Jersey, California and friends from Washington, D.C., and Arizona came to join us in what was to be an important part of our emotional healing.

"Instead, Congress and the President have turned this into an emotional nightmare. My 13 year old has been crying because she was looking forward to visiting Ribbon Falls with family and friends. How do I explain to her what is happening in Washington?

"Family members paid hundreds of dollars for plane tickets, car rentals and hiking gear. People have arranged time off from work. For some, this is their only vacation this year.

"One teacher had to get special permission from the school superintendent to be here. We have been looking forward to being together as family and friends to celebrate Michael's life in a place he loved, at the bottom of the Grand Canyon. Instead, we are stranded at the top because the President and our elected representatives in Congress didn't do their jobs. The Grand Canyon didn't have to close."

Mr. Chairman, the Grand Canyon didn't have to close. And it doesn't have to close in the future. And neither do other national treasures. The States have the ability to provide the personnel to keep these facilities open, and I don't understand why we can't pass legislation that allows the Department of Interior to enter into intergovernmental agreements with States who are willing to pay the tab and accept the liability, to keep these national treasures operating during times of emergency, especially when that emergency is created by our inability to do our jobs.

It seems to me to be a very reasonable approach, a very narrow and rational approach, and I commend Governor Symington and the Members of this committee who have taken the time to care enough about this issue to try to ensure that the problems that I

alluded to in the letter from this constituent from Flagstaff never arise again.

I appreciate the committee's consideration of the legislation and I look forward to working with you on the Senate side on this important legislation.

And, Mr. Chairman, because I have been asked to manage a bill beginning at 10:30, I am going to excuse myself part way through Governor Symington's testimony.

Mr. HAYWORTH. That is fine. Thank you, Senator, we appreciate your testimony.

Now we will call on the Governor of Arizona, Fife Symington.
Governor.

STATEMENT OF HON. FIFE SYMINGTON, GOVERNOR OF ARIZONA

Governor SYMINGTON. Thank you, Mr. Chairman.

I wish to openly express my thanks to our congressional delegation and to Senator Kyl and Senator McCain and you, Mr. Chairman, Congressman Shadegg, Congressman Stump, all Members of our delegation who have been so responsive regarding this issue.

I appreciate the chance to come here today to discuss the merits of H.R. 2677. I have had the chance to review this bill and bills introduced by our delegation, H.R. 2732 and Senate bill 1451. I applaud both chambers for responding so quickly to this problem and I am confident that we can keep the parks open in the event of a second budget impasse.

Today I would like to outline for you the importance of the Grand Canyon National Park to Arizona, recap the steps we took last month in a bid to reopen the park and underscore some of the critical questions the legislation needs to answer.

In the wake of the Federal Government shutdown last month, some folks asked in jest if the news media hadn't told you the government was closed, would you have noticed?

While this question reflects a healthy indifference toward both Washington and the press, the answer unfortunately for us in Arizona was definitely yes. The administration's decision to close the Grand Canyon National Park on November 15th, 2 days after the general government shutdown, was a jolt to many in my State.

We estimate that visitors to the Grand Canyon spend \$250 million a year in Arizona. This activity sustains communities in northern Arizona. It generates about \$12.5 million annually in sales tax revenue for the State, which is roughly the cost to operate the park on an annual basis.

Besides the economic consequences of the closure, I was disturbed by the way it hit a number of individuals. Visitors come to see the Canyon from around the country and all over the world. We in Arizona pride ourselves on being good hosts. Thus, I was annoyed when a couple from New Zealand, for instance, who had spent \$10,000 to visit the park, was turned away at the gate. It is a little arrogant, I think, to seal off one of the natural Wonders of the World while our Federal Government squabbles over its continuing fiscal excess.

In response to the closure, Arizona asked the Federal Government to let us reopen the park using State resources. We backed

up our offer by going to the park the next day with the manpower necessary to do the job. The caravan that I led on November 17th included State park staff, employees from our Department of Public Safety and unarmed National Guardsmen. We had come to work, not to fight.

Upon arrival, I met with Park Superintendent Arenburger. He was somewhat uneasy about our campaign. However, he relaxed enough to point out to me a fact that clearly illustrates the absurdity of this episode. He mentioned there is evidence of human habitation in the Grand Canyon that goes back 4,000 years. So while mother nature could not in 4 millennia keep people out of the Canyon, the Federal Government managed to drive them out last month.

While we were at the park, the administration declined our offer to reopen it. They cited several concerns. I urge you today to view these as legitimate but surmountable obstacles. I think we can craft legislation to keep the parks open that addresses these issues. Please consider these points as you go into mark-up.

The first hurdle cited by the Interior Department in rejecting my offer involved the responsibility of the Secretary to operate parks in a safe and sound manner, consistent with Federal law and regulations, and to manage their resources in such a way as to preserve them for future generations.

Legislation should give States an option. Let us open parks by paying the salaries and benefits of Federal employees or by using State employees.

I am concerned that the Department is going to urge you to bar the use of State employees by establishing arbitrary standards of experience or training. Don't buy into this Washington-knows-best mentality.

In connection with this issue, please also consider the opportunities we have to serve the public through partial reopenings of the parks. Consider, for example, the possibilities at Grand Canyon National Park. The Federal Government had the flexibility during the first 2 days of the budget deadlock to keep the park open but close the visitors center. In the event of a second budget impasse this month, the State of Arizona might at a minimum reopen Mather Point.

And I would like to put the pictures up here on the easel. Please turn your attention to the map of the park that we provided.

These are a few of the pictures of the park from Mather Point, which is the place that most people who come to the United States or from within the United States when they go to the Grand Canyon, this is the view that they want to see. During last month's budget impasse, the Federal Government blocked access to the road that goes out to this overlook. You can see in red where they put their blockade. If they had moved the blockade further to the west where the blue line is, Mather Point would have been available to the public without much effort on the part of the Park Service.

Removing this roadblock and allowing visitors to enjoy perhaps the best view of the Canyon, as shown in this picture before you, would not have been hard. It would not entail putting the full contingent of 200 or so nonessential park employees back on-the-job.

It would require only a handful of employees in relatively simple positions.

A second objection raised by the Interior Department involves the Antideficiency Act. Under this law, the Federal Government cannot obligate funds that have not been appropriated. On the basis of this, the Department rejected our offer to reopen the Grand Canyon because we did not discuss covering the incremental cost of things such as power and water supplies arising from an expansion of park operations beyond the essential level. Well, we can cover these items and correct that deficiency.

And finally, I would just like to say with regard to the liability issue, I believe we can work those issues out. One acceptable solution that I understand is taking shape would involve indemnification of a State for any liability to the United States arising from the actions of a State employee.

Finally, Mr. Chairman, I do appreciate the opportunity to say these words to you today, because we in Arizona do never, ever want to see the Grand Canyon National Park closed to the public again.

Thank you very much.

[The statement of Governor Symington may be found at end of hearing.]

Mr. HAYWORTH. Governor, I thank you for your testimony.

Reminding the Members that the committee Rule 2(i) imposes a 5-minute limit on questions, the Chair will now recognize Members for any questions of the first panel.

Governor, again, thank you for your testimony. And we have heard and seen in letters some concerns from some within this institution and about the financial and technical abilities of State governments to administer park facilities. But doesn't Arizona have park employees with similar duties and missions as National Park Service employees?

Governor SYMINGTON. Mr. Chairman, that is correct. We have an extensive park system in our State, well-trained personnel. It would be not difficult at all for them to supplement national park activities in times of crisis.

And, in fact, when the Grand Canyon was in trouble about a year and a half ago, after a major flood event, many of our people went in to help clean up the park. Our Conservation Corps was actually contracted for by the National Park System to rebuild the pipeline that had broken that goes from the North Rim to the South Rim.

And so we actually have a lot of experience in the park.

Mr. HAYWORTH. Governor, since last month's shutdown of the Grand Canyon, has the State of Arizona come any closer to reaching an agreement with the National Park Service to operate the park during a future shutdown?

Governor SYMINGTON. We really have had no constructive negotiations under way at this time. And, of course, that is my biggest concern that with another shutdown looming, we do not seem to be any further along than we were when they closed it in November.

Mr. HAYWORTH. Could you characterize the position of the other governors you talked with last week at the Western Governors' As-

sociation meeting regarding park and refuge closures in their State during last month's shutdown?

Governor SYMINGTON. The Western Governors' Association, which is a bipartisan organization, passed a resolution supporting this effort to keep the parks open in times of crisis by the States coming in with supplemental aid. And in the West, where we have these tremendous national assets, most of them, there is great concern on the part of the governors and the States that they will be adversely impacted by this type of arbitrary action.

Mr. HAYWORTH. Governor, you documented here an interesting episode in the entire closure of the park. And I guess it is symptomatic of an entire set of instances and incidents that occurred during the shutdown. To you and in your capacity as chief executive of the State of Arizona, what was the most surprising or most frustrating incident surrounding the shutdown of the Grand Canyon?

Governor SYMINGTON. The most frustrating aspect of the shutdown was, as you can see on the chart, the fact that the blockade of the park was done right at what we call the "T", when just to the West is Mather Point, which is a very easy area to police and patrol. In fact, the Coconino County Sheriff in Arizona has an intergovernmental agreement with the Park Service and sometimes is up there helping them when they have a real crunch in the summer. All they had to do was move that blockade further to the West and not completely close the park to visitors worldwide.

That was really disturbing, because that spoke, I think, to the really arbitrary nature of the closure of the park, and just disappointed the 8,000 people a day that were being turned away unnecessarily.

Mr. HAYWORTH. During your visit to the Canyon, discussing this with Park Service officials on hand there, did they offer any reason for that particular blockade at that particular juncture?

Governor SYMINGTON. Mr. Chairman, they said they were following guidelines. We did have a discussion with the Chief of Staff of the Interior Department by phone. Most of the leadership of northern Arizona was in the room, and really there was no satisfactory explanation given to us, except there was a comment made in that conversation by the Interior Department which, in effect, said: Governor, stay out of our park.

And there was a hush in the room and we all thought about that remark and we came back and we advised the person from the Interior Department, you know, this park doesn't belong to you. This park belongs to the American people. Nobody should shut this park.

Mr. HAYWORTH. Governor, what else occurred—perhaps there are other anecdotes you can offer us today, not humorous ones, to say the least, but other things that happened during this entire episode that perhaps would help us understand truly the impact upon northern Arizona and, indeed, visitors from around the world and people from the United States who wanted to see the Grand Canyon during this shutdown?

Governor SYMINGTON. When you have a park like this, which attracts between 4 to 5 million visitors a year, on a daily basis that is a tremendous number of people coming from all over the world

to see it. And the quick and arbitrary nature of the closure just destroyed people's travel plans from all over the world.

It had a huge negative impact on tourism in our State. And I think just created a lot of unnecessary hardship, especially when you consider that the park really pays for itself. That particular park generates sufficient revenue to cover more than its operating expenses on an annual basis. So it was not an economic decision to close that park.

Mr. HAYWORTH. And we should note, although we are talking specifically about the Grand Canyon, there are many other national parks within the State of Arizona that felt the brunt of this shut-down.

Governor SYMINGTON. That is correct, but I believe that the Grand Canyon is considered to be the crown jewel of the parks, something that people come from all over the world to see on an annual basis, both in winter and summer. And it was a very distressing event for our State.

Mr. HAYWORTH. Governor, I thank you.

And now I turn to the Ranking Minority Member, Mr. Vento, for questions.

Mr. VENTO. Welcome, Governor.

Last time, I think you were looking to take over the BLM, now it is the park system this time; right? The BLM lands—the people's lands, and we certainly agree with that from Minnesota, as you know. We certainly agree with that from Minnesota, Governor.

It is a pleasure to see you here, and my good friend and colleague Jon Kyl, who we did work with in expanding Saguaro and dealing with other problems in Arizona. As a matter of fact, we have got quite a few sites based on the Udall legacy down there in Arizona, of parks and monuments, almost 2 dozen sites, including Tumacacori and a lot of other smaller sites, that might not be on the national radar screen but may be important. There may be someone from who knows where, from Switzerland or New Zealand, coming to Tumacacori.

Are we worried about that, too, Governor, keeping it open? That would be an easy one; wouldn't it?

Governor SYMINGTON. Well, Congressman Vento, of course, in Arizona, we worried about any effort to close any of the parks because we are a great tourism State, and I think we really are a wonderful symbol for the world in terms of the quality of the environment in America. So I share your deep concern as far as keeping the parks open.

Mr. VENTO. I am glad to see that bipartisan support with the Udall's in terms of that State, and of the special lands and places. I agree they are. I worked a long time on it, and I know, Governor, you have expressed an interest here today.

I don't know if I would fight it with the enthusiasm in terms of whether or not—or the agreement whether or not the Grand Canyon pays for itself these days. I didn't see the particular budget numbers. I would like to think we could make it on just entrance fees, but I think that if you look at that more closely, we probably—maybe the way that you are computing it, it does it. But I don't think that the way that we look at it, it makes the—the numbers, the numbers don't quite add up that well.

But certainly I think we are aware that there was great inconvenience visited on a major attraction to the State by virtue of the close-down, the failure to pass the appropriation matters through either the House and the Senate so the President could have the opportunity to sign or veto the bill.

One of the issues here, though, is that, you know, for instance, some of the employees were exempt from—and worked and continued to work, and others were nonexempt, and those are the ones we are concerned about. But the issue is, for instance, just from a law enforcement standpoint, do you have joint jurisdiction in the Grand Canyon these days?

Governor SYMINGTON. That is correct.

Mr. VENTO. And so you could actually go in there and provide that service.

Were you providing services on that basis? Were you willing to provide that service?

How many police officers do they have in the Grand Canyon or squads do they have right now?

Governor SYMINGTON. Well, Congressman Vento, when we went up there, we had 14 squads of Department of Public Safety officers. We had more than sufficient individuals.

Mr. VENTO. How many—for instance, I know they have almost 400 employees, over 300 on the South Rim. And how many State park employees do you have totally?

Governor SYMINGTON. Actually, I don't know the specific number of State park employees.

Mr. VENTO. I have a number here, Governor, that says that the State of Arizona has 24 operating parks and 2 more that are going to open. Apparently, you like parks enough to designate your own in Arizona and that you have 200 total employees, including administrative employees.

Here we have 200 employees for the entire State of Arizona. The South Rim has over 300. Some, of course, are public safety employees. Some are maintenance employees. You know, this—I mean, I don't know. Maybe the Park Service has more people than they need there. But I don't think that—

Governor SYMINGTON. That is probably a good point I think you just made.

Mr. VENTO. Well, I think that—

Governor SYMINGTON. Congressman—

Mr. VENTO. That is sort of the—

Governor SYMINGTON. Congressman—

Mr. VENTO. That is sort of the attitude that exists if you are going to serve people, I mean, you know, but that is sort—that is fine. Probably the State of Arizona has too few. But I mean, the point is that the issue is one of whether or not what you are going to do and how you are going to run that park. How it is going to be treated. How you are going to interpret it.

Governor SYMINGTON. Mr. Chairman, Congressman Vento, I think I can answer those questions given the chance.

The force that we had up at the Canyon included 60 to 100 highly skilled National Guardsmen that were part of the Special Police Operations in the Guard, and they were meant to be involved in the traffic control issues so that we could basically open up Mather

Point, which was at issue—let me finish—and also we had some of our top State park personnel there who could lend assistance.

In addition to that, we had 14 squads, Department of Public Safety officers, who are very skilled at crowd control and helping in critical areas. They were all at the disposal of the National Park Service.

Mr. VENTO. Were you going to run the concessions, too? I mean, how were the concessions going to be functioning?

Governor SYMINGTON. The concessions—excuse me, Mr. Chairman, Congressman Vento, the concessions are run by private individuals and really aren't operated by the park personnel.

Mr. VENTO. Do you have a contract with the private individuals? I mean, they weren't there.

Do they have reservation systems, computer systems? You know, they have all sorts—are you going to run the concession programs, too?

Governor SYMINGTON. Mr. Chairman, Congressman Vento, as I was saying, like the El Tovar Lodge, for instance, is run by a private company. They were shut down basically.

Mr. VENTO. Who is going to oversee that? Do you have someone in your government, in your group there, that was going to be the administrator and run the Visitors Center and run these concession contracts, or do you think that they can just amble along by themselves?

Governor SYMINGTON. Congressman, hotel operators usually know how to run hotels and the people who run the El Tovar Hotel are capable of doing that.

Mr. VENTO. They are capable people, but there is an oversight responsibility of the park within the park. For instance, there are contracts that are ongoing, for instance, cleaning up trails in the Grand Canyon. There are maintenance contracts. There are maintenance personnel that have to keep the power systems going there. Do you have boilermakers and engineers in that group that went up there with you that understood the systems of the Grand Canyon?

Governor SYMINGTON. Congressman Vento, we find it very interesting that when the park gets in trouble they usually call on the State, like our State Conservation Corps which bailed them out of trouble a year and a half ago. If your insinuation is that the park is autonomous and can only be run by Federal people, I would beg to differ with you, because the State for many, many years has been in the business of operating parks.

Mr. VENTO. I am not insinuating anything. I understand the co-operation of the State and Federal Government on a range of activities on law enforcement, fire, safety and health; and I commend you, Governor, to continue that cooperation and collaboration. I am just asking questions based on the fact that you have 200 park employees statewide and are going to take over an operation where they have at least 300 of them on the rim.

Governor SYMINGTON. The Grand Canyon National Park and the Park Rangers had, about, I think 120 people still on duty in the park. We were there with sufficient individuals, with the capability to fill in, to at least open up Mather Point, which is nothing more basically than a traffic policing operation.

I think that what concerns me most is the arbitrary nature of this closure and the fact that we have a history of cooperation with the Park Service.

Mr. VENTO. Well, we have——

Governor SYMINGTON. Excuse me, Congressman, but I would like to make this point.

The State of Arizona is drastically impacted when you close something like the Grand Canyon National Park. There is no need to do that in the future. We are willing to help. We are willing to give money. We are willing to lend people. We are willing to set out parameters to protect the United States Government from liability.

And so I don't quite understand how in the face of that kind of a generous offer, our country at the national level could spurn that good-faith offer on the part of the sovereign State of Arizona.

Mr. VENTO. Well, I think my time has expired.

But I mean, I certainly understand how they could still have—reserve questions. And I don't question your good faith. I just question the feasibility about a piecemeal basis trying to keep the government operating, when you have this type of shutdown in terms of no funds.

Mr. HAYWORTH. I thank the gentleman from Minnesota who correctly noted that his time has expired.

I would also pause here in my capacity as the Chair today to acknowledge that Representative Lincoln, one of the sponsors of the bill coming up next, has joined us in the audience. We look forward to her testimony.

Now, the questions from Governor Symington will continue.

We will yield 5 minutes to the gentleman from Oregon, Mr. Cooley.

Mr. COOLEY. Governor, I don't have any questions to ask you. I am just going to make a comment.

I think it would be to the benefit of the State of Arizona, and also the Federal Government, if we just turn this park over to you to manage.

Governor SYMINGTON. Thank you, Mr. Cooley. We would be pleased to accept.

Mr. COOLEY. I wish we could. In your previous statement, you talked about arrogance put forth by people in the Federal Government. The 104th Congress is here to downsize and change government—get rid of some of the arrogant bureaucrats. One way to do this is by giving it back to let you run it. I would certainly support such a effort.

Thank you much for your time here.

Governor SYMINGTON. Mr. Chairman, Congressman Cooley, thank you.

Mr. HAYWORTH. Now, the Chair would recognize my colleague from the great State of Arizona, a gentleman who also serves on this committee, and I am pleased to serve with him in this country, Mr. Shadegg from the Fourth District.

Mr. SHADEGG. Thank you, Mr. Chairman. I appreciate that.

I have got to tell you, Governor, that I am absolutely awestruck, and my colleague from Oregon used the word that I think is appropriate here. To me, it is the absolute height of arrogance to insinu-

ate that for an American or a foreigner, anyone from around the world, who comes to the United States to see one of the Seven Wonders of the World, and to conceive that they cannot do that, they cannot absorb the beauty and take in the beauty of the Grand Canyon if they don't have a Federal bureaucrat standing at their side, that is unbelievable to me.

I happened to be here during the shutdown because we remained in Washington. I spoke by telephone to an audience in Phoenix, and it was the day you were pursuing your effort to open up the park both for the visitors who had come from around the world to visit and around the Nation, and for people who have established businesses and have economic lives at stake there.

And when I made that comment to that audience, I got a rather loud, loud round of applause. They seemed to agree with me that they didn't feel they needed a Federal bureaucrat standing beside them in order to enjoy the Grand Canyon.

It also kind of amazed me, because I am a boater, that at the same time the Federal Government also shut down Lake Powell. So if I understand this, one cannot safely boat on Lake Powell unless you have a Federal bureaucrat somewhere nearby to ensure that you can do it properly.

I guess the other point of arrogance is the arrogance that I hear that only the Federal Government can do this and that clearly the State of Arizona, because it has fewer employees in its park, must be doing it wrong and the Federal Government must be doing it right.

I have to tell you that I believe Senator Kyl's letter illustrates that this is not an issue of us rushing in to solve a problem that doesn't exist or a problem that is being created so we can solve it. I think that letter powerfully and dramatically and somewhat sadly illustrated the pain that was suffered.

I also noticed in—I wasn't able to make an opening statement, but in Mr. Vento's opening remarks, he talked about a couple of things I want to deal with. One of them was—and he used the words twice—he said this is an essential Federal Government responsibility and then he said it is a fundamental Federal responsibility. I pulled out a copy of the Constitution, which I learned has certain enumerated powers.

I can't find this as an enumerated power in there. It may well be there. I did just a quick survey. But it is somewhat shocking to me to believe that during such a break, at least the States couldn't assume this responsibility because it is so essentially Federal in character.

One of the points that Mr. Vento brought up goes to the issue of the Antideficiency Act. I want to go to that. As I understand it, Governor, what you are saying to us is that you are willing to enact legislation in which the State would assume all responsibility for the operation of the park, all cost for the operation of the park, if that is what we have to do in order not to cross the Antideficiency Act, and all liability.

Is that correct?

Governor SYMINGTON. That is correct.

Mr. SHADEGG. OK.

If you do all of that, I don't believe there is a problem with the Antideficiency Act, and I think that is a very important point.

Let me ask a second question. One of the issues that is in the two bills, and one in the delegation bill that we have written and the other is Chairman Young's bill, I understand that the State would be willing to have the language of the bill provide that you would assume all responsibility, all costs and all liability, and also not provide for any reimbursement. You would be willing to assume the cost.

Governor SYMINGTON. Mr. Chairman, Congressman Shadegg, that is correct. It is about—we estimated about \$40,000 a day in total expense, and we presumed that the shutdown wasn't going to go on forever, but we were willing to bear that burden.

Mr. SHADEGG. One of the ideas that I have mentioned to you is perhaps what we ought to do with this issue of cost is to allow the States to operate the parks during this time period and assume the responsibility and the liability and the cost and allow them to charge a fee or not charge a fee, but keep the fee. That is certainly something that would be of some interest to you or some attractiveness to you?

Governor SYMINGTON. Yes, Congressman, that would be. But, again, we were trying to take the path of least resistance. We were trying to make an offer which was really very much in favor of the Federal Government, where we would come to their aid in this time of budget impasse.

Mr. SHADEGG. Mr. Vento went into the issue of contracts with concessionaires. This legislation would allow you to enter into an intergovernmental agreement with the Federal Government and under such an intergovernmental agreement you could, for example, assume the responsibility of supervising those concessionaires during the time period that the Federal Government was not operating the park but rather the State was; couldn't it?

Governor SYMINGTON. Mr. Chairman, Mr. Shadegg, that would be correct. The point I was trying to make about the concessionaires is that the reason they are there is they know their business better than people who work for the Federal Government, so they are fully capable of operating a first-class operation with minimal supervision.

Mr. SHADEGG. I am really sorry that Senator Kyl had to leave us because he brought us some important information.

On this issue of legislation which would have the States assuming all liability, all responsibility and all cost, it is my understanding that Senator Kyl had a conversation with Mr. Leshy, the solicitor for the Interior Department. I believe Mr. Leshy may be here—is he here? He is here. Mr. Leshy, how are you?

Perhaps we could ask you to—or ask the Governor to reiterate Senator Kyl's conversation. My understanding is that Senator Kyl said that a bill which had those provisions would, as I understand it, and Senator Kyl reported to us, not be a showstopper, there wouldn't be any reason why that couldn't be done legally?

Was that your advice, Mr. Leshy, to Senator Kyl?

Mr. LESHY. I am going to accompany Mr. Frampton, who is going to testify in a minute.

Mr. SHADEGG. You will be testifying through Mr. Frampton in a few minutes?

Mr. LESHY. Yes.

Mr. SHADEGG. OK. Then I will ask the question at that time.

I just know that the Governor and I were present when Senator Kyl reported that and it is an important fact.

My time has concluded.

I thank the Chairman.

Mr. HAYWORTH. I thank the gentleman from Arizona, and he is correct in that statement.

Governor, with your indulgence, we realize you have a travel schedule that will require your departure at 11:15, but there may be a few more questions.

Again, we are glad to see our colleague from Minnesota representing the Minority today, and I believe he has a couple more questions. So, again, we would recognize the gentleman from Minnesota.

Mr. VENTO. Mr. Chairman, I thought you wanted to ask some questions. I will be brief. We all have travel plans. But I appreciate the Governor coming here before the committee.

Obviously, one of the problems with this, and I might just say for the Governor and others, is that you talked about the fact that we are going to have a chance in committee to work on the legislation, but plans right now are to offer something on the Floor to another bill without any amendment process or further deliberation or consideration, and so that obviously is going to leave us in the lurch.

Now, I don't doubt that we could probably write this so that it could work out on a narrow basis and we could deal with the Grand Canyon, but what about the parks in your area, Mr. Shadegg, like Saguaro, what about Tumacacori, what about the Petrified National Forest National Park? We have got a lot of parks in Arizona and other places. We have got some that are split up among States like Yellowstone.

Mr. SHADEGG. Would the gentleman yield?

Mr. VENTO. Well, I would in a minute, but I just think trying to say well we can open up that—move that roadblock just a little further back, people can get in there, we can get a view of the Grand Canyon, we don't need 311 employees to run a park that has 4 million people a year that come into it—which I don't think is the case in most parks in Arizona. Maybe I am wrong, but I don't think it is the case, Governor.

I mean, this park has a lot of problems. You say well, we will indemnify any action by a State employee of any particular problem that they have. Well, is one of their actions going to be if somebody makes a mistake and slips and injures themselves seriously or some other particular physical feature of the park where there are steps or other things—I just read in the morning paper, one of our colleague's spouse had a serious accident and all of a sudden we have got court cases that flow out of it and, you know, these things happen because this topography isn't obviously regular in terms of its makeup.

So there are a lot of issues that go on here for us to say we can step in the place of the Federal Government and we will just ab-

sorb all of that particular responsibility. I mean, I think it seems to me you are very guarded in what you are doing.

Oh, we can make an agreement to take over the concession contracts, run them with a minimal amount. After all, I agree the concessionaires and most of the folks there are expert. They know what they are doing in terms of running some of these facilities.

But on the other hand, I think you give too little credit to the expertise and the management ability, the interpretive ability, and some of the other professionals in the National Park Service. These aren't Democrats or Republicans, you know. They are professionals that have been trained and hired and have decades of experience in terms of what they are doing.

And today we sit here and make a mockery of the fact that they have got 300 employees. I think that is a real mistake to do that.

Mr. SHADEGG. Will the gentleman yield?

Mr. VENTO. I yield to my colleague.

Mr. SHADEGG. Thank you very much.

Quite frankly, I don't have any national parks in my district. I wish I did. Saguaro National Park is not in my district.

Mr. VENTO. Well, that is enough to claim credit and bragging rights, I expect.

Mr. SHADEGG. Well, actually, Saguaro National Park is near Tucson. My district is metropolitan Phoenix. It is hundreds of miles away, almost as far away as the Grand Canyon.

Mr. VENTO. Well, OK.

Mr. SHADEGG. It is neither here or there.

Let me simply respond to the point, and that is that I believe that each of these issues is conceptual and that is if we can authorize, simply authorize the Federal Government to enter into these agreements and give the Park Service or the Interior Department the leeway to negotiate those provisions they think are necessary, I see no difficulty. Indeed, I believe Mr. Leshy has said that could be done.

Mr. VENTO. I don't think he has.

Mr. SHADEGG. On the issue of liability, if I might, the bill specifically provides that the State would assume all liability, including the liability to which you just adverted.

Mr. VENTO. Mr. Chairman, I just think it is a tremendous amount of energy being expended on the predicate that we are going to have, you know, shutdowns of government, that this is going to be a regular—the regular order around here and somehow we are going to have to deal with this. This is something that has happened a couple of weeks in the last 20 years.

Now, of course, if it is your objective that you are going to have—I mean, if it is your interpretation, then I suppose we ought to spend lots of time on this because this is going to be the normal manner of operation. I just think it is sort of looking through the looking glass, back through the looking glass the wrong way in terms of what we are doing and where we are going.

Mr. SHADEGG. Well, I think the family whose letter Senator Kyl read—

Mr. VENTO. I would be happy to yield further to my colleague. All right.

But my concern is that, you know, you are trying to solve these problems and you are going to get further and further into this, and what are you solving in the end? I mean, the issue is there is nothing in this bill about indemnifying the Feds, incidentally, on liability, the bill that we have here right now. So, I mean, it is—being we are going to be responsible for what Federal or State employees are doing isn't quite—doesn't quite meet that particular test as an example.

And as far as the Antideficiency Act, I mean, I am raising these questions because I think there is a whole range of them. I mean, I think you just scratched the surface here in terms of the types of problems that you are dealing with in the legislation.

It just boggles—I mean, you know, the questions are very severe, very significant in terms of—in terms of this type of action. And they are not—they haven't been answered by the Governor.

The Governor, you suggest that you would—would you curtail operations at the State parks in lieu of this, in terms of taking your employees from the State parks to run this?

Governor SYMINGTON. Mr. Vento, the answer to that is definitely not. And that is why we brought an augmentation force up to the Canyon to help, through a temporary crisis at the Federal Government.

You seem to resist the idea that we came with aid to help the Park Service keep the park open. I thought that it was an extremely generous offer.

For some reason, at the Federal level you seem to resist the fact that the State can actually make generous offers to the Federal Government to keep one of the crown jewels of the park system open, and I sit here absolutely amazed at that answer.

Mr. VENTO. I am surprised at the misunderstandings and the sort of shallow view or understanding. That is what amazes me.

I have been working on this subject for 10 years and I have a Governor of a major State that has tourism and has a lot of other good intentions, but I am surprised at the lack of understanding of what the park system does.

Governor SYMINGTON. I think the people in Arizona are very surprised at the lack of understanding by someone such as yourself of the impact of the closure of the crown of the National Park System in the State of Arizona and the impact that has on tourism in our State and around the world. I don't think the Federal Government should ever do that and that is why I am here testifying today.

Mr. VENTO. I think it is very serious. I think the closure and the failure to pass legislation is very, very significant, Governor. I regret the inconvenience in the economy.

I don't usually sell parks, as I have worked in this area for many years, on the basis of their economic impact, but it is there. It is very, very important. It is very important to your State and that is why I think it underlies the importance to pass it. If we were, for instance, to completely facilitate this process through the looking glass the wrong way sort of, so to speak—

Governor SYMINGTON. Mr. Vento, just because—

Mr. VENTO. We would—it would just take away any type of motivation, in many respects, to get the legislation passed.

Governor SYMINGTON. You know, I want to make this comment. There isn't some sort of mystical transformation that takes place that just because you become a Federal employee or you wear a Park Service uniform that you have developed some sort of mystical standard of ability in managing an asset like the Grand Canyon National Park.

There are many people in our State who would be well-qualified to pitch in and help in time of an emergency. We were there to offer our support, I thought a good-faith offer, and it appears to be rejected out of hand. And this just doesn't need to happen in the future and I regret that people on the other side feel that for some reason this is an incorrect offer, to come to the aid of the Federal Government when it has a budget impasse.

We are prepared to help. We came offering help. So if you want to turn it down, that is your prerogative.

Mr. HAYWORTH. The time of the gentleman has expired.

Mr. VENTO. The program of volunteerism and help, and help is fine, but you have to answer the questions. The questions aren't being answered today.

Mr. HAYWORTH. The time of the gentleman from Minnesota has expired.

I would return to the gentleman from Oregon.

Mr. COOLEY. Governor, I want to give you some information that you might find very interesting.

Our good gentleman from the other side of the aisle introduced a bill in 1990 called the Minnesota Public Lands bill, H.R. 2783. It became Public Law 101-442. He stated, when he was Chairman, that he thought the State of Minnesota could better manage their public lands than the Federal Government.

I think that the gentleman agrees with you in principal, since he thought the lands within his State, when he was Chairman of this committee, could be better run by the State of Minnesota than by the Federal Government.

Governor SYMINGTON. Mr. Cooley, I always knew that in his heart he had the right spirit.

Mr. COOLEY. I don't think much has transpired since 1990—except perhaps, the Federal Government has become less responsive to State issues. Therefore, we should encourage the gentleman and get him involved in the dialog. Then, maybe we can allow the State of Arizona to run their property.

Mr. VENTO. Would the gentleman yield, since he used my name?

Mr. COOLEY. Yes, you may.

Mr. VENTO. Well, I appreciate it.

It doesn't bother me so much what the gentleman thinks is correct. It is what he thinks is correct that isn't the fact that is the concern of mine. And the issue here is, of course, some small tracks of BLM land that remained in the State.

Mr. COOLEY. No, no, no. It is my time, sir.

The small tracks is a minor issue. It is the idealism of the situation. You felt the State of Minnesota could better manage their lands than the Bureau of Land Management which is a Federal Agency.

Mr. VENTO. Well, it wasn't that land. It was BLM public domain land and there were scattered tracks arranged.

Mr. COOLEY. Let's get down to the philosophy.

I think that the Governor of Arizona should be able to manage the land in Arizona.

Mr. VENTO. I don't want to get in the way of the gentleman's torture.

Governor SYMINGTON. Well, you know, Mr. Cooley, the Grand Canyon has sometimes been referred to as a sort of a lengthy scattered track also. It is a rather large chasm.

Mr. COOLEY. Right. I just wanted to bring that to your attention.

Governor SYMINGTON. Thank you. I appreciate it.

Mr. COOLEY. I think, in principle, the gentleman agrees with you. Maybe we can introduce legislation to allow the State of Oregon and the State of Arizona to manage their public lands as they see fit. I think that is consistent with his past legislative history.

Governor SYMINGTON. Thank you.

Mr. COOLEY. You are welcome.

Mr. HAYWORTH. I thank the gentleman from Oregon.

We have been joined by our good friend and colleague from Hawaii, Mr. Abercrombie.

Mr. Abercrombie, do you have any questions for Governor Symington.

Mr. ABERCROMBIE. No.

Mr. HAYWORTH. OK.

We thank you.

And we turn to the gentleman from Arizona, Mr. Shadegg.

Mr. SHADEGG. Thank you, Mr. Chairman. I will be very brief.

Governor, I want to commend you for bringing this bill forward. I have a little speech that I give to all prospective employees, and it goes like this, it says that you have got people in this world, those who look for excuses for why you cannot get a particular task or assignment or project done and those who look for ways to achieve or get the project passed or assignment done. And it really breaks into that.

And I like to hire those that say, wow, I have just been given this task. I can do it and they think of six different ways around the box to ultimately get the job done. I don't really like to hire employees who when given an assignment say well, I really can't do it for this reason and we shouldn't do it for that reason, and this is a bad idea for that reason, and I really shouldn't do it for that reason, and I asked somebody and they say no. So I see an attitude here, an attitude that we shouldn't be doing this because it might require some bill. You might have to work on the bill and rewrite it.

It seems to me that there is the issue of whether or not the Park Service should have accepted your offer some time ago. I think it is extremely responsible for you to have come forward, to have sought legislation so that the next time this occurs, which could be at any point, not only in this budget cycle but in budget cycles for the remainder of the history of the Nation and perhaps for other reasons. And it seems to me most appropriate that you are taking that action.

I think, again, the letter written by the family who wanted to visit the Canyon during the shutdown and the emotional trauma that they went through illustrates the point beautifully.

I commend you. I happen to have the, "yes, we can get it done attitude."

I would ask you, Governor, the delegation bill, which we—is not before us here today for a technical reason, does allow liability to be assumed completely by the State, does it not?

So we get beyond the liability issue. I appreciate that very much, Governor, and I thank you for coming.

I yield back the balance of my time.

Mr. HAYWORTH. We thank the gentleman from Arizona. And with that, Governor Symington, we thank you for your appearance here today and look forward to rejoining you back home at the conclusion of the business day.

Governor SYMINGTON. Thank you, Mr. Chairman.

Mr. HAYWORTH. Thank you, Governor.

Mr. HAYWORTH. The Chair would now call our second panel forward, two of our colleagues from the great State of Arkansas, the Honorable Blanche Lambert Lincoln and the Honorable Tim Hutchinson, in bipartisan fashion, on H.R. 2706, authorizing the Secretary of the Interior to accept from the State delegation State employees for the purpose of hunting management.

With that, the Chair would recognize the gentlelady from Arkansas.

**STATEMENT OF HON. BLANCHE LAMBERT LINCOLN, A U.S.
REPRESENTATIVE FROM ARKANSAS**

Mrs. LINCOLN. Thank you, Mr. Chairman. I appreciate your gracious welcome to my colleague from Arkansas and myself, and I thank you very much for allowing me to testify today before your committee on my bill, H.R. 2706. I appreciate the quick response to the events surrounding the recent Federal Government shutdown and taking up the bill so expeditiously.

I would also like to add my special thanks to the Federal Fish and Wildlife Service, the Arkansas Game and Fish Commission, and the International Association of Fish and Wildlife Agencies for working with me on this bill to resolve any of the problems that we have, and I certainly want to say that I am looking forward to continuing to work with them as we work through some of the glitches that we may have but to make sure that we come through with a bill that is going to be good for everyone.

Although many Americans did not directly experience the effects of the shutdown, the inability of Congress to complete its house-keeping chores certainly touched the lives of many Arkansans. We have just heard from Governor Symington that tourists in Arizona were turned away from the Grand Canyon and other National Parks.

In Arkansas, the Government closure prevented hunters from entering our national wildlife refuges during deer season. Hunting is one of Arkansas's favorite pastimes. People take time off from work, and families plan their vacations around hunting trips. It is very much of a family event, and a part of our heritage that we are very, very proud of.

Prior to the recent shutdown, refuge managers had scheduled deer hunts at two of Arkansas's refuges. Hunting permits for these hunts were sold under a competitive lottery system. Hunters in the

Congressional District that I represent went through an extremely competitive permit process. They paid \$12.50 for each permit. Many of them took days off from work. They drove up to 6 or 7 hours only to be turned away at the gates of the refuges. Needless to say, the budget crisis in Washington was not of their choosing and they were not happy about the results.

Weeks before the actual shutdown, the Fish and Wildlife Service had worked with the Arkansas Game and Fish Commission on an agreement to try and allow the State employees to volunteer their services on the Federal wildlife refuges. This agreement was signed and ready to implement in the event of a Federal Government shutdown.

However, days before the actual shutdown, the Interior Department determined that this agreement violated the Antideficiency Act and would not be allowed to go into effect.

My bill very narrowly tried to codify this type of an arrangement between the Federal and State governments. It is a very narrow bill that only allows the States to manage hunting activities on wildlife refuges during times of Federal Government shutdowns.

While I don't advocate such shutdowns, I do support the creation of a contingency plan to protect our constituents from our action or, better yet, sometimes our inaction.

Additionally, under H.R. 2706, States can only step in the shoes of the Federal Government where they have entered into such agreements. This is a purely voluntary action and only permitted when certain criteria are met.

I believe that what happened in November should never happen again. People at home who have played by the rules continually should not be punished by Washington's inability to pass its annual appropriations bills.

I thank you, Mr. Chairman, for working with me to address this situation, and I certainly look forward to moving this issue forward. I am available for any questions after the statements are made, and I may apologize if I have to excuse myself early to catch a flight.

Mr. HAYWORTH. Quite understandable. We thank the gentlelady from Arkansas.

Now we would call our colleague, Mr. Hutchinson.

**STATEMENT OF HON. TIM HUTCHINSON, A U.S.
REPRESENTATIVE FROM ARKANSAS**

Mr. HUTCHINSON. Thank you, Mr. Chairman.

Let me first say I appreciate the opportunity to appear before you today in support of H.R. 2677 and H.R. 2706, and I would particularly like to thank you, Chairman Hayworth, and the other members of the committee who have worked so diligently on this legislation to move it forward quickly.

I commend Congresswoman Blanche Lincoln and sympathize with what she went through during the shutdown. Short of a constitutional amendment prohibiting shutdowns during deer hunting season, her legislation is desperately needed.

Mr. Chairman, H.R. 2677, the National Parks and Wildlife Refuge Systems Freedom Act of 1995, is what we in Arkansas would refer to as just plain common sense. As has been stated, this legis-

lation would require the Secretary of the Interior to accept the services of State employees to operate any national park or refuge within its boundaries during a Federal Government shutdown.

It is important, I think, to point out that H.R. 2677 would not force or require any State to operate a park or refuge but would simply grant the State the option of keeping its parks and refuges open during a shutdown.

This legislation is important to the State of Arkansas for a number of reasons. It would not only allow the State to maintain operations at Pea Ridge National Park in my district and the Buffalo Flat River in my district which are located in the beautiful Ozarks, but it would also permit operations to continue at Fellsenthal National Wildlife Refuge, which I think is in Congresswoman Lincoln's district, and the Hot Springs National Park in Congressman Jay Dickey's district. So it has a great impact.

The State of Arkansas has a very rich tradition in the parks and conservation business. We have almost 104,000 acres of flat park land in our State, and the Arkansas Department of Parks and Tourism oversees an additional 50,000 acres of State park land. Our parks and facilities enjoy over 7 million visitors a year. It might not be the crown jewel of the Grand Canyon, but it has a tremendous economic impact upon our State. They contribute in the neighborhood of \$220 billion to the State and local economies. Shutting down the parks during a Federal Government shutdown is one area in which a dramatic ripple effect occurs, touching the lives of many times more than the number of park employees who might be directly impacted.

Mr. Chairman, while I commend you and the other members of the Resources Committee for bringing this matter before the committee and hopefully the House, I must be honest and tell you that I think it is very unfortunate that we are forced to solve this problem legislatively.

I was disappointed to learn that the Department of the Interior did not—denied Governor Symington's offer to operate the Grand Canyon by using State National Guard personnel. It is one thing not to have the resources available to keep the parks open. If the resources are offered and refused, as was the case in Arizona, it simply defies logic, at least to me, and compounds the cost and problems associated with a shutdown.

So while I join Congresswoman Lincoln in hoping that we don't have another shutdown, in desiring, as we all do, an agreement on a real balanced budget with honest numbers will be reached very soon, a December shutdown would be averted, I think history teaches us that these kinds of shutdowns will occur in the future. They have occurred over the last decade.

There is a history of shutdowns, however brief they might be occurring. It is not, I don't think, extraordinary to think that we may have a shutdown of some length at some point in the future and that the legislation that you are considering and that you are bringing forward is wise and prudent for us to address that possibility in the future.

Your legislation will alleviate such problems in the future, and I am glad to be a cosponsor of this legislation, and look forward to its expeditious consideration by both the House and the Senate.

I thank you for the opportunity to be with you today.

Mr. HAYWORTH. And we thank both of our colleagues from Arkansas for their testimony on both pieces of legislation.

We would turn now to the panel. Does anyone have a question?

Mr. VENTO. I thank them, and I understand the concern, you know, about only about 3 or 4 percent of the people that go to the refuges are in fact going to hunt. About 96 percent are there for other reasons, for recreation, for, you know, picnicking or whatever. So you propose that they—that we stand at the entrances of these refuges and complexes to see if somebody has got a duck stamp, or what, to make this determination?

Mrs. LINCOLN. Well, in most cases there are those Federal officials out there checking duck stamps and hunting permits, quite frankly. We only have four—

Mr. VENTO. I am talking about, see, the whole problem is, you are going to have all these other folks there that aren't going to be hunting. So hunting becomes essential, and the other activity—I shouldn't say essential. That is politically incorrect. It is it exempt or not exempt.

Mrs. LINCOLN. Well, one of the biggest caveats for that is that most of the hunters pay actual dollars for their permits, and they plan for it ahead by going through, in our case, a lottery system.

Mr. VENTO. Well, I appreciate that. I mean I hunt, I am an active sportsperson in a variety of different ways, you know, and so I understand that.

The question is of course here whether or not the refuge is going to be open, closed, or how it is going to be managed, and how you are going to deal with it. I am just trying to present to you questions that are going to arise.

Mrs. LINCOLN. And that is one of the reasons that in my bill it does mandate that there be a prior agreement made between the State and the Federal—

Mr. VENTO. If we are just going to open it up and exempt the parks and say the parks are all going to be exempt from this if we don't pass the legislation.

But I mean obviously what you have here with the refuges or the parks is a differential system than you have, you know—Governor Symington was here, who is eager to take over the public domain lands. You have got my friend from Oregon who is eager to give away the national parks.

I might say, Mr. Chairman, there has been a lot of debate, you know, about where all of these notions come from with regards to the shedding or stripping park designation or turning it over to the States and others. Well, they come from right here, from the members of this committee.

Earlier in the year Chairman Young had a committee hearing on stripping park designation from Voyageurs, today we have got statements again about sending the Grand Canyon back, and so if you want to know where these ideas are coming from, they are coming right here from this committee.

Now I understand that H.R. 260 took the brunt of it, and I am a cosponsor of that bill, but I want to tell you where these notions are coming from. They are coming from the mouths of the members of the committee here. I just want to make that point, which is on

a different matter than the—but I think the—my concern here is that this isn't the regular way, Mr. Hutchinson, that we do business and have in the past. In fact, there haven't been that many days of shutdown; this is a very unusual circumstance.

You know, obviously if you want to have more of it, the way to do it—I mean there is an argument here as legislators where we are giving up our responsibility and handing it over to the executive or to the States so that they can—you know, they will be able to continue to operate. We have some concerns about that with regards to, for instance, some of the national security interests.

Mr. HUTCHINSON. If I may respond to that.

Mr. VENTO. Surely. Why don't you respond to that.

Mr. HUTCHINSON. Well, I think clearly as I listened to your questions to Governor Symington, there is a very clear, fundamental, philosophic difference in the role of the State, how we view the role of the States and the capacity of the States.

I mean I simply agree with many on the Majority side who express the concern about the arrogance that all wisdom and all ability, all expertise, flows out of Washington, D.C.

We are simply—this legislation giving the States the option. I think the State of Arkansas has the capacity to understand what they are capable of handling and what they are not and where their economic impacts will be, and if they should make an offer with proper safeguards, as is included in this legislation, then I think they ought to have the option to do that.

In fact, there have been—though those shutdowns have been short, they have been fairly frequent over the years, and that it is not unimaginable, that there will be shutdowns somewhere 10, 15 years down the road that will be of a greater length. What is, it seems to me, the prudent thing as legislators is to prepare for those kinds of eventualities.

Mr. VENTO. Well, I don't know if I could quite—you know, I obviously disagree with you because I am asking questions, if that translates into, you know, arrogance. I don't know that that does. I don't necessarily believe that.

Mr. HUTCHINSON. I did not mean to imply that necessarily to you. I think that that is a mentality in Washington, D.C.

Mr. VENTO. It is a good argument, but I think the thing is that these questions have to be answered. They are real questions. They weren't answered by Governor Symington. They are not being answered right here, right now, in terms of how you are going to manage it, when you are going to manage it, which refugees are going to be open, which are not, are all of them going to be open? are all States equally capable of doing that? I don't think so. You are going to open it just for hunters and not for others? I think those are real questions.

Mrs. LINCOLN. I would love to address that, and I would just simply say that in my bill we do address that. That would be taken up in the agreement that would be agreed to prior to any shutdown.

So I think it is important to know that there are precedents that have been set from State agreements that have been made, as well as I think it is important to note that there has been a very long-standing and traditional relationship between the local game and

fish commissions on the State level and the Federal Fish and Wildlife; they work very closely together.

Mr. VENTO. I agree. I think that is absolutely correct, Blanche. I think that much of what has passed as being Federal arrogance, really, when you begin looking it on the ground, whether it is in law enforcement—

Mrs. LINCOLN. Well, you would probably be very much in favor of my bill with those prior agreements.

Mr. VENTO. With regard to fish and game management, with regard to land management, with regard to fire fighting, all of this is intergovernmental. In fact, it is much more efficient in terms of what the American people—but I think now you are taking it to a different level. You are taking it to the absolute administration of parks and wildlife refuges. You are taking it to a different level, and I think it gets—if you have those agreements all set up ahead of time ready to go, it would be one thing.

Mrs. LINCOLN. That is what my bill addresses though. I want to make sure that is clear.

Mr. VENTO. What frustrates me, we ought to be working more on the other policies in this committee rather than preparing for a disaster which might not occur. That is very frustrating to me in terms of what this committee has done this year.

So your bill only deals with hunting, not with any other use, incidentally. It doesn't deal with the 97 or 96 percent of the uses, as I pointed out in my opening comments to you.

Thank you, Mr. Chairman.

Mr. HAYWORTH. I thank the gentleman from Minnesota, whose time has expired.

The Chair will also note, just to offer empirical data from the Congressional Research Service, lapses in appropriations to fund the Government are not uncommon. From fiscal year 1962 to fiscal year 1981, the two decades immediately preceding the Civiletti decision, the CRS found that interruptions in agency funding took place 32 times. Such lapses appear to be the rule rather than the exception.

So we offer that from Congressional Research to lend empirical evidence to the observation by our friend from Minnesota.

Mr. VENTO. Will the chairman yield? Maybe to put this in the record or share it, I mean 32 times for the agency's situation, it may be 1 appropriation, 2 hours or 1 day, or whatever it is for those.

Mr. HAYWORTH. Well, if you would like that included in the record.

Mr. VENTO. I think we ought to, for the record.

Mr. HAYWORTH. I am very happy to accommodate my friend from Minnesota as we will accommodate other Members from the Chair.

If anyone else has questions of our colleagues from Arkansas.

The gentleman from Hawaii.

Mr. ABERCROMBIE. Just an observation, Mr. Chairman, because I am sure each of us could bring something to the table with respect to someone who is inconvenienced.

We had a situation in Hawaii in which people were unable to bury veterans because of the National Cemetery being closed, so I think it ranks at least up there with whatever inconvenience the

governor of Arizona might have experienced, at least as far as those people were concern. They came probably as great a distance as most people.

My concern here is not the good faith either of the governor or of yourself, certainly, but, having served on local government bodies myself, what I can foresee in this situation is a local taxpayer being upset.

And, parenthetically, I want to say I am not trying to make your life more difficult or the thrust of your legislative offering here more complicated than it need be. But having gone through the agony of trying to get a park, a small local park, open, baseball diamond, area communities that didn't have a park before and have grown up where no one lived before, new communities, and just trying to get a ball field open, I can see, Mr. Chairman, where you would find local taxpayers saying, look, you are taking county funds, State funds, village funds, city funds, to open up a national park and expending money there when you don't take—when you are not expending those funds where they should be expended on county or city or State parks and/or other recreational facilities that we have been denied because we have been told there wasn't sufficient funding.

Now, I think that I don't—I have no idea, Mr. Chairman, what the legal ramifications of that would be, whether someone would actually go as far as to go into court and say, look, this isn't right, because it may be the decision of an executive of a State or the legislative body in Arkansas or any place else.

But I do think that if that does happen—and this is not so much a question but an observation—I hope that would be pondered before we pass legislation like this, that we think seriously about what the implications would be if local taxpayers felt that they were being shortchanged when they had made a legitimate effort on a community-wide basis to get funding and were told at that point that there maybe wasn't sufficient funding or that the economic interest was not great enough to be served.

So I think it might be more useful for us to find ways to deal with funding our Federal agencies for the purposes under law for which they were established than it would be, at least at this stage, to concentrate on finding exceptions that might end up with all taxpayers feeling themselves unfairly slighted.

Mr. HAYWORTH. I thank the gentleman from Hawaii.

We will turn to the Majority side.

Mr. HUTCHINSON. Mr. Chairman, can we respond?

Mr. HAYWORTH. Absolutely, indeed.

Mrs. LINCOLN. I would just say to the gentleman that I don't disagree. I think it is most important to look at a very fiscally responsible way to fund the Government, to do it in a way that we can balance the budget.

I myself have worked hard at putting together an alternative budget that does that with a group that I work hard with, the Coalition. We have offered a plan, and we think it is a good one. So I don't disagree with the gentleman, and I also do realize that there are places where we have got to work out in terms of liability schemes and also in terms of enforcement authority.

This is not to supersede what is most important, and that is putting the Federal Government back into action. All it simply is, in my bill, is to set parameters to put prior agreements together that, in the event that a shutdown does happen, that there is a contingency plan.

Mr. HUTCHINSON. And I would just like to say that, in my opinion, we are not compelling the State governments to do anything. We are giving them an option. If State officials would determine that they could operate or should operate a park or a refuge to keep it open, they then will be accountable, must be accountable, to their constituents, and I think they are going to make those decisions with great care, realizing that they have to face the wrath of the voters should they misuse those State funds.

Mr. HAYWORTH. Thank you very much.

The Chair did want to move this along in an expeditious fashion, and the Chair apologizes, though, and thanks the gentleman from Arkansas for his entreaty to respond to the points made by the gentleman from Hawaii.

Keeping that in mind, we will turn now to the Majority side for questions.

Mr. Cooley, do you have anything for our colleagues from Arkansas?

Mr. COOLEY. No, Mr. Chairman, I don't.

Mr. HAYWORTH. I thank the gentleman from Oregon and turn to our good friend from Puerto Rico for any comments or questions he would care to make.

Mr. ROMERO-BARCELÓ. I would just like to make a question to Mrs. Lambert.

Is there any reason why—I was not here for the whole testimony, so I must excuse myself if I am asking something that was already said.

Mrs. LINCOLN. That is quite all right.

Mr. ROMERO-BARCELÓ. But is there any reason why there is a formal requirement instead of a formal request? In other words, the proposed bill says "the Secretary shall accept" instead of saying "the Secretary is hereby authorized to accept." Is there a reason for making it a requirement?

Mrs. LINCOLN. It is voluntary. Only if there is an agreement.

The whole premise of what my bill does is, it allows the States to set up an agreement with the Federal Government. These agencies have traditionally worked hand in hand anyway, the State game and fish with the Federal Fish and Wildlife. If they choose to set up an agreement, put it into place in the event of a shutdown, they can then put it into application.

Mr. ROMERO-BARCELÓ. Let me suggest perhaps you should consider changing the wording. Instead of saying "the Secretary shall accept" as to something that "the Secretary is hereby authorized to accept" in the beginning of the bill, the first section 2(a) says "requirement." It says "the Secretary shall accept."

Mrs. LINCOLN. It basically gives, though, the Secretary the option of denying the agreement if, in fact, the State does not meet all the requirements.

One of the things that I feel is very important in my bill is that the States have to meet several requirements. The State employees

must ensure resource and visitor protection. The State employees must have adequate safety training. The State employees must have knowledge of the terrain. They must have knowledge of and adhere to Federal regulations, which I think is very important because we are dealing with Federal lands.

So basically it gives the Secretary the ability to deny the plan from the State that is presented if they so choose and don't feel like it meets the criteria.

Mr. ROMERO-BARCELÓ. Right. That is what I am suggesting, perhaps you should consider changing the wording, instead of "shall accept." "Shall accept" seems to be mandatory. When you read, "The Secretary shall accept," which is the first sentence in the proposed bill—

Mrs. LINCOLN. Right. I understand what your suggestion is. I think if you look down in—under the agreements in general, it does say that the Secretary may enter into the agreement. So in other words, it behooves the Secretary, and they shall look at the agreement that the State presents.

They still have the capability to deny the State if the agreement does not meet the Federal regulations and the criteria that they feel comfortable with in applying to Federal lands.

But I do think it is important that the Secretary at least enter into negotiations of an agreement and take a look at what the State has to propose.

Mr. ROMERO-BARCELÓ. Thank you.

Mrs. LINCOLN. But I would definitely take into consideration and love to work with all the members of the committee to improve the bill if we can.

Mr. HAYWORTH. I thank the gentleman from Puerto Rico.

Now I turn to my colleagues.

Any questions for our friends from Arkansas?

Mr. SHADEGG. Thank you, Mr. Chairman.

First I simply want to commend you for bringing this legislation forward. I do have to say that I made a comment earlier about how I will look for people who figure out how to solve a problem, not for excuses for why you can't solve it.

I think your legislation is a step in the direction of how we solve a problem. I am certainly willing to work on it. Obviously it is not perfect. No bill is perfect when it is first introduced. I am not certain any are perfect when we finish enacting them.

I simply do want to make one other comment. That is, I listened to my colleagues on the other side. I heard Mr. Vento avert to the fact that, well, you know, this legislation assumes that States could actually operate these parks, and it diminishes the expertise of the Federal Government, and there was this thread of superiority in it that, well, we have to decide whether or not the States can do it.

And now, with all due respect, the second line I hear is that, before we pass this legislation, we ought to decide whether or not State officials ought to do this and spend State dollars to do it since their constituents might get angry with them.

Well, you know, I guess I got elected too late in the cycle in American politics, but I have this view that if the governor of the State of Arizona or officials of Arkansas want to step in and solve this kind of problem, you know, they got elected by people too.

They know what those people think. They have a sense of whether or not this is a priority and whether or not it is appropriate to spend State and local dollars, and they are also, you know, adults, and they can make these decision for themselves.

The notion that we shouldn't authorize it because some State official might spend local dollars and then get his or her constituents mad at him, once again, reflects this superiority that bothers me, troubles me somewhat.

I really think we have adult officials at State and local levels. I think we ought to trust them and maybe decentralize some power in this country and recognize that the Federal Government doesn't do everything perfectly or isn't always—doesn't always have the right answers.

So I hope we will continue to look at Federal legislation with the notion that others in America have judgment and can make proper decisions for their own lives, including, gee, State and local officials are even citizens.

So with that, Mr. Chairman, I will give back the balance of my time.

Mr. HAYWORTH. I Thank the gentleman from Arizona.

If there are no further questions of our friends from Arkansas, we thank both of you for your testimony. And just in conclusion, as we bid you farewell, and you have your travel plans, we just simply ask you to visit with your fellow Arkansan at the other end of Pennsylvania Avenue in your capacity of sharing the same home State and perhaps prevail upon him to come to an expeditious conclusion of some of these questions that are still out there.

Mrs. LINCOLN. Thank you, Mr. Chairman.

Mr. HUTCHINSON. We want another shot. The Razorbacks want another shot at Arizona before the end of the season.

Mr. HAYWORTH. That may come next year in something we all know as March madness.

Thanks to both of you for trying to help us end some of the madness that has accompanied some of the recent occurrences in American history.

Mr. HAYWORTH. With that, we thank our friends from Arkansas, and we call now upon our third panel, Bruce O'Connell of the National Park Hospitality Association in Waynesville, North Carolina, and our friend George Frampton, assistant secretary of fish and wildlife and parks, U.S. Department of Interior here in Washington.

Again, gentlemen, we appreciate the fact that you are here this morning. The Chair would urge you to limit your comments to 5 minutes commensurate with the rules, and of course you have our assurance that your full testimony will be entered into the record.

With that in mind, Mr. O'Connell, please begin.

STATEMENT OF BRUCE O'CONNELL, NATIONAL PARK HOSPITALITY ASSOCIATION, WAYNESVILLE, NORTH CAROLINA

Mr. O'CONNELL. Thank you.

My name is Bruce O'Connell, and I am general manager of the Pisgah Inn, a National Park concession operation on the Blue Ridge Parkway near Waynesville, North Carolina. Our visitors services consist of a 51-room lodge, 2 restaurants, a campground,

a camp store, a gas station, a gift shop, plus we house 60 employees in the park. We are members of the National Park Hospitality Association. This is the organization that represents concessioners in the National Park System. So I am also giving this testimony on behalf of this association and its many members.

It was truly regrettable that the recent Government shutdown resulted in the closure of not only our National Parks but also privately operated concession operations. I am not appearing here to assess blame, but I do feel that the full weight of this experience may not have fully been assessed and evaluated by the Park Service nor the Congress.

Let me describe for you what occurred at the Pisgah Inn during this period of shutdown so you can better understand the problems it presented.

Like most people, we were aware that the Government was shut down. Being a concessioner in a National Park, I had a particular interest in this situation. Even though the Pisgah Inn is a privately operated facility, I knew that the Blue Ridge Parkway was federally maintained. Therefore, I was prepared for some reduction in service; i.e., ranger patrols, maintenance, and visitor interpretation. But never in my wildest dreams did I consider the possibility of the Federal Government telling me, a private businessman, "Shut your doors; Close."

It was Wednesday, early evening, when I got a call from my concession specialist who officially directed me to, quote, cease all operations effective 6 p.m. the following Friday. That was 2 days later, unquote.

In a state of shock, I asked him what would happen if I refused to close, and he replied jokingly that a Federal marshal would be sent to ensure my compliance.

As we have a great relationship and my concession specialist went on to explain for me that the safety and security on the parkway could not be maintained, thus we were being directed to cease operations.

I went on to ask him when I could expect to reopen for business. He could not give me anything definitive.

At this point, I began to meet with my department heads in an effort to formulate a plan based on several different scenarios. One scenario was that we were closed for the remainder of the season, never to reopen; another scenario is that we would be able to reopen soon for the upcoming Thanksgiving holidays; and the final scenario was that we could reopen immediately, that I would get a call and we could open right away.

Based on these possible scenarios, we then discussed the impact on the visitors and the best course of action to take to reduce the visitor inconvenience. Next, my department heads and I discussed the impact on our employees who were out of work and likely to quit their jobs if the shutdown was prolonged. Finally, we discussed operational problems such as perishable food stuffs in the restaurants, fixed costs, and other uncertainties.

We were obliged ultimately to call all incoming guests who had reservations for the upcoming weekend and offer them blanket refunds. Luckily, we were able to reach most of these guests in time for them to make other arrangements.

We had a small conference booked from the University of Tennessee as well as a small wedding group booked. To say the least, these two groups were the toughest to deal with, with the mother of the bride being extremely difficult.

Our scramble continued with offering free room and board to all of my employees who would hopefully hang in there in the hopes that the Government would eventually reopen and we could reopen soon.

Our purveyors assisted us by picking up all the perishable food and taking it back, and then our operation basically ground to a halt. Now the waiting game started.

When and if we were told we could reopen, how fast could we get back up and running? Would the employees still be here? How long would it take to rebuild all the restaurant food items? What effect would the shutdown have on our previously made Thanksgiving reservations? Would those guests have made other plans? How many turkeys would you cook if you were in the restaurant business?

I believe it was on Monday morning that I got official notice that we could reopen, but it would take us until Wednesday at 5 p.m. to gear back up just in time for the Thanksgiving holiday weekend.

Though we did reopen, it turned out that many of our reserved guests had covered themselves and made reservations elsewhere.

The financial impact was felt by Pisgah Inn as well as by all my employees who hung in there. My employees will not get any back pay nor any other form of reimbursement. Pisgah Inn will not be compensated for their loss.

How can we concessioners be expected to maintain visitors services in the parks under this type of uncertainty?

The scenario of Pisgah Inn was probably repeated many times throughout the National Park System with other concessioners. Because of the short time for preparation for this hearing, it has not been possible to compile a comprehensive description of the problems the closure presented, but many of our experiences were probably happening elsewhere with similar effects.

National Park Concessions, Incorporated, operators of the concession services at Big Bend National Park in Texas, has compiled a summary of economic effects of the closure on their operations, and it is attached as exhibit A to my statement. You will notice that the revenue losses clearly show the devastating effect of the concession operation this year. Other concession operators have suffered similar losses from the closure.

Knowing that there may be other budgetary uncertainties in the future, which unfortunately might also require a shutdown of Government services, I would suggest some guidelines which might make such experiences easier and more fairly handled.

Number one, in order to determine what visitors services must be cut off and what might be continued, there should be an evaluation of the type of services rendered, such as lodging, food, gift sales, et cetera, and its relation to the loss of Government services.

For instance, many of the concession services enjoyed by park visitors are dispensed with little or no involvement with Government personnel, but with an across-the-board shutdown all services are cut off.

Number two, if the shutdown of all or a certain part of visitors services must be done, then as much notice as possible should be given to concessioners so that adequate notice to visitors can be made who have reservations, may be involved with tour operator programs, may have scheduled family events, such as weddings, involving many others with complicated arrangements, et cetera.

Number three, the fact that we are vulnerable as concessioners to Government shutdowns gives us an unfair disadvantage with our comparables. Nervous guests tend to book elsewhere, future reservations book elsewhere, et cetera. We should expect our rates to be based on the risk factor of a Government shutdown plus the intangible cost of visitor perception that their vacation plans may be tentative and that they cannot rely on a concession being open.

What we deserve are rate approvals that factor in the possibility of a Government shutdown. These rates will compensate us for the risk and, at the same time, net the Government higher revenue from franchise fees based on sales.

Further, realizing that such shutdowns have a devastating economic effect on concessions operators and their employees, the NPS should be prepared to grant reductions in franchise fees and/or in other ways to assist in offsetting such economic losses that always accompany such experiences.

Four, the NPS and its concessions operators should mutually work toward a cooperative program which would consider a number of contingencies in the event of a Government shutdown for budgetary or even other emergency reasons. This plan could anticipate various possible scenarios or circumstances and what procedures would then be employed to deal with such happenings.

With reference to H.R. 2677 and H.R. 2706, addressing services of State employees to assist the National Park System and the Wildlife Refuge System in terms of shutdowns, it would seem that such authorizing legislation would be helpful and maybe that the State employees could be helpful in such situations, and there should be some procedure adopted to make that possible in the future.

I will be happy to answer any questions you may have and thank you for the opportunity to testify.

[The exhibits to the statement of Mr. O'Connell may be found at end of hearing.]

Mr. HAYWORTH. Mr. O'Connell, we thank you for your testimony.

The Chair would simply note and especially sympathize with the experience in the wedding.

Mr. O'CONNELL. Yes.

Mr. HAYWORTH. And the distress of the mother of the bride. I think it scarcely helped to ensure domestic tranquility, which of course is one of the missions found in the Preamble of the Constitution.

Thank you, Mr. O'Connell. We will have questions for you later.

Now we call on our friend, Mr. Frampton, for his testimony.

STATEMENT OF GEORGE T. FRAMPTON, JR., ASSISTANT SECRETARY FOR FISH AND WILDLIFE AND PARKS, U.S. DEPARTMENT OF THE INTERIOR

Mr. FRAMPTON. Thank you, Mr. Chairman.

The Park Service and the Fish and Wildlife Service are in business to keep the parks and the refuges open for the American people. We want to keep the parks and the refuges open for the American people. But when the Congress fails to appropriate any money, any funds, for the Department of the Interior, the Park Service, the Fish and Wildlife Service, to operate these systems, then we as Federal employees have absolutely no choice. We are obligated by Federal law, other laws passed by this body, to close these system or at least to bring them down to the minimal point at which personal safety and protection of properties are at least safeguarded. We don't have any choice in that matter. We follow the law.

Now, I heard Governor Symington say he felt that the closure of Grand Canyon was arbitrary. Mr. Shadegg said he thought it was the height of arrogance to close the park system.

You know, if Federal employees, doing their best to follow Federal law, including Federal laws that have criminal sanctions in them, such as those in the Antideficiency Act, if that is arbitrary or arrogant, then you gentlemen have a different idea about the role of law in society than I do.

We want to keep the parks open. There are some perfectly available straightforward strategies for preventing this from happening again, for keeping all the parks and refuges open, and the Congress can help us with those strategies, and I want to outline those in a minute.

But unfortunately, we don't think that Chairman Young's bill, H.R. 2677, is a way to go. We have fundamental objections to that bill. We believe it can seriously compromise visitors' safety as well as the management of resources for which the Department of the Interior is responsible. Each of these areas really does have unique management problems, unique problems in keeping infrastructure running, unique hazards.

The fact of the matter is that to be forced to turn over these areas to State employees who are not trained in running these areas, who are not familiar with them, poses some very serious visitors' safety problems.

The idea that a transportation unit of the National Guard and a few State policemen and some State park supervisors in Arizona could protect the hundreds of thousands of people visiting Grand Canyon every day I would suggest to you is a very hazardous assumption.

Moving beyond the serious problems of visitor safety are the issues that relate to resource management. State and Federal areas and systems and wildlife areas have different missions and a different set of problems than National Parks and National Wildlife Refuges. Protection of those resources is a national responsibility, and if you have State employees exercising State responsibilities on State standards for doing things like permitting, making compatibility decisions, making resource protection decisions, there is no way that the Secretary of Interior can exercise any responsibility or hold those people accountable for managing these resources for the American public pursuant to fundamental Federal law.

There are some other issues here that are not really addressed in the Young bill. Liability is one of them. Under the Antideficiency Act as we read it, not only can we not pay salaries or other ex-

penses to keep the parks operating but we cannot assume liability. So it is not really a matter of whether liability would be assumed by the State for State employees.

You know what happens the first time a National Guard flatbed truck rolls over some kid? Does the Federal Government get sued for that? It is the liability for Federal functions as well during the period from which there is no appropriations.

And issues like what happens with fees and who collects the fees are also not addressed in the bill. Under current Federal law, fees go—Park Service fees go in the General Treasury, and there is no legal provision for the State to assume those fees. If the State doesn't collect fees, does the Federal Government sue the State for failure to collect fees? These are some of the issues that are not addressed in Mr. Young's bill, H.R. 2677.

But we don't have to face these, Mr. Chairman, because there are perfectly available ways to keep the parks and refuges open. Strategy number one is get us a bill. We are two and a half months into a fiscal year, and Congress still has not sent an appropriations bill for the Department to the President.

If the Congress cannot get us a bill, then get us a CR, a clean CR that the President can sign and continue to provide the money to keep these units open.

If neither of those strategies is going to be adopted, then there are other strategies available to keep the parks and refuges open. The most obvious is that we are prepared to try to work out, under existing law, procedures in which States could deposit money in an account for all of the expenses of the operation of a particular park or refuge and indemnify the Federal Government for liability, and we would go ahead and continue to operate the park or refuge with those funds and that assumption of liability.

Indeed, I was a little bit surprised to hear Governor Symington say—and I wrote down what he said—that they were prepared to assume, Arizona was prepared to assume, all the costs and liabilities of running Grand Canyon National Park, because in fact when he made what he characterized as his original good faith offer, which we received in the form of a letter and press release, that he was taking a National Guard unit to Grand Canyon to take over the park, we made sure that, by the time he got there, a letter was delivered offering on behalf of the administration to work out, sit down and work out, with the State a system in which they would pay the operational costs of the park on a day-by-day basis and assume liability, indemnify the Park Service, and we would continue to operate the park.

That was two and a half weeks ago, and there were some discussions back and forth in which we offered to sit down on that basis, the basis he said this morning he was willing to accept, and there are a lot of details to try to work that out, and we have had radio silence, Mr. Chairman, from Arizona for two and a half weeks. So we have been waiting to sit down and work that out.

Now, Senator Kyl and I have seen his bill, at least in draft form. He testified that he believed that the Federal Government should be allowed to enter into agreements with—for States that are willing to assume—pay the entire tab and assume liability to continue to keep parks or refuges open. Now, that is very much along the

lines of what we offered to try to work out on Grand Canyon and have received no response to it.

I think that is—again, that is a basis on which this Congress could help us, in the event of a shutdown, keep parks and refuges open. Write legislation that would authorize the Secretary to receive money from the State for the costs on a day-to-day basis and assume liability, and we would continue to operate these units with our own well trained people, keep people safe, and avoid all the problems of the Antideficiency Act.

You know, there are several strategies, with or without legislation, that are available. You could help us to do that without requiring the Secretary to take whatever State employees or National Guard units show up in a National Park and try to protect visitors.

Let me just close by saying a word about Congresswoman Lincoln's bill, which is H.R. 2706. That is not, Mr. Chairman, very similar to Mr. Young's bill. It is much more similar to what Governor Symington described this morning that he is willing to do, if he is really willing to do it, and much more similar to what the legislation that Senator Kyle, I understand, has introduced or is about to introduce.

Her bill basically authorizes the Secretary to enter into agreements to—not to manage whole units but to manage hunts for State employees who are qualified, trained, and familiar with the area, to manage hunts at State expense in the event of a shutdown.

Now, we do that already. Fish and Wildlife Service does have about 20 percent, 15 or 20 percent, of the hunting that might have been otherwise curtailed during the shutdown several weeks ago, in fact, were hunts managed by State employees pursuant to cooperative management agreements, and we did keep those open, and the Fish and Wildlife Service would like to negotiate more of those agreements.

In fact, it is not absolutely clear that H.R. 2706 is necessary and that I think we pretty much have the authority to do that now. It is not that easy. I am not sure it would be a sensible use of resources to do that for every one of the 272 refuges on which there is some kind of hunting in the system, which is a little more than half the system.

But we would be very interested in exploring and would hope, you know, that we could support a bill that made more specific the authority of the Secretary to enter into these kinds of agreements, and we would certainly look favorably at the possibility of supporting a bill such as Senator Kyl's or bills along the line that I suggested in which you authorize the Secretary to accept money and indemnities in order to keep park and refuge units open in the case of States that want to do that for, let's say, a big park that generates significant tourism revenues.

So we are eager to try to explore those kinds of possibilities, but that is very different from being required to accept untrained people who are not knowledgeable, who may be State employees, who know nothing about parks or park management with—on a totally mandatory basis, and then impose liability on the Federal Government for actions of State employees. That is a formula in H.R. 2677 that we think takes us in the wrong direction if we really want to develop ways to keep these units open during shutdowns.

Now, I am here this morning with John Leshy, who is the Solicitor of the Department of the Interior, and he and his office have had the principal discussions with Governor Symington, and so he is here both to answer questions about some of the legal aspects and provide any additional information on that. I don't know whether he wants to supplement my comments with respect to the Grand Canyon or not.

Mr. LESHY. Mr. Chairman, with your indulgence I could take about one minute and rehash the discussions we have had with the State of Arizona.

Mr. HAYWORTH. That would be fine.

Mr. LESHY. Thank you very much.

To respond to a couple things the governor said, let me just give you a very quick chronology. On November 16th, which was the day after, I believe, the Government shutdown, we received a letter from Governor Symington.

Mr. COOLEY. The 14th.

Mr. LESHY. The letter from Governor Symington was addressed November 16th, to the Secretary, and made an offer which would have the Federal employees stay at the Grand Canyon and essentially become State employees under some sort of arrangement.

The letter didn't specify what kind of arrangement. It did not specify anything about liability, and it said that the Federal employees would become State employees, would collect money, and keep half, and give half back to the Treasury. It was a very vague letter.

The next thing, we immediately put a team of people to work to explore that, to see if there was a basis where we could go forward.

The next thing we knew, we understood the governor was heading for the Grand Canyon with some National Guard people. We accelerated our work on how we could respond to the governor's letter and on the next day handed the governor a letter, when he arrived at the Grand Canyon, from me which outlined the problems with the governor's proposal, and there were a number of them. The letter speaks for itself.

At the same time, I had a conversation with the attorney general of the State of Arizona. The attorney general of the State of Arizona had written a short opinion which pointed out some legal problems with the governor's proposal under State law. Of course the park then reopened a couple of days later.

We had some further conversations with the governor's office about proceeding on the basis of what I outlined in my letter, which Mr. Frampton has talked about as a basis we might be able to reach some sort of agreement to go forward.

The last conversation we had with the governor's office was November 22nd in which we said we need to talk about the conditions as outlined in my letter. We have had a deafening silence since that time.

We identified the basic problem as a concern about liability, and since November 22nd we have heard absolutely nothing from the governor's office until this morning, when we hear the governor basically say that he is prepared to meet and talk about the conditions that we outlined in terms of the State assuming total cost

and liability. This is absolutely the first time we have heard that. We have lost nearly three weeks in this process.

This is not something that we have ever done before, and, as my letter of November 17th pointed out, we are in some uncharted territory, and this has to be very carefully done, and we have lost an awful lot of time waiting for the Governor of Arizona to get back to us. That has really been a great concern to us.

I just wanted to set the record straight on what the discussions had been back and forth.

Thank you very much.

[The statement of Mr. Frampton may be found at end of hearing.]

Mr. HAYWORTH. Thank you, Mr. Leshy. We also thank Mr. Frampton for his testimony.

And, indeed, as we begin the questions, Mr. Leshy, on an unrelated matter, Chairman Young, who is unable to be with us today but of course whose presence we all note even when he is not physically here, wanted to know the status of an official request he gave you regarding Alaskan land conveyance. When will that information be sent to the Chairman?

Mr. LESHY. I reviewed that this morning, and we have kept the Chairman's staff informed of the progress. That letter should be to him today or Monday.

It is easy to ask questions and difficult to answer them. There are about 40 pages' worth of answers that he will get very shortly. I signed off on it last night, and now it is just really a question of putting it together and getting it to him.

Mr. HAYWORTH. Thank you very much. I know he looks forward to receiving that information and he thanks you for those answers.

Now, Mr. Frampton, I appreciate your testimony today, especially in your closing remarks about the notion of cooperation and some positive things to say about the Kyle legislation, which of course we are constrained from fully discussing here because of the rules of this committee.

I would just like to note for the record that you made what I will interpret, I believe charitably, to be a request rather than a demand or an order when you said that we in the Congress should, quote, get us a clean CR, end quote.

I would simply note for the record that it certainly is historical fact that we provided the President with a clean CR that he chose not to sign, and I know that you in fact were requesting rather than demanding or ordering the Congress of the United States to provide a clean continuing resolution.

Now, Mr. Frampton, if a Government shutdown occurred on December 16th—and we all hope that can be averted, but if it were to occur, and, again, it affected your Department, what changes will you make in your shutdown policy and procedures regarding units of the National Park System and the National Refuge System?

Mr. FRAMPTON. Mr. Chairman, I can get you detailed answers to that question.

I know that the original shutdown plan which began to be developed in July by OMB and resulted in a guidance and a departmental plan and changes in that plan, and which was the plan that

we followed the last time around, that there have been some minor changes to that based on the experience we had.

But as far as I know, the overall thrust of our shutdown would be the same, and that is that we would try to—depending on what the prospects were for how many days it would be, we would have to bring the Park Service and Fish and Wildlife Park System and Fish and Wildlife Refuges basically to the point where we were reducing employment by 80 to 90 percent, which is about what it took to get to the point where all we were doing was protecting personal safety and property.

So as far as I know, there would not be major changes in the approach that we used, but I would have to—to the extent that the plan has been tinkered with, I would want to get back to you on that.

We tried to use sort of a rule of reason with respect to visitors who were staying in campgrounds and concession facilities in the hopes that if we didn't, you know, we gave people some time, we didn't really start to try to move some of those people out for a day or two in many of the parks in the hopes that perhaps something would happen and we would get a CR.

What we have learned about whether we would apply the same guidelines or somewhat different guidelines, I would have to get back to you.

[The information was not received at time of printing.]

Mr. HAYWORTH. So for all intents and purposes, to paraphrase, aside from perhaps tinkering around the edges or nibbling around the edges, basically there would be no fundamental change in a broad philosophical sense from what transpired in November.

Mr. FRAMPTON. Not as far as I know, Mr. Chairman.

Mr. HAYWORTH. And, Mr. Frampton, were you relatively pleased with the actions in the wake of the shutdown and think that was the way to go?

Mr. FRAMPTON. I was very upset to have the parks closed. Contrary to, I think, the suggestion that you made in terms of Government funding has been interrupted in the parks, I don't believe there has ever been a time in the history of the National Park System when the parks were shut down across the system for any significant period of time.

Previous shutdowns, my understanding is, have occurred for, you know, overnight or a few hours at a time, and we sort of waited a day to start closing parks or occurred over a weekend. So I don't believe there has ever been a time when the gates were really shut across the park system for a number of days and visitors moved out, and I would very much hope that that doesn't have to happen again.

Mr. HAYWORTH. Mr. Frampton, I understand that the Atlanta regional director of the U.S. Fish and Wildlife Service negotiated agreements with the States of Arkansas and Mississippi that allowed States to keep hunting programs open on certain refuges. These States were surprised when this agreement was rejected by officials here in Washington.

I guess my final question would be: Why was this agreement, which was negotiated by your career professionals in the field, rejected by officials here in Washington, D.C.?

Mr. FRAMPTON. I am not familiar with that agreement, Mr. Chairman. You know, the guidelines and the guidance that we are operating under basically come from OMB, and it may be that that agreement, if there was something in draft that was negotiated, didn't meet Federal law or didn't meet those guidelines.

The approach that we followed with respect to keeping hunting open, hunts ongoing, was as follows: Of the 506 refuges in the system, there are 272 that are open to hunting in one way or another. Of those 272, hunting was only restricted or hunts were canceled in situations where they would have had to be managed by Federal employees who could not be employed; so there was a safety issue, or a resource issue, and that is about half. About 130 of the 505 refuges had hunting adversely affected.

In roughly the other 140 refuges in which there was some hunting, hunting was not impacted during the shutdown, either because we had preexisting agreements with States to—for State employees to manage the hunt or because the hunting really wasn't managed very much by the Federal folks anyway.

In other words, if it was a matter of somebody climbing over a fence, we didn't shut down hunts that weren't managed, we only shut down hunts that required active management and salaries to be paid. And then there were some of those refuges where there was no hunting season.

So where we had preexisting agreements with the States, those allowed us to keep the hunting open, and where the hunting really was not very insensitively managed, we left the hunting open. It was only where we could not administer the program, and that is some way or another on about 130 refuges, where hunting was adversely affected.

Mr. HAYWORTH. Mr. Frampton, I thank you for that and also acknowledge your admission at the outset that you were somewhat uncertain of the reasons but offered your conjecture.

I would ask for a written response for the reasons that this agreement was fundamentally rejected, and I am sure you will be happy to provide that to the committee.

Mr. FRAMPTON. We will, Mr. Chairman.

[The information was not received at time of printing.]

Mr. HAYWORTH. Thank you, Mr. Frampton.

Turning to our friends on the Minority side, I am glad to see my good friend from Michigan is here. But we will defer, based on a time-honored custom, to our colleague from Hawaii for his questions in his five minutes.

Mr. ABERCROMBIE. Thank you very much, Mr. Chairman.

Mr. Frampton, I presume you have been here for all of the testimony and observations and commentary to this point?

Mr. FRAMPTON. Yes, Mr. Abercrombie, I have.

Mr. ABERCROMBIE. I would just like to say for the record that Hawaii is one State that is very, very happy to have Federal employees in the Federal park system operating. As a matter of fact, the State of Hawaii considers that it is a real advantage and opportunity made available to us, both in terms of the scope of the activities and the quality of the employees that are in the National Parks in Hawaii. They are uniformly excellent.

If there is any complaint about Federal employees, park system employees, in Hawaii, I am unaware of it. On the contrary, frankly, what we receive are compliments that should be rightfully shared with the Department of Interior and the Park Service, I think we get credit.

Most people are not really aware of the difference between the State and the park system with respect to areas like Volcanoes National Park, if you had the opportunity to be there—I don't know whether any of you have had that chance—or Haleakala, even Kalaupapa, which as a matter of fact we saw as a distinct—again, a distinct advantage.

For those who are not familiar, Kalaupapa is where Father Damien carried on his work among victims of Hansen's disease. And we would simply be incapable, very frankly, as a State, with dealing with the implications of what is likely to be the impending designation of sainthood for Father Damien. He is a short step away from that. Pilgrims coming from all over the world to a remote corner of the island of Molokai, virtually inaccessible except by air and a difficult trail.

These kind of things make us recognize how important the work is that Federal employees do and Park Service employees do.

Now, I put that forward not only by way of compliment in an atmosphere which I think has not been seen that way, I also want to establish the context that I am very distressed at the rather occasionally seemingly cavalier expression of—of reflection on Federal employees, particularly in the park system, so that we are looking upon balkanizing, in effect, the park system in this country; that somehow at the village or county or State level there are excellent parks with wonderful employees, always well funded, able to carry out all of their functions with no fiscal difficulties but when we reach the Federal level suddenly there is a different kind of employee apparently. I don't accept that, and I presume that you do not as well.

In that context, I would say—and I will ask you to comment on this—I don't think you can just simply take State or local employees, thrust them into a National Park situation, and expect the same kind of service to take place.

What I mean by that is not that people would be unwilling, but if you are in Volcanoes National Park, you can't just walk in there and, simply because you have been trained in another context, take over the administration or management of that park. Neither can you do it with Haleakala. We have the most rare species in the world, silver swords, for example, in Haleakala; the city of Refuge, with its Hawaiian history and Polynesian history there.

Would you agree that National Parks do not necessarily lend themselves to interchangeable personnel management and administration on the spur of the moment?

Mr. FRAMPTON. I would agree. That was the point. You made the point much better than I did, that I was trying to make earlier, that National Parks work well because you have dedicated people with decades of training and familiarity not only with visitor services and safety, protection of health and safety, but with the infrastructure and the management of a park; the radio systems, the water treatment systems.

Mr. ABERCROMBIE. If you are taking a park—I don't want to take all the time. In other words, you agree with my observation, I take it, in general?

Mr. FRAMPTON. I do.

Mr. ABERCROMBIE. All right. In fact, to give as an example, Volcanoes National Park, I would hate to be accepting guidance from somebody as to where it was safe to walk in Volcanoes National Park from somebody who was brought in for the day from the National Guard. That is not what the National Guard is trained for in Hawaii, at least as far as I know. I hope they are not. I am on the National Security Committee, and I would hope that their training takes them into a little bit different area. Otherwise, we may be wasting our money at this end.

May I then take it from your comments and from Mr. Leshy's comments that, rather than proceeding with lengthy legislative activity, am I correct in my conclusion that you believe you have sufficient executive authority right now to be able to conduct at least a dialog at this stage as to whether or not the park system can be operated under duress—financial, governmental, administrative or otherwise—and that if you would like to explore that opportunity before we move to the legislative level?

Mr. FRAMPTON. That is correct.

As Mr. Leshy said, we have never done this before, and there are certainly a lot of details and issues. But we believe that we probably would be able to enter into an arrangement, without legislation—we would hope to be able to enter into a relationship with the State in which we estimated the total daily costs of running even a big park, if the State deposited that—those funds in advance for several days in the account, and work out the liability issues, and go forward to continue to keep the park open.

We are optimistic that under that—without any legislation, that we could find a way to deal with the problems in the Antideficiency Act and other legal problems to do that.

Mr. ABERCROMBIE. Thank you.

Could you grant me one more minute, Mr. Chairman, so Mr. Leshy could comment? I think he does want to. I realize I am at the end of my time.

Mr. HAYWORTH. The Chair would be happy to agree to one more minute.

Mr. ABERCROMBIE. Thank you.

Could you do it in 30 seconds so I can conclude, Mr. Leshy?

Mr. LESHY. Sure. Nobody has challenged the limitations that we see. The State of Arizona has not challenged the problems that we have identified with moving forward.

I would point out the reason that we think we can do something like this is that the Park Service is unlike almost every other Federal agency in that it has the authority to accept cash gifts. Most agencies do not. That is the lever here we are trying to pull. This is high political drama, but there is a very simple principle at the bottom of it. Congress has made it a crime for a Federal employee to spend money or incur any obligation where there is not an appropriation to cover it, and that is the problem we are trying to deal with through this sort of cash contribution.

Mr. ABERCROMBIE. Keeping that in mind, and in conclusion, Mr. Chairman, I conclude from the conversation that we have had so far today that the Department of the Interior, through its Park Service, is prepared, without having to go to legislative—the legislative area, it seems to me they are prepared to negotiate an agreement that might be satisfactory, would meet Mr. O'Connell's very real difficulties, and others.

And I can assure you, Mr. Chairman, that the State of Hawaii takes no back seat to anyone in terms of the recognition of how important tourism is. Our economy is utterly, totally, completely dependent upon it, and I think that anything that can be done on the part of Mr. Frampton and his associates to conclude this, short of the legislative grind, would be most welcome.

Mr. HAYWORTH. The time for the gentleman from Hawaii has expired.

We thank the gentleman for his point of view on tourism in his home State, and we should also note for the record that the proposed legislation does not force States into the action, it simply offers an option to the several States.

With that in mind, we turn to the Majority side, and the gentleman from Oregon is recognized for five minutes.

Mr. COOLEY. Mr. Frampton, I wish we had done this under oath; I really do. It seems like we are getting on the same trail that we did when we had your testimony on the Endangered Species Act.

Are you familiar with the Volunteers and Park Guideline, one of your own publications?

Mr. FRAMPTON. I am not intimately familiar with it, no.

Mr. COOLEY. That's interesting. It has a section which says, "What can volunteers do? Volunteers can be utilized in any and all parts of the park management system. All levels and types of skills can be utilized, and almost any type of work can be performed as long as the work that would not otherwise get done during a particular fiscal year because of funding and personnel limitations."

Would you please define to me what a ranger is, for the record?

Mr. FRAMPTON. Well, a ranger is a series of job classifications within the National Park Service.

Mr. COOLEY. So when you say a man is a chief ranger, what do you mean?

Mr. FRAMPTON. Well, in a park, the chief ranger is the supervisor of a portion of the park employees, other rangers in the park. Rangers provide a variety of services, including visitor protection, interpretation, and other management functions. In a given large western park, for example, there could be a large division of rangers, a separate maintenance division, a natural resource management division, and an administration division.

Mr. COOLEY. And they all have chief rangers?

Mr. FRAMPTON. No. The chief ranger is the person who is the head of the ranger division within the park. The maintenance people, the natural resource management people, in most parks would report through a slightly different reporting chain ultimately to the superintendent.

Mr. COOLEY. OK. The shutdown occurred on the 14th, and it ran through the 18th. Agreed?

Mr. FRAMPTON. That sounds right to me. I am not sure those are the correct dates.

Mr. COOLEY. You don't know when the shutdown was? You are the deputy director of the Department of Interior, and you don't know when the shutdown was? Come on.

Mr. FRAMPTON. I will take your word for it. I don't remember the exact days.

Mr. COOLEY. OK. Congressional staff called the Park Service and talked to the chief rangers of each one of these parks. These staffers asked about the staffing level during the government shutdown.

We found that there were 134 operating rangers on duty during the shutdown compared to 138 the day before the shutdown.

It is surprising to me that we didn't cut back on our personnel.

Rocky Mountain: On the 13th we had 6 rangers, and on the 18th we had 6 rangers. This was during the shutdown period. Chat-tahoochee River: We had 5 on the 13th and 6 on the 18th, during the shutdown period. The Golden Gate: The 13th, we had 16 rangers and 54 park police. On the 18th, we had 13 rangers and 41 park police. Death Valley: We had 12 on the 13th and 13 on the 18th. One more. Yosemite: We had 17 on the 13th and 16 on the 18th, one less.

Grand Canyon: We had 12 on—now, this was on the South District. We had 12 on the 13th and 15 on the 18th. Yet we couldn't let anybody in, but we had more rangers.

Hawaii Volcanic: We had 3 on the 13th, but we dropped to 2 on the 18th. Blue Ridge Parkway: We had 21 on the 13th and 20 on the 18th. Everglades: We had 13 on the 18th—I mean 21 on the 13th and 18 on the 16th. And Cape Cod National Seashore: We had 9 on the 13th and 8 on the 18th. And Indiana Dunes National Lakeshore: We had 3 on the 13th and 3 on the 18th.

Mr. FRAMPTON. Do you want me to explain why that is?

Mr. COOLEY. No. I just want to point out to you that—

Mr. FRAMPTON. I certainly hope we had more rangers than—

Mr. COOLEY. We have almost more rangers in half of the parks—

Mr. FRAMPTON. That is correct.

Mr. COOLEY [continuing]. after the shutdown has occurred.

Mr. FRAMPTON. That is correct.

Mr. COOLEY. We couldn't pay anybody, we couldn't let anybody in, but we had more rangers there.

Mr. FRAMPTON. No, that is inaccurate that we couldn't pay anybody.

Mr. COOLEY. No, I said you didn't let anybody in. You shut the parks down.

Mr. FRAMPTON. Let me explain why I hope your numbers are correct.

Mr. COOLEY. My numbers are correct. We can have all of the chief rangers contacted to verify their accuracy.

Mr. FRAMPTON. Of the total—

Mr. COOLEY. This is necessary, to—

Mr. ABERCROMBIE. Point of order, Mr. Chairman. Point of order. I don't think it is necessary to imply to a witness—twice I have heard so far—imply that they are subject to perjury charges in just

answering a question. I think we can assume good faith answers here.

Mr. HAYWORTH. I thank the gentleman from Hawaii for his point.

The time of the gentleman from Oregon has expired.

Mr. FRAMPTON. Mr. Chairman, could I respond to that?

Mr. HAYWORTH. Certainly.

Mr. FRAMPTON. It seems to have been raised perhaps that we didn't really close the park system. Overall, of the 19,000 employees in the park system, about 3,200 were considered to be employees who needed to stay on the job to exercise shutdown functions, and that means basically the protection of personal safety and property; 3,200 out of 19,000.

Of those 3,200, about 700 were park police, as far as I know, all of whom, or almost all of whom, continued to work, and many of the rest were rangers, because it is the ranger corps in the Park Service that almost—it is a requirement for a ranger to have law enforcement training and public safety training. They go to the Federal Law Enforcement Training Institute, along with the FBI and the Secret Service people.

So naturally, if you are going to try to reduce your work force to a skeleton staff, with the goal of protecting personal safety and property, what you are going to do is put—keep on the job every single person in the organization with Federal law enforcement training.

So I am sure that not only was everybody who had law enforcement training who was there the day before asked to continue on duty, but people who may have been on vacation or people who may have been on leave the day before were asked to come back in order to fulfill shutdown functions.

So I would certainly hope that the Park Service did its best to make sure that the skeleton staff included everyone within the organization who was well trained and had experience in law enforcement, emergency medical training, and property protection.

Mr. COOLEY. You actually increased people in some places. If you have no visitors, you have no obligations or liabilities, with no—

Mr. HAYWORTH. With all due respect—

Mr. COOLEY. And you add people to it. I don't see any justification for that. But that is a matter of management.

Mr. FRAMPTON. The first two days, we had tens of thousands of people in the park.

Mr. HAYWORTH. The time of the gentleman from Oregon has expired. We thank the gentleman testifying for his response.

Now we will turn to our friend from Michigan for his five minutes.

Mr. KILDEE. Thank you, Mr. Chairman.

I apologize for being late, but this is a Catholic holy day. Having been to church, I am in a very gentle, kindly, charitable mood this morning toward everyone on the committee and those testifying.

I have great respect for Mr. Frampton, and to imply that because you might want to check on this, the 14th or the 18th or the 19th is something neither incompetent nor being cagy, as a matter of fact, I think they went back to work on the 20th. I have great re-

spect for you and those whom you direct, Mr. Frampton. I have great respect for those who serve in the Park Service in Michigan.

In Michigan, the Park Service employees are not only respected, they are revered, and I can't quite understand some of the strong feelings expressed here. I know we want to seek the truth, but I have always found you to be one who is very cooperative and candid with this committee, and I have always appreciated that.

In the Grand Canyon there are 380 employees, 88 emergency employees.

Have a good day, Mr. Cooley.

Mr. COOLEY. You too.

Mr. KILDEE. God bless you.

We have 88 emergency employees, law enforcement employees, and those who are responsible for protection of the resources and facilities, and I can understand there can be—some were on leave—I can understand the situation there very well.

I think the Park Service did very well when Congress did not complete its responsibility. I think we put a great burden on all the agencies of government. I think that the agencies of government should be commended for responding as well as they did. It was us who didn't do our duty, and I appreciate you not mentioning that. I can mention that, Mr. Frampton.

But I just want to say that I respect those whom you supervise. I think they do a great job, and I think they did a very fine job under circumstances created by the Congress of the United States.

Mr. HAYWORTH. I thank my Michigan friend for his words.

Any response that the gentlemen here would care to give?

Mr. FRAMPTON. No.

Mr. HAYWORTH. OK. Thank you. And in that spirit of charity and accuracy, I would simply point out to my friend from Michigan that during his—perhaps before he arrived there was a clean continuing resolution offered to the other end of Pennsylvania that was turned down. So perhaps we have a difference of opinion on where the responsibility may lie.

With that taken into account, I would turn to my colleague from Arizona for his allotted five minutes.

Mr. SHADEGG. Thank you, Mr. Chairman.

In that spirit of charity, let me just try to set the record straight.

Mr. Frampton, you quoted that I had said that it was arrogant to shut the park, and that is not what I said. What I said is that it is arrogant to presume that you must have a Federal bureaucrat standing by your side in order to enjoy the park, and there is a significant difference.

I would not and did not insinuate that Federal employees ought not to abide by the law. Indeed, they should. I am simply saying that we ought to, I think, create a structure which clearly we are in agreement on, where, if the State or somebody other than the Federal Government wants to step in and allow people to enjoy the park, we ought to try to do that.

Mr. FRAMPTON. I apologize if I misunderstood you.

Mr. SHADEGG. Sure.

I do also applaud you for your clear supportive remarks regarding the bill that Senator Kyl, the Chairman, myself, and other members of the Arizona delegation have all introduced or cospon-

sored, and I assume from your remarks and from what I heard Mr. Leshy say, that the essence of the conversation which Senator Kyl has related to the Arizona delegation and to Governor Symington, which is that if the bill does provide that the State would pay the entire tab and assume all liability, those are the terms on which we could in fact legislate and solve this kind of problem. Is that correct?

Mr. FRAMPTON. I was referring to his description of the bill. My recollection of seeing a draft is that it offered a choice or an alternative of payment or accepting State employees, that the problem with using State employees poses many problems that receiving a donation of money does not.

Mr. SHADEGG. I think also—my time is limited.

Mr. FRAMPTON. My recollection is that the draft of the bill at least, or the final version of Senator Kyl's bill that I saw, provided that the State would assume liability for the actions of State employees, or would indemnify the Federal Government for the actions of State employees. What we have—that may or may not—

Mr. SHADEGG. Let me clarify that point if I might, and I don't want to cut you off, except my time is limited, and the Chairman is going to cut me off, and we all have to get on airplanes, or some of us do.

We did chat with Senator Kyl on that very point this morning and recognized, well, there are two issues of liability. There could be liability committed by a State employee who, while operating the park, ran over somebody. There could also be an issue of an existing negligent condition that the Federal Government had left. And how do we deal with those two? I think clearly we have to address both of those.

Mr. LESHY, I think given Mr. Frampton's answer, maybe I need to ask you directly. Senator Kyl has told us that he had a conversation with you over the outlines of this bill. Obviously you did not have text in front of you, although maybe he did bring you the bill; I am not sure.

But the essence of what he related to us was that if the statute provided that the State would pay the entire tab—and maybe that does mean Federal employees; I am not certain that I care—and the State assumed all liability, that there were—what he related to us was, no show stoppers; that is, there is no conceptual reason why such legislation couldn't work. Is that correct?

Mr. LESHY. That is basically what I said, although let me make a couple of cautions. Number one, I didn't have the text of the bill in front of me. He later shared a draft of the bill. I understand the bill, as introduced, is actually changed from the draft, and I haven't had an opportunity to study it.

Of course, that bill, let me remind you, is not before this committee, and we can't speak to the administration position on the bill.

Mr. SHADEGG. I am not sure it will be before the Congress.

Mr. LESHY. Third, I would note, just in passing, that the Attorney General of Arizona has, in commenting on the original Federal Government proposal, said that the liability issue was a significant one and recommended—and I quote—that “the State seek indemnification from the United States for any claims or damages that might accrue to Arizona as a result of the arrangement.”

So at least the governor's chief lawyer is telling him that liability ought to shift to the United States, and I am a little surprised that the governor this morning said that he was willing to assume liability.

Mr. SHADEGG. Liability is a touchy issue. As a matter of fact, I discussed that with the Arizona delegation in my remarks this morning, saying liability questions are always difficult. I was the one who raised the issue of, well, clearly the State can assume liability for its own employees. Is it also going to assume liability for Federal employees or for acts of negligence by the Federal Government? So we are indeed in unchartered territory. I think we are trying to chart it.

There is a very important point I want to bring out here, and that is, Mr. O'Connell, have your concessions ever been shut down in the past as a rule?

Mr. O'CONNELL. Never due to a Government shutdown. We have been shut down due to hurricanes and other bad weather.

Mr. SHADEGG. As a matter of fact, if I told you that in the 32 times that the Federal Government has shut down in the last two decades, that the National Park Service had never shut down a private concessionaire, would you have any reason to dispute that?

Mr. O'CONNELL. No.

Mr. SHADEGG. Would you, Mr. Frampton?

Mr. FRAMPTON. No, except that I don't think the Park Service has been shut down in the last 20 years.

Mr. SHADEGG. Well, the Federal Government has had, in the last two decades, 32 shutdowns.

Mr. FRAMPTON. But the Park Service has always managed to keep most of the parks open.

Mr. SHADEGG. I understand your explanation.

As I understand your explanation of that point, it is that the Park Service, because those shutdowns have been more brief than this one, 2 days, let's say, the Park Service has essentially fudged that issue. And I guess my question is: How is it that you fudged it in the past when it was 2 days and you couldn't fudge it now because it is 3 days?

I mean, where—and maybe I ought to ask, and I only want to make a point here—where in the Antideficiency Act does it say that you can fudge for 2 days but you can't fudge for 3 or 4?

Mr. FRAMPTON. Well, I think my understanding of the way the administration read the Antideficiency Act was that, you know, we were entitled to engage in an orderly shutdown. That is the reason, for example, why people came to work on a morning for which there was no appropriation to get their orders to shut down rather than simply walk out, and, in effect, the Park Service made a decision that the orderly shutdown of concession operations might take a day or two, that you can't rouse everybody up from midnight from hotels in the middle of nowhere and tell them to get on the road.

So this was part of our interpretation of what an orderly shutdown amounted to. But I don't think you can have a 5 or 6-day orderly shutdown.

Mr. SHADEGG. In Arizona we have had—because we are constitutionally mandated to have a balanced budget, we have had shut-

downs, and what the governor, this governor, has done in Arizona is to anticipate those shutdowns because you have knowledge of them in advance—and Mr. Leshy has been in Arizona when this has occurred—and prepare the Government and begin phasing of the shutdown so that you don't continue to operate past the budgetary authority you have.

I want to turn to a different point. Mr. O'Connell's business is a private business. It occurs to me here that I am a little confused about what rules we apply to private businesses. There is an Attorney General's opinion, which I am looking at here, which goes at this issue, and it specifically says that, with respect to short-term shutdowns, a short-term lapse in appropriations, the practice of past administrations has been to assume the continued operation of the private economy.

They say, for example, "We assume that private airlines are going to continue to fly. Therefore, air traffic controllers are essential, and therefore we keep them at work."

And the opinion goes on to say, "we"—they give another example of meat inspectors. They say, "Well, we assume meat packing plants are going to continue to operate. They are part of the private economy. Therefore, we must keep Government employees who are meat inspectors at those plants."

I guess my question is—and it is a question which has some sympathy with Mr. O'Connell—why is it that the Government assumes that the private economy within the park, i.e., a concessionaire, is going to close and, therefore, it withdrew park employees, versus taking the opposite assumption?

I mean it seems to me, why wasn't it exactly the same as the other examples here? And that is, well, we are going to assume that a private concessionaire such as Mr. O'Connell is going to continue to operate, like the private airline industry continued to operate, like the private meat packing industry continued to operate, and, therefore, at least those employees of the Park Service which are essential within the park to enable that private economy to continue—and I am quoting directly out of this opinion—why was the opposite assumption made in this instance?

Mr. FRAMPTON. Well, I am not familiar with the opinion, but I assume what it addresses is the basic assumptions you have to make to determine what services the Government is going to provide to protect health and safety. I mean, you—it is—it may be necessary to—you know, if you have a Government shutdown and the Government withdraws air traffic controllers or starts letting contaminated meat go on the market, that is arguably, I guess, a different business than whether the Government is obligated to continue to run all of its operations for the benefit of private businesses.

Mr. SHADEGG. Yes, that might be a valid point. The opinion—and I will refer to Mr. Leshy and I guess ask him or you to give me a written response, since we are probably going to run out of time.

It is an opinion dated August 16, 1995. It is a memorandum from the Department of Justice for Alice Rivlin, director of the Office of Management and Budget. It was written by Mr. Walter—from Walter Dellinger, assistant attorney general.

And I guess my only point on that last issue is, it says—it says nothing about safety. It makes a reference to air traffic controllers, meat inspectors, and then says “other similarly situated personnel.” And I guess Mr. O’Connell would say—and it specifically uses the words, “the practice has been to assume that the continued operation of the private economy”.

Mr. O’Connell is the private economy. If we assumed his continued operation and ran it parallel to these other instances—and it does say “other similarly situated personnel”—it seems to me there is an argument that the Park Service had to keep personnel there to allow him to continue the operation of the private economy that he was running.

With that, I will yield back the balance of my time, Mr. Chairman.

Mr. HAYWORTH. I thank the gentleman from Arizona.

Mr. Leshy, do you have any comments?

Mr. LESHY. We will be happy to give you a written response on that point.

I just would briefly say that I think the difference here is, you know, if it were a Federally-owned meat packing plant, it would shut down. The Federal Government provides ancillary services that makes private meatpacking go.

On the question of the parks, it is really the flip side of that. That is, the concessionaires provide ancillary services that enable the people to experience the parks. Because of the shutdown, the people could not experience the parks. So I think that is the distinction, but I would be glad to elaborate on it in writing.

[The information was not received at time of printing.]

Mr. SHADEGG. Well, it is not set forth in the opinion, and I don’t think—I mean you can make the argument that the Federal Government does control and operate the air traffic control towers, and so I am not certain the point holds, and I am certain the park concessionaires would like an explanation.

Mr. HAYWORTH. I thank the gentleman from Arizona for his time.

Moving along, let me turn then to our friend, Mr. O’Connell, who is here and quite patiently listened to the exchange.

What about this situation for you in a private business setting? What is your evaluation of the course of action that should be followed?

Mr. O’CONNELL. Well, I understand the issue of safety and security in the park, but the reality of the situation is that I am a private businessman trying to make a living. I have 100 employees working for me, trying to make a living. We are just trying to every day make ends meet. All of a sudden, the Government shuts down, and 3 days later I am asked for an explanation and I am told safety and security. It may or may not make a lot of sense, depending on the parks.

Parks are different. Each park needs to be looked at individually, I would say. Certainly, in my situation there is concurrent jurisdiction with local law enforcements. So there was no loss of law enforcement coverage in the park.

Also, given the nature of the park that I operate in, there was no reason why we needed to be closed at all, flat out.

Now, granted, there are some parks this may or may not hold true, but certainly it is—a blanket shutdown was not the proper course of action.

Every park is different. The Blue Ridge Parkway is different from Yosemite, different from Big Bend, different from Yellowstone. The Statue of Liberty is different from Acadia can't. Every park is different, and they require different services to maintain safety and security, and my stand is that they should be looked at individually and different courses of action should be taken as appropriate.

Mr. HAYWORTH. Well, let's pursue that with reference to the business which you operate. You mentioned earlier, and we spoke parenthetically, about the dilemma of the wedding, which gave us all a chuckle in retrospect but certainly wasn't funny for the folks involved in it. You also talked about the challenges of Thanksgiving Day, and again there is a tendency to kind of get tongue in cheek about this, although I am certain that it had business consequences for you. Let's pursue the business consequences.

If the Government shuts down, which of your services would be directly and, I dare say, adversely impacted by that decision?

Mr. O'CONNELL. Well, strictly speaking, when the Government shuts down, it has little or no effect on my operation as far as Government employees are concerned.

Granted, in theory, there would be no rangers patrolling the parkway. All right. I very seldom see rangers except when there is an accident, and in that case, as I said, there is concurrent jurisdiction in our area, which means we would have the local county sheriffs or the other law enforcement agencies.

Visitor interpretation: Due to budget cutbacks, there is very little visitor interpretation left anyway, so it would be hardly missed.

Other administrative functions that the Blue Ridge Parkway provides: For example, the superintendent's office, the concession specialist, all of the secretaries; if they are sent home, it really doesn't affect my business in the least, certainly not for—in the short-term it wouldn't, certainly the Government would be expected to reopen within a week, I would hope.

And I can't see any effect on me, and why I couldn't have been allowed to operate for a week makes no sense. There would have been no adverse effect on the visitor and certainly no risk to the environment.

We are in a partnership with the Park Service, you have to remember that. It would not behoove me to damage or in any way abuse the park environment. That is not what I am here to do. And whether there is a Federal agency here to oversee and protect the park or not, I like to look at it as, we are in a partnership, and I will bail out the Federal Government, I will bail out the Park Service. When they are forced to go home because of a budgetary shutdown or a budgetary limitation, then I will offer as a concessioner, in their stead, to watch over the park resource. I have no desire to abuse it at all.

Mr. HAYWORTH. Thank you very much, Mr. O'Connell.

Mr. Leshy, a question for you, sir. Do the States which manage hunts on National Wildlife Refuges assume all liability for the activities on those refuges?

Mr. LESHY. Mr. Chairman, I am not actually sure of the answer. To some extent, this area is covered by statute; to some extent, it is covered by individual agreements; and I just would have to look at those. I am happy to look into it and get back to you.

Mr. HAYWORTH. Well, we thank you very much for your willingness to take a look at it and to get back to us with your findings.

[The information was not received at time of printing.]

Mr. HAYWORTH. With that in mind, I again turn to my good friend from Michigan for any questions or comments he might have.

Mr. KILDEE. Thank you, Mr. Chairman. I think I better go back to church.

Mr. HAYWORTH. I think that is an observation that we all could use in these times. And thank you very much for your comments.

If there are no further questions, I want to thank the witnesses for their valuable testimony and, of course, the Members for their questions, many of whom have had to vacate the premises to catch airplanes, and my good friend from Michigan for his closing observation.

If there is no further business, the Chairman again thanks the members of the committee, and this committee stands adjourned.

[Whereupon, at 12:45 p.m., the committee was adjourned; and the following was submitted for the record:]

104TH CONGRESS
1ST SESSION

H. R. 2677

To require the Secretary of the Interior to accept from a State donations of services of State employees to perform, in a period of Government budgetary shutdown, otherwise authorized functions in any unit of the National Wildlife Refuge System or the National Park System.

IN THE HOUSE OF REPRESENTATIVES

NOVEMBER 20, 1995

Mr. YOUNG of Alaska (for himself, Mr. HANSEN, Mr. SAXTON, Mr. CALVERT, and Mr. HAYWORTH) introduced the following bill; which was referred to the Committee on Resources

A BILL

To require the Secretary of the Interior to accept from a State donations of services of State employees to perform, in a period of Government budgetary shutdown, otherwise authorized functions in any unit of the National Wildlife Refuge System or the National Park System.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “National Parks and
5 National Wildlife Refuge Systems Freedom Act of 1995”.

1 **SEC. 2. REQUIREMENT FOR SECRETARY OF THE INTERIOR**
2 **TO ACCEPT STATE DONATIONS OF STATE EM-**
3 **PLOYEE SERVICES.**

4 (a) REQUIREMENT.—The Secretary shall accept from
5 any State donations of services of qualified State employ-
6 ees to perform in a Unit, in a period of Government budg-
7 etary shutdown, functions otherwise authorized to be per-
8 formed by Department of Interior personnel.

9 (b) LIMITATIONS.—An employee of a State may per-
10 form functions under this section only within areas of a
11 Unit that are located in the State.

12 (c) EXCLUSION FROM TREATMENT AS FEDERAL EM-
13 PLOYEES.—A State employee who performs functions
14 under this section shall not be treated as a Federal em-
15 ployee for purposes of any Federal law relating to pay or
16 benefits for Federal employees.

17 (d) DEFINITIONS.—In this section—

18 (1) the term “Government budgetary shut-
19 down” means a period during which there are no
20 amounts available for the operation of the National
21 Wildlife Refuge System and the National Park Sys-
22 tem, because of—

23 (A) a failure to enact an annual appropria-
24 tions bill for the period for the Department of
25 the Interior; and

1 (B) a failure to enact a bill (or joint reso-
2 lution) continuing the availability of appropria-
3 tions for the Department of the Interior for a
4 temporary period pending the enactment of
5 such an annual appropriations bill;

6 (2) the term “Secretary” means the Secretary
7 of the Interior; and

8 (3) the term “Unit” means a unit of—

9 (A) the National Wildlife Refuge System,
10 or

11 (B) the National Park System.

○

104TH CONGRESS
1ST SESSION

H. R. 2706

To authorize the Secretary of the Interior to accept from a State donations of services of State employees to perform hunting management functions in a National Wildlife Refuge in a period of Government budgetary shutdown.

IN THE HOUSE OF REPRESENTATIVES

DECEMBER 5, 1995

Mrs. LINCOLN introduced the following bill; which was referred to the Committee on Resources

A BILL

To authorize the Secretary of the Interior to accept from a State donations of services of State employees to perform hunting management functions in a National Wildlife Refuge in a period of Government budgetary shutdown.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “National Wildlife Ref-
5 uge Management Contingency Act of 1995”.

1 **SEC. 2. AUTHORITY OF SECRETARY OF THE INTERIOR TO**
2 **ACCEPT STATE DONATIONS OF STATE EM-**
3 **PLOYEE SERVICES TO PERFORM HUNTING**
4 **MANAGEMENT FUNCTIONS.**

5 (a) IN GENERAL.—The Secretary shall accept from
6 any qualified State donations of services of State employ-
7 ees to perform in a National Wildlife Refuge, in a period
8 of Government budgetary shutdown, hunting management
9 functions otherwise authorized to be performed by Depart-
10 ment of Interior personnel.

11 (b) LIMITATIONS.—An employee of a State may per-
12 form functions under this section only—

13 (1) within areas of a National Wildlife Refuge
14 that are located in the State; and

15 (2) in accordance with an agreement entered
16 into by the Secretary and the Governor of the State
17 under subsection (c).

18 (c) AGREEMENTS.—

19 (1) IN GENERAL.—For purposes of this section,
20 the Secretary may enter into an agreement in ac-
21 cordance with this subsection with the Governor of
22 any State in which is located any part of a National
23 Wildlife Refuge.

24 (2) TERMS CONDITIONS.—An agreement under
25 this subsection shall—

1 (A) require that each individual performing
2 functions under the agreement shall have—

3 (i) provisions to ensure resource and
4 visitor protection acceptable under the
5 standards of the United States Fish and
6 Wildlife Service;

7 (ii) adequate safety training;

8 (iii) knowledge of the terrain in which
9 the individual will perform those functions;
10 and

11 (iv) knowledge of and adherence to
12 Federal regulations relating to those func-
13 tions; and

14 (B) specify other terms and conditions
15 under which a State employee may perform
16 such functions.

17 (d) EXCLUSION FROM TREATMENT AS FEDERAL EM-
18 PLOYEES.—A State employee who performs functions
19 under this section shall not be treated as a Federal em-
20 ployee for purposes of any Federal law relating to pay or
21 benefits for Federal employees.

22 (e) DEFINITIONS.—In this section—

23 (1) the term “Government budgetary shut-
24 down” means a period during which there are no

1 amounts available for the operation of the National
2 Wildlife Refuge System, because of—

3 (A) a failure to enact an annual appropria-
4 tions bill for the period for the Department of
5 the Interior; and

6 (B) a failure to enact a bill (or joint reso-
7 lution) continuing the availability of appropria-
8 tions for the Department of the Interior for a
9 temporary period pending the enactment of
10 such an annual appropriations bill;

11 (2) the term “qualified State” means a State
12 that has entered into an agreement with the Sec-
13 retary in accordance with subsection (c); and

14 (3) the term “Secretary” means the Secretary
15 of the Interior.

○

U.S. House of Representatives
Committee on Resources
Washington, DC 20515

December 7, 1995

Hon. Don Young
Chairman
Committee on Resources
1324 Longworth
By Hand

Dear Mr. Chairman:

Your staff has informed the minority that you are seeking to bring H.R. 2677, "The National Parks and National Wildlife Refuge Systems Freedom Act," to the floor next week under Suspension of the Rules. By this letter, I am informing you and the Republican leadership that it would be premature to schedule this bill -- which will be subject to a hearing only tomorrow, when the House will not even be in session -- for the floor.

All Democratic Members are aware of the significant inconveniences caused by the recent closure of many parks, refuges and other federal sites during the recent government shut-down. Many of us had sites and constituents who were affected by the closures which were occasioned by the failure of the Congress to pass the necessary appropriations bills that are required to fund these functions of government.

Hastily passing a bill like H.R. 2677, however, is an inappropriate response. Many serious questions have already been raised about this legislation concerning the financial and technical capability of states to administer federal facilities, questions of liability, impacts on the ability of states to maintain their own parks if personnel are diverted to federal sites, and many more. The need for the legislation has also been called into question since most government shut-downs have occurred for very short periods of time, generally a day or two.

Of course, when a federal shut-down occurs, far more than the parks and refuges are affected. Is it the Republican plan to permit states to take over other areas of federal responsibility as well? In addition, some have raised concerns that this legislation may be the first step in a broader plan to remove parks and other lands from federal management and turn them over to the states on a permanent basis. Indeed, some Republican members of this Committee have proposed just such a divestiture of federal assets to the states, few of which have the fiscal or personnel resources to manage these federal lands.

Page 2

Hon. Don Young
December 7, 1995
Page Two

Some Members are also expressing dismay at the suggestion that H.R. 2677 would be brought to the floor after a single perfunctory hearing, with no ability to seek additional witness comments, to develop amendments, or to participate in mark-ups at the subcommittee or even the committee level. Treating this complex subject in this fashion may be designed to suggest this is a simple matter, but it most certainly is not. Your staff is already aware of multiple legal, operational and policy concerns that have been raised by the Department of the Interior concerning this legislation.

I would hope there is no suggestion, because we are recommending the normal legislative consideration of an untested and unsupported change in federal policy, that Democratic Members are less concerned about the impacts of parks, refuge and other closures on federal employees, our constituents or other citizens, because we certainly are concerned and committed to acting to minimize the chances that such closures will occur again.

Accordingly, we will strongly object to any effort to bring H.R. 2677 to the floor under a Unanimous Consent request or a Suspension of the Rules until such time as the Committee on Resources has had an opportunity to give this proposal full legislative consideration. This legislation is not a simple proposal but rather a radical departure from federal resource management practices that could place the taxpayers and federal resources at serious risk and that, therefore, deserves full committee scrutiny.

Sincerely,


GEORGE MILLER
Senior Democratic Member

Copies: Members of the Committee on Resources
 Hon. Richard A. Gephardt
 Hon. Richard Arney

**Testimony on HR 2677 for House Resources Committee
Governor Fife Symington, Arizona
8 December 1995**

Thank you for the chance to come here today to discuss the merits of HR 2677. I've had the chance to review this bill and the bill drafted by Arizona Senators Kyl and McCain. I applaud both chambers for responding so quickly to this problem, and I am confident that we can keep the parks open in the event of a second budget impasse. Today, I'd like to outline for you the importance of Grand Canyon National Park to Arizona, recap the steps we took last month in a bid to reopen the park, and underscore some of the critical questions the legislation needs to answer.

In the wake of the federal government shutdown last month, some folks asked in jest: if the news media hadn't told you the government was closed, would you have noticed? While this question reflects a healthy indifference toward both Washington and the press, the answer unfortunately for us in Arizona was yes. The administration's decision to close Grand Canyon National Park on November 15th, two days after the general government shutdown, was a jolt to many in my state. We estimate that visitors to the Grand Canyon spend \$250 million in Arizona each year. This activity sustains communities in Northern Arizona and generates about \$12.5 million annually in sales tax revenue for the state, roughly the cost to operate the park.

Besides the economic consequences of the closure, I was disturbed by the way it hit a number of individuals. Visitors come to see the canyon from around the country and the world. We in Arizona pride ourselves on being good hosts. Thus, I really was annoyed when a couple from New Zealand who had spent \$10,000 to visit the park was turned away at the gate. It's a little arrogant I think to seal off one of the natural wonders of the world while our federal government squabbles over its continuing fiscal excess.

In response to the closure, Arizona asked the federal government to let us reopen the park using state resources. We backed up our offer by going to the park the next day with the manpower necessary to do the job. The caravan I led on November 17th included State Parks staff, employees from our Department of Public Safety, and unarmed National Guardsmen. We had come to work, not to fight.

Upon arrival, I met with Park Superintendent Rob Arnberger. He was somewhat uneasy about our campaign. However, he relaxed enough to point out to me a fact that clearly illustrates the absurdity of this episode. He mentioned that there is evidence of human habitation of the Grand Canyon that goes back 4,000 years. So while Mother Nature could not in 4 millennia keep people out of the Canyon, the

federal government managed to drive them out last month.

While we were at the park, the administration declined our offer to reopen it. They cited several concerns. I urge you today to view these as legitimate but surmountable obstacles. I think we can craft legislation to keep the parks open that addresses these issues. Please consider these points as you go into mark-up.

The first hurdle cited by the Interior Department in rejecting my offer involved the responsibility of the Secretary to operate parks in "a safe and sound manner, consistent with federal law and regulations, and to manage their resources in such a way as to preserve them for future generations." Legislation should give states an option. Let us open parks by paying the salaries and benefits of federal employees or by using state employees. I am concerned that the Department is going to urge you to bar the use of state employees by establishing arbitrary standards of experience or training. Don't buy into this Washington-knows-best mentality.

In connection with this issue, please also consider the opportunities we have to serve the public through partial reopenings of various parks. Consider, for example, the possibilities at Grand Canyon National Park. The federal government had the flexibility during the first two days of the budget deadlock to keep the park open but close the visitors' center. In the event of a second budget impasse this month, the state of Arizona might at a minimum reopen Mather Point. Please turn your attention to the map of the park we've provided. During last month's budget impasse, the federal government blocked access to the road that goes out to this overlook. Removing this roadblock and allowing visitors to enjoy perhaps the best view of the canyon, as shown in the picture before you, would not be hard. It would not entail putting the full contingent of 200 or so "non-essential" park employees back on the job. It would require only a handful of employees in relatively simple positions.

A second objection raised by the Interior Department involves the Antideficiency Act. Under this law, the federal government cannot obligate funds that have not been appropriated. On the basis of this, the Department rejected our offer to reopen the Grand Canyon National Park because we did not discuss covering the incremental costs of things such as power and water supplies arising from an expansion of park operations beyond the "essential" level. This objection highlights only a minor flaw in our original proposal, as non-salary expenses account for only about 10 percent of the park's operating budget. I propose that you consider adding these infrastructure costs to the definition of essential services, so the Interior Department can keep paying them. Alternatively, at least let states cover these costs along with salaries when making a bid to keep a park open.

The third problem the Department had with Arizona's offer concerned liability at times when a state would provide services to the federal government. I think we

can deal with this by clarifying the issue in legislation. One acceptable solution that I understand is taking shape would involve indemnification of a state for any liability to the United States arising from the actions of a state employee. In any case, I think our society is eventually going to paralyze itself with fears and threats about legal liability. When God gave us the Grand Canyon, I don't think he ever intended for the lawyers to rope it off and secret it away.

In addition to addressing the Administration's concerns, I would ask you to consider in legislation the issue of compensating states for expenses. This could be done through a fee sharing arrangement as we had proposed or through reimbursement once the federal government resumes normal operations.

Last week, at a meeting of the Western Governors' Association, we passed a resolution in support of your efforts to keep the parks open. Because the west is home to most of the key holdings of the National Park System, we need to be heard on this issue. In our view, the decision to close the parks was a good sign of the need to transfer responsibility for important matters closer to home.

I urge you to move this bill forward promptly, so we can be prepared to keep the parks open in case budget talks again deadlock. Thank you again for the opportunity to testify.

RESOLUTION RECEIVED AFTER THE DEADLINE

Western governors' Association
Proposed Resolution 95 - D

December 1, 1995
Las Vegas, Nevada

SPONSOR: Governor Symington

SUBJECT: National Parks and National Wildlife Refuge Systems Freedom Act of 1995

A. BACKGROUND

1. The federal government was shutdown during budget negotiations between the President and Congress in November 1995. The federal government faces the potential of a second budgetary shutdown later in December.
2. The budgetary shutdowns closed the National Parks and National Wildlife Refuge systems to the citizens of this country. These unnecessary closures represent a significant economic threat to the western states.
3. The State of Arizona, during the November 1995 budgetary shutdown, offered to supply temporary funds or state personnel to keep the Grand Canyon National Park open to visitors.
4. The Secretary of Interior is prohibited under current statutes from delegating or allowing the responsibilities for operating the National Park and National Wildlife Refuge systems to the states. The Secretary, further believes that if there are no lawfully appropriated funds to operate the Park and Wildlife Refuge systems, the Department of Interior is precluded under the Antideficiency Act from entering into any arrangement with a state that would have the effect of obligating funds, regardless of the conditions.
5. The National Parks and National Wildlife Refuge Systems Freedom Act of 1995 was introduced to address these issues and to require the Secretary of Interior to accept state donated services of qualified state employees during a period of government budgetary shutdown to perform authorized functions.

B. GOVERNORS' POLICY STATEMENT

1. The Western Governors believe that the closure of the National Park and National Wildlife Refuge systems is avoidable in the event of a federal government budget impasse if the Secretary of Interior has the authority to accept state donations of personnel to perform necessary functions.

2. The Western Governors support the intent and immediate passage of the National Park and Wildlife Refuge Systems Act of 1995.

C. GOVERNORS' MANAGEMENT DIRECTIVE

1. The Western Governors' Association shall convey this resolution to the President, the Secretary of Interior, and appropriate members and committees of Congress.
2. The Western Governors' Association staff will continue to monitor congressional activities in this area and report back to the Governors as necessary.

96resol/resot/parks d

STATEMENT BY
BRUCE O'CONNELL
PISGAH INN - BLUE RIDGE PARKWAY
ON BEHALF OF
NATIONAL PARK HOSPITALITY ASSOCIATION

December 8, 1995

EXHIBIT A

National Park Concessions, Inc.

GENERAL OFFICES
MAMMOTH CAVE, KENTUCKY 42259 0027
(502) 773 2191



(502) 773-2101
FAX (502) 773-2120

CALCULATED LOSS RESULTING FROM NATIONAL PARK CLOSURE

National Park Concessions, Inc. has calculated the loss of revenue directly related to the directive of the National Park Service to close Big Bend National Park, Texas.

The National Park Service closed Big Bend National Park on November 14, 1995 and mandated National Park Concessions, Inc. to close all of its operations on November 17, 1995. Copies of the two official letters November 3, 1995 and November 14, 1995 are attached. In addition thereto telephonic communications were received by National Park Concessions, Inc. management from the National Park Service.

It is calculated that National Park Concessions, Inc. suffered losses of revenue as a result of the CLOSURE in the amount of \$57,200.74 See the attached calculation sheets.

In addition to the direct loss of revenue, National Park Concession Inc. suffered additional losses. Big Bend National Park is located about 100 miles from any town and as such must house and feed its employees. It is estimated that the minimum expense involved to house and feed the staff during this period amounted to \$4,550.00.

Had we not kept our staff during this period of time we simply would have lost a large portion of those employees. Payroll cost to retain those employees is estimated at a minimum of \$22,750.00. Our utility expenses continued during the 'shut down' period, the insurance cost continued during this 'shut down' period, along with the cost of calling our guest who held reservations, letters, and other costs continued and we have not attempted to calculate all of these and other expenses at this point in time.

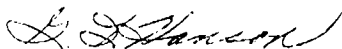
THE TOTAL ESTIMATED LOSS OF REVENUE, THE EMPLOYEE COMPENSATION PAID AND THE EXPENSE INCURRED TO HOUSE AND FEED THE STAFF IS \$84,500.74.

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The month of November is one of the heaviest visitation periods at Big Bend National Park. The National Park Service directed National Park Concessions, Inc. to force registered guest to leave our Trailer Park even though they held reservations for a longer period of time.

The National Park Service directed us to force our registered guest in the Lodge overnight accommodations to check out even though they held reservations to stay additional nights.

The Guest were very unhappy, and we have received written and telephone threats of legal action for our failure to comply with a confirmed reservation contract.



Garner B. Hanson, CHA
President & General Manager

BIG LEAF OPERATIONS
REVENUE LOSS 11-14 TO 11-21 1995

	AVERAGE REVENUE	ACTUAL REVENUE	REVENUE (LOSS)
11/14	\$11,188.87	\$ 7,808.20	\$ 3,380.67
11/15	11,188.87	4,525.32	6,663.55
11/16	11,188.87	2,136.79	9,052.08
11/17	11,188.87	994.32	10,194.55
11/18	11,188.87	513.67	10,675.20
11/19	11,188.87	371.05	10,817.82
11/20	11,188.87	5,814.50	5,374.37
11/21	11,188.87	10,149.02	1,039.85
TOTALS	\$89,510.96	\$32,310.97	\$57,200.74

15 NOVEMBER 1995

MEMORANDUM

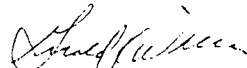
TO: RONDELL G. SANDERS
FROM: GERALD K. WILLIS

SUBJ: REMARKS MADE BY GUESTS REFERRING PARK CLOSURE

WHILE PASSING OUT COPIES OF NATIONAL PARK CONCESSIONS, INC. LETTER AND NATIONAL PARK SERVICE LETTER CONCERNING THE PARK CLOSURE I HEARD THE FOLLOWING NEGATIVE COMMENTS:

- 1.) " I'VE BEEN WAITING TO COME FOR 15 YEARS AND NOW I HAVE TO LEAVE EARLY."
- 2.) " THIS IS RIDICULOUS OUR POLITICIANS CAN'T RUN OUR GOVERNMENT."
- 3.) " WE'RE HERE FROM ENGLAND. WE DO UNDERSTAND. OUR GOVERNMENT IS EVEN WORSE."
- 4.) " I'M HIKING THE TRAILS TOMORROW. THEY CAN THROW ME OUT IF THEY CAN FIND ME."
- 5.) " ISN'T THIS SILLY? IT'S A SHAME OUR POLITICIANS CAN'T REACH AN AGREEMENT ON SOMETHING LIKE THIS."

THE NUMBER FIVE STATEMENT WAS BY FAR THE MOST COMMON. IT MAY HAVE BEEN WORDED A LITTLE DIFFERENTLY BUT IT WAS ESSENTIALLY THE SAME.


GERALD K. WILLIS

NOTES TO FILES

November 30, 1995

Manager, Ronnie Sanders, Big Bend National Park Operations of National Park Concessions, Inc. received a call at approximately 9:40 AM CST from William Connell, Attorney of the law firm of Connell and Taylor, 535 5th Avenue, New York, New York, stating he represented Andrea C. Rondolino of Italy and that National Park Concessions, Inc. had breached a contract with his client. Sanders attempted to explain the situation to Mr. Connell, but without success in satisfying Mr. Connell.

Sanders referred Attorney Connell to the President and General Manager of National Park Concessions, Inc., Garner B. Hanson at Mammoth Cave, Kentucky.

November 30, 1995

Garner B. Hanson, President and General Manager, National Park Concessions, Inc. received a call from Attorney, William Connell on the subject of National Park Concessions, Inc. failure to fulfill a reservation contract with his client Andrea C. Rondolino of Aesti, Italy. Connell wanted National Park Concessions, Inc. fax number, which he was provided. Mr. Connell received sincere apologies from Hanson for the inconvenience his client had suffered, offered Rondolino a free nights lodging at some future date, and explained that National Park Concessions, Inc. was ordered by the United States Department of the Interior, National Park Service, Big Bend National Park to close and that we had no choice in the matter. He was advised that the National Park Service Rangers were the ones who manned the entry gates to the park and refused visitors entry. Mr. Connell was advised that National Park Concessions, Inc. had immediately processed a credit to Rondolino's American Express credit card account for the advance room reservation deposit as a refund.



Garner B. Hanson

National Park Concessions, Inc.

GENERAL OFFICES
MAMMOTH CAVE, KENTUCKY 42259 0027
(502) 773 2191



(502) 773-2191
FAX (502) 773-2120
November 21, 1995

OFFICERS AND DIRECTORS

G.B. HANSON
PRESIDENT AND
GENERAL MANAGER

D.E. ATWELL
VICE PRESIDENT

JAMES W. MELBURN, JR.
VICE PRESIDENT

C.R. ANDERSON
TREASURER

W.L. GARDNER, JR.
SECRETARY

JACQUETTA J. HANSEN
ASSISTANT SECRETARY

JULIE LUGH GARDENKUCH
DIRECTOR

MAMMOTH CAVE NATIONAL PARK
KENTUCKY

• BLUE RIDGE PARKWAY
VIRGINIA/NORTH CAROLINA

• ISLE ROYALE NATIONAL PARK
MICHIGAN

• OLYMPIC NATIONAL PARK
WASHINGTON

• BIG BEND NATIONAL PARK
TEXAS

HOTELS
LODGES
COTTAGES
HOUSEKEEPING UNITS
FOOD SERVICE
GIFTS
HANDICRAFTS
PHOTO SUPPLIES
SERVICE STATION
ACCESSORIES
TRANSPORTATION
BOATRENTING
ROW BOATS
GUIDED FISHING
CAMPING SUPPLIES
TRAILER SITES
SKI RENTAL

Mr. Andres C. Rondolino
Strada della Serra 68
14010 Vaglianero d'Asti
(Asti), Italy

Dear Mr. Rondolino:

We sincerely regret that you were unable to visit with us at Chisos Mountains Lodge due to the actions of the U. S. Department of the Interior, National Park Service ordering the Park to be Closed due to Budgetary problems.

Certainly we can appreciate your disappointment in not being able to enter Big Bend National Park as scheduled.

National Park Concessions, Inc. is a private company that operates the Chisos Mountains Lodge under a long term contract with the U. S. Department of the Interior, National Park Service. We were ordered by the Government to close our operations, we had no choice in the matter.

Your advance room reservation deposit which was made by a charge to your American Express has now been credited to your account as of November 21, 1995 in the amount of \$60.42. A copy of that credit is enclosed for your information.

We sincerely apologize for the inconvenience the closure of the Park has caused you. We seriously doubt that the U.S. Department of the Interior, National Park Service, will be in a position to make any payments to anyone as result of their actions to close the Park; however, we are sending a copy of your letter to the Superintendent for his information, consideration, and further response to you.

Hopefully you will be able to plan a future visit to Big Bend and give us an opportunity to serve you at the Chisos Mountains Lodge.

Very truly yours,

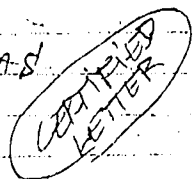
GBH:11

Garner B. Hanson, CMA
President & General Manager

cc: Superintendent, BBNP, w/c Incoming
Manager, Chisos Mountains Lodge

from MARATHON (TX) US POST Office
on NOVEMBER 17, 1995
(at 11:45 A.M.)

TO THE Manager
CHisos MOUNTAINS LODGE
BIG BEND NAT. PARK — TEXAS



Dear Sir

after our phone conversation this morning from Marathon I realized you are NOT in the position of receiving me tonight and you added that it is useless for me to leave Marathon because the road and the Park Entrance are closed —

As you know you already accepted more than one month ago my reservations (and good money) as advanced payment for two nights (namely the 17th and the 18th of November 1995 —

I am coming from ITALY for my Thanksgiving holidays and I already invested a considerable amount of money in Airline tickets, car rental, hotels, fuel, meals etc etc., consequently I will hold you and the National Park Service fully responsible for past, present and future damages due to your unavailability to respect the agreement between us.

Please let me know as soon as possible
how you intend to solve this problem.

Regards

Andrea Rondolino

ANDREA C. RONDOLINO (Mr.)
Strada della Serra 68
14010 VAGLIERANO d'ASTI
(ASTI) ITALY

phone 39.141.200333 (Home)
" 39.141.598484 (Business)
fax 39.141.598459 (")

copy to : LAW FIRM OF
WILLIAM CONNER & CO.
N YORK - N.Y



November 15, 1995

*Received 11-16-95
Delivered by Jim Northrup*

Memorandum

To: Field Directors and Closedown Coordinators

From: Deputy Director (signed John J. Reynolds)

Subject: Concession and Campsite closedown procedures

No progress has been made or is imminent that would provide us appropriations. Accordingly, now that park facilities are closed and secured and staff reduced to a minimum we will begin implementing the following additional Phase 2 closedown steps as necessary to ensure the protection of the remaining visitors:

1. Visitors in all overnight accommodations and campgrounds are to be given 48 hours, starting from 6 pm EST, Wednesday, November 15, in which to make other arrangements and leave the park. This applies to visitors in both NPS and concessioner operated facilities.

2. All concession operated visitor services and facilities are to be closed unless they are deemed essential for health or safety purposes or are needed to support ongoing essential park operations. Concession operated marinas are to be closed. Routine security must be maintained. Access to privately owned boats are permitted, but use for recreational purposes within the park boundary denied.

3. In urban areas where there is a need to continue full law enforcement coverage due to the inability to control visitor access, concession operations may be allowed to continue to operate. In these instances, there is no jeopardy to the visiting public.

4. Access to personal and commercial inholdings is permitted; however, no recreational uses outside of the inholding on park lands are to be permitted.

Concessioners must be notify of these actions immediately. Also, I want to update our count of essential employees. By COB today, provide to Bruce Shaffer via CC-Mail a park by park listing of the number of essential employees. Also include your total number of employees now on staff. Review your designation of these employees carefully. Only a very small percentage should

remain.

The situation is changing rapidly. We will notify you as circumstances dictate.



15-70000-100-100

F62 (B7BE-C)

November 14, 1995

United States Department of the Interior

NATIONAL PARK SERVICE

Big Bend National Park

Rio Grande Wild and Scenic River

P.O. Box 129

Big Bend National Park, Texas 79834-0129



Mr. Ron Sanders
Resident Manager
Chisos Mountains Lodge
Big Bend National Park, Texas 79834

Dear Mr. Sanders:

On November 3, we notified you that the Government was operating under a continuing resolution, which would expire on November 13, 1995. We also informed you that if agreement was not reached, Big Bend National Park would be closed until a budget or a continuing resolution passed or the debt ceiling was lifted to provide funding for our operation.

Unfortunately, that situation has occurred, and Big Bend National Park is now closed to the public as of 11 a.m., November 14, 1995. The two main entrances to the park (US 385 and TX 118) are closed and staffed by commissioned personnel, who will keep the visiting public from entering the park but will allow local and essential business traffic to enter.

We hope that this budget impasse will be resolved shortly, and so we do not plan to immediately disrupt overnight visitors. Our closure plan calls for the Rio Grande Village RV Campground and National Park Service campgrounds to remain open through tonight. The Chisos Mountains Lodge overnight visitors must vacate the park by the morning of November 16; the restaurant and Panther Junction service station will close down at the end of business on November 16. All other National Park Concessions, Inc., facilities will close down at the end of business on November 16.

All park backcountry roads, trails, and the river are closed to public and residents' use. The main park roads will be open to residential use. Freight and other deliveries to your business will continue. Your office operations may continue as scheduled.

We recognize the many problems that this situation is posing for you, the commercial outfitters, and park visitors. We regret that the budget impasse in Washington has brought us to this close down. If you have any questions, through this process, please contact the Incident Commander Roger Moder at (915) 477-2251.

Sincerely,

Jose A. Cisneros
Superintendent

cc: Mr. Garner B. Hanson, President and General Manager, National Park Concessions, Inc.



16-00000-1-1

United States Department of the Interior

NATIONAL PARK SERVICE

Big Bend National Park

Rio Grande Wild and Scenic River

P.O. Box 199

Big Bend National Park, Texas 79534-0129



762 (BIBZ-C)

November 3, 1995

Mr. Garner B. Hanson
President and General Manager
National Park Concessions, Inc.
Mammoth Cave National Park, Kentucky 42259-0027

Dear Mr. Hanson:

As you probably know, the Government is operating under a continuing resolution, which expires on November 13, 1995. Once again, we are waiting to see if an agreement will be reached to prevent a Government shut-down. If agreement is not reached, Big Bend National Park will be closed until a budget or a continuing resolution passes or the debt ceiling lifts to provide funding for our operation.

If an agreement is not reached, large signs will be posted at Marathon, Study Butte, and Alpine, which read "Big Bend National Park may be closed beginning November 14. Call 915-477-2251 for information." The words "may be" will be covered if the closure occurs.

The two main entrances to the park (US 385 and TX 118) will be closed and staffed by commissioned personnel, who will keep the visiting public from entering the park and allow local and essential business traffic to enter. Rangers will provide responses to emergency medical events, wildland fires, and structural fires. They will also respond to other life and safety situations that may affect park residents and will protect government and personal property and natural and cultural resources located within the park.

We do not plan to immediately disrupt overnight visitors. Overnight accommodations, the Chisos Mountains Lodge, Rio Grande Village RV Campground, and National Park Service campgrounds, will remain open initially. If the closure extends beyond one or two days, however, park visitors will have to leave.

We hope that agreement about the Department of Interior's budget will be reached and that all of the shut-down planning will be unnecessary. In the meantime, we will remain in close contact with Resident Manager Sanders to keep him informed about the on-going budget process.

Sincerely,

Jose A. Cisneros
Superintendent

cc: Mr. Ron Sanders, Resident Manager, Chisos Mountains Lodge





United States Department of the Interior

NATIONAL PARK SERVICE
Mammoth Cave National Park
Mammoth Cave, Kentucky 42259

C38

November 17, 1995

Mr. Garner Hanson
President and General Manager
National Park Concessions, Inc.
Mammoth Cave, Kentucky 42259

Dear Garner:

We are now in the third day of a partial closure of the federal government, awaiting an approved budget for the operation of the National Park Service. Accordingly, now that park facilities are closed and secured, and staff reduced to a minimum, we have been instructed to begin implementing components of Phase 11 of the Service Closedown Plan.

All concession operated visitor services and facilities are to be closed. Visitors in all overnight accommodations are to be asked to leave by the closedown time of 5:00 p.m. CST on Friday, November 17, 1995. National Park Concessions, Inc. will be permitted to maintain a minimum staff necessary to provide for security and care of it's facilities. This notice of closure was transmitted verbally to National Park Concessions, Inc. Resident Manager, Greg Davis at our noon Incident Command meeting on Thursday, November 16, 1995.

When an approved appropriations bill is signed by the President, National Park Concessions, Inc. as well as normal park operations will be permitted to reopen. However, all services within the park must remain closed until such time. The situation can change very rapidly and the above guidance may be modified.

Sincerely,

Michael R. Switzer
for Ronald R. Switzer
Superintendent

STATEMENT OF GEORGE T. FRAMPTON, ASSISTANT SECRETARY FOR FISH AND WILDLIFE AND PARKS, DEPARTMENT OF THE INTERIOR BEFORE THE COMMITTEE ON RESOURCES, CONCERNING H.R. 2677, A BILL TO REQUIRE THE SECRETARY OF THE INTERIOR TO ACCEPT FROM A STATE DONATIONS OF SERVICES OF STATE EMPLOYEES TO PERFORM, IN A PERIOD OF GOVERNMENT BUDGETARY SHUTDOWN, OTHERWISE AUTHORIZED FUNCTIONS IN ANY UNIT OF THE NATIONAL WILDLIFE REFUGE SYSTEM OR THE NATIONAL PARK SYSTEM, AND H.R. 2706 TO AUTHORIZE THE SECRETARY OF THE INTERIOR TO ACCEPT FROM A STATE DONATIONS OF SERVICES TO PERFORM HUNTING MANAGEMENT FUNCTIONS IN A NATIONAL WILDLIFE REFUGE DURING A GOVERNMENT BUDGETARY SHUTDOWN.

December 8, 1995

Mr. Chairman, thank you for the opportunity to present the Department of the Interior's views on H.R. 2677 and H.R. 2706. H.R. 2677 requires the Secretary of the Interior to accept from states donations of services of qualified state employees during a government budgetary shutdown. Under the legislation, state employees would assume the duties otherwise performed by federal employees in any unit of the National Wildlife Refuge System or the National Park System. H.R. 2677 also prohibits state employees from being treated as federal employees for purposes relating to pay or benefits and it limits state employees to performing authorized functions only at national parks or refuges within the state. H.R. 2706 authorizes the Secretary of Interior to accept services of state employees to manage hunting in National Wildlife Refuges. The Department of the Interior opposes H.R. 2677. We have concerns with H. R. 2706, but we are hopeful that, with the appropriate amendments, we can support H.R. 2706.

It should first be noted that there would be no need for such legislation in this or any year if Congress would enact an Interior Appropriations Act acceptable to the President or a continuing resolution

until such time as an acceptable appropriations bill is enacted. We realize that the recent federal government shutdown caused some hardship around the country, but such events are infrequent and temporary.

Our objections to H.R. 2677 are fundamental. We oppose this bill also because it would seriously compromise our management of resources for which the Department is responsible. In many cases, state parks and wildlife management areas have different missions than do National Parks and National Wildlife Refuges. Preservation and management of the National Park System and National Wildlife Refuges are *national* responsibilities. These areas have been designated by Congress and are held and operated by the Department on behalf of all Americans. Federal law directs the National Park Service and the Fish and Wildlife Service to preserve and protect these national resources for future generations. Each park unit and each refuge has unique management needs.

The Secretary has statutory responsibility for ensuring parks and refuges are operated in a safe manner consistent with all applicable federal laws and regulations. Since the bill provides no restrictions on the kinds of functions that state personnel would perform, there is a possibility that compatibility determinations on new public uses and other decisions requiring highly specialized training would be made during a shutdown by state employees who are not familiar with the requirements for such decisions. The Secretary, who is legally responsible for such decision-making, would have no means to exercise control or oversight over such actions of the State employees, which might involve the use or disposal of Federal wildlife refuge resources. Many refuges and parks have no long-term management plans that are readily available to provide guidance for management

decisions. The public and the resources could be put at risk if management responsibilities are suddenly turned over to state employees who may be unfamiliar with federal standards or regulations, with specific infrastructure needs or weaknesses, or with the specific management challenges of a refuge or park. The implications from a resource management and liability standpoint are immense.

Another of our main concerns is the cost of implementing H.R. 2677. In these times of increasing fiscal constraint it seems imprudent to spend State and Federal taxpayer dollars training State employees to manage National Parks and Wildlife Refuges in case of a government shutdown and verifying state employees' qualifications to perform necessary duties. It would be unwise to use scarce financial resources to train possibly thousands of state employees who would only use their training during such a rare event as a government shutdown. In fact, because the Department has no lawfully appropriated funds to operate parks and refuges during a shutdown, any obligation of funds for facility operations beyond emergency costs directly contradicts the Antideficiency Act.

We are also concerned that H.R. 2677 does not address important liability issues. For instance, it appears that under this legislation, the federal government could be liable for tort claims if visitors in parks and refuges are injured during a federal government shutdown, even if the cause of injury were attributable to conduct of state employees. The same problems exist with regard to claims by concessionaires who feel their contracts are violated.

Moreover, although the bill says state employees are not to be treated as federal employees for the purposes of pay or benefits, it does not specify who is liable if state employees are injured or killed while working in national parks and refuges or which entity is responsible for providing workmen's

compensation. Of course risks will be higher with State employees who are not familiar with a particular unit. The bill also runs counter to long-standing provisions in the Antideficiency Act to protect the interests of federal employees by generally restricting the acceptability of volunteer services to fulfill the primary duties of federal employees.

In addition, H.R. 2677 is silent on numerous other management issues that could cause serious problems in the day-to-day operation of parks and refuges. The bill gives no indication how fees are to be collected or whether the revenue generated from fees is the responsibility of the federal government or the state government. Under existing law, these fees could not be made available to the states, but must be deposited in the Treasury. Nor does the bill provide any guidance for cases in which park units or refuges are in two or more states, such as Yellowstone National Park and Upper Mississippi National Wildlife and Fish Refuge. It does, however, specify that, "An employee of a State may perform functions under this section only within areas of a Unit that are located in the State." Under this provision, we can foresee many management and visitor safety problems in federal areas that span the boundaries of two or more states.

It might be possible to continue operation of specific parks and refuges with legislation to authorize the National Park Service and the Fish and Wildlife Service to accept and expend funds from states to continue operating federal facilities with trained and experienced federal employees during a budgetary shutdown. There are a number of issues to take into account, but we are willing to work with Congress to explore this possibility. Such legislation would have to cover all operational costs associated with the park or refuge during the period of shutdown and address issues of liability.

H.R. 2706 addresses only the State management of hunting programs on National Wildlife Refuges during a shutdown. By conditioning the acceptance of State assistance upon an agreement between the Secretary and the State in question, and by specifying reasonable terms for the agreements and qualifications for State employees, the bill ensures that those replacing the refuge staff would both be needed and, in fact, qualified. By limiting the scope of the replacements' activities to a particular type of program, rather than overall management of the unit, the bill ensures that the Secretary would maintain control over the overall management of the refuge.

At the same time, however, we believe the bill should be amended to address concerns we have about liability and cost issues. We also believe that the Secretary should have the authority to enter into these agreements, but should not be mandated to do so.

We recognize that in some areas of the country, refuges represent a significant portion of the available public hunting areas, and we want to do all we can to maintain or expand those hunting opportunities. The Fish and Wildlife Service currently has a number of agreements with State agencies for cooperative management of hunting and other recreational programs on units of the National Wildlife Refuge System, and those programs did proceed during the shutdown.

Notwithstanding the recent shutdown, for both budgetary and policy reasons, the Service is likely to pursue an increasing number of cooperative agreements with States and other entities in the future, covering hunting programs on refuges. These agreements could -- but will not necessarily -- provide for continuation of the program during shutdowns, depending upon whether the cooperating State

or other entity is willing to assume the liability and costs arising from the program during a shutdown. Importantly, these agreements result in an orderly sharing of responsibility and training.

It must be recognized, however, that the Service and the State wildlife agencies have differing legal mandates. As a result, achieving such agreements for cooperative management of refuge hunting programs may be difficult even during the course of normal business, and not all such agreements in the past have been successful. We cannot guarantee that such agreements could be negotiated and finalized for all refuges in the foreseeable future.

To undertake the monumental task of securing such agreements, including provisions for training State employees and addressing liability, for the sole or primary purpose of operating hunting programs during those extremely rare periods of Federal shutdowns may simply not be practical. The necessary resources to do this could only be made available by taking them away from other State and Service programs. We question whether this is a wise or even reasonable use of those limited resources. Certainly, it would be far more practical for the states to provide the Service with funding as we have proposed regarding H.R. 2677.

This concludes my written remarks, Mr. Chairman. I will be pleased to answer any questions you may have.

National Parks

and Conservation Association

STATEMENT OF
 WILLIAM J. CHANDLER
 VICE PRESIDENT, CONSERVATION POLICY
 NATIONAL PARKS AND CONSERVATION ASSOCIATION

TO THE
 SUBCOMMITTEE ON NATIONAL PARKS, FORESTS, AND LANDS
 ON

H.R. 2677, THE NATIONAL PARKS AND
 NATIONAL WILDLIFE REFUGE SYSTEMS FREEDOM ACT OF 1995

Submitted December 8, 1995

On behalf of the more than 450,000 members of the National Parks and Conservation Association, I am pleased to submit NPCA's comments on H.R. 2677, the National Parks and National Wildlife Refuge Systems Freedom Act of 1995. Despite the bill's good intentions, NPCA opposes this legislation as the wrong way to keep the National Parks open during periods of government shutdown.

NPCA believes that this bill is a response to the negative publicity and the adverse economic impacts to the local park communities that resulted from the recent shutdown -- a shutdown that could have been avoided if Congress had passed an Interior Appropriations bill that the President would sign. As it currently stands, Congress has been unable to send any bill to the President. In fact, the House of Representatives has twice voted to recommit H.R. 1977, the Interior Appropriations bill for FY 1996, to the conference committee because of an excessive number of anti-environmental riders.

While H.R. 2677 is the product of good intentions, Congress could eliminate its need by stripping the Interior Appropriations bill of unnecessary riders so that the President would sign the bill. This would avert another national parks shutdown and provide fiscal stability for the National Park Service. Rather than spending its time, attention, and resources on H.R. 2677, we urge the members of the Resources Committee to help Chairman Regula remove the extraneous riders from the bill.



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 PRINTED ON RECYCLED PAPER

Exemplified by Governor Symington's generous offer to keep Grand Canyon National Park open by using state employees, this proposed legislation is likely to create more problems than it seeks to resolve. The most serious question is: Will these "qualified State employees" (Sec 2(a)) be properly trained to uphold the management standards of the National Park System? We believe it is unlikely that state employees would possess adequate knowledge with respect to the myriad of relevant federal statutes, National Park Service regulations, management policies and plans to effectively undertake this responsibility.

Such volunteered employees would likely require substantial training, which would cost money and take time, in order to develop an adequate base of knowledge to run a park unit. Without passing judgement on the quality of state park systems or their employees, it is fair to say that they have their own budgetary and personnel shortages that could seriously undermine their ability to properly manage a unit of the National Park System. In addition, undertaking the challenge of operating national park units could cripple their own operations. Not only does this problem exist in many states, it certainly exists in the District of Columbia which clearly lacks the financial resources to appropriately operate the National Mall and monuments.

The use of state employees to operate the parks also raises serious legal, safety, and logistical questions that would need to be addressed before the proposed temporary transfer of management could take place. Would state employees be acting on behalf of the federal government, or their respective state? Would the federal government be a liable party in a lawsuit which resulted from the negligence of a state employee? Where would the state workers be housed?

H.R. 2677 seeks only a partial reopening of the parks because it only applies to those units in which an offer of assistance is made. In this respect, it undermines one of the fundamental premises of why we have a National Park System. There is no doubt that the Grand Canyon is spectacular, but all 369 park areas make unique and important contributions to the preservation of our natural and cultural heritage. Congress should either support normal operation of all 369 units of the system, or it should not allow any operation in the 369 units during shutdowns.

The good intentions of this bill could be met in a different, but more logical and efficient way -- designation of National Park Service employees as "essential." In making this suggestion, the line could be drawn at "those employees necessary to ensure normal operations at the 369 units of the National Park Service." It is our understanding that such a determination could be made administratively; therefore, Congress could pass a "sense of the Congress resolution" or report language in an appropriate bill urging that course of action.

The November shutdown of the government, and consequently the National Park System, has reminded all of us of the important place parks hold in the hearts of Americans, and the important roll they play in the local communities near the parks. This recent experience should prompt Congress to focus on passing the fiscal year 1996 Interior Appropriations bill, rather than expending time and money on flawed backup strategies such as H.R. 2677.

Thank you for your consideration of the views of the National Parks and Conservation Association on H.R. 2677, the National Parks and National Wildlife Systems Freedom Act of 1995.

CRS Report for Congress

Shutdown of the Federal Government: Effects on the Federal Workforce

James P. McGrath
Analyst in American National Government
Government Division

Updated November 20, 1995



Congressional Research Service • The Library of Congress



SHUTDOWN OF THE FEDERAL GOVERNMENT: EFFECTS ON THE FEDERAL WORKFORCE

SUMMARY

The partial shutdown of the Federal Government, which began at 12:01 a.m., on Tuesday, November 14, and immediately furloughed an estimated 800,000 Federal employees, was due to the expiration of a continuing funding resolution (P.L. 104-31) agreed to by President Clinton and the congressional leadership on September 30, 1995. The shutdown was precipitated by President Clinton's veto on November 13 of two bills sent to his desk, a second continuing resolution (H.J.Res. 115), which would have continued to fund the Government until December 5, and a debt limit extension bill (H.R. 2586), which would have raised the Treasury's borrowing limit through December 12.

On November 19, the White House and Republican congressional leaders announced jointly that agreement had been reached to end the partial shutdown of the Federal Government. Furloughed Federal employees returned to work on Monday morning, November 20, 1995.

An impasse between the Administration and the Republican-controlled 104th Congress over passage of either permanent appropriations bills or a further continuing resolution set in motion a partial shutdown of the Federal Government. An appropriations impasse of this sort automatically leads to lack of budget authority to fund the Federal agencies, and taken together with lack of agreement on a continuing budget resolution to act as a stop-gap funding measure, most of the Federal Government is forced to shut down.

The most immediate and critical outcome of such an event is the furloughing of Federal employees. The only exemptions from furloughs under a Federal shutdown situation are Presidential appointees, uniformed military personnel, and Federal civilian employees rated "essential." Employees considered "essential" are those performing duties which are vital to national defense, public health and safety, or other crucial operations, and who are required therefore to be at work regardless of any shutdown action. The Administration reviewed presidential authority in a Federal shutdown and was guided in that undertaking by an August 16 memorandum prepared by Assistant Attorney General Walter Dellinger.

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SHUTDOWN OF THE FEDERAL GOVERNMENT: EFFECTS ON THE FEDERAL WORKFORCE

INTRODUCTION

The continuing resolution (P.L. 104-31), which was enacted on September 30, 1995, and which funded the Government through November 13, expired. The partial shutdown of the Federal Government that followed was precipitated by President Clinton's veto of two measures, a second continuing resolution (H.J.Res. 115)¹ and a debt limit extension bill (H.R. 2586).² The impasse arose because of extensive disagreements with the congressional Republican majority over provisions in the bills. On Monday, November 13, the President instructed agencies to begin closedown operations, and on Tuesday morning at 12:01 a.m., an estimated 800,000 "nonessential" Federal employees went on furlough.

On November 19, the White House and Republican congressional leaders announced jointly that agreement had been reached to end the partial shutdown of the Federal Government, that furloughed Federal employees would return to work on Monday, November 20, and that furloughed Federal employees would be paid retroactively. Agreement was reached when the House and Senate passed a one-day funding resolution (H.J.Res. 123) to be followed by expected approval of continuing resolution H.J.Res. 122 (introduced November 15) that would extend funding through December 15. Agreement ending the impasse occurred when both sides agreed to a seven-year timetable to balance the Federal budget, or by 2002.

By law, agencies are prohibited from spending money, not otherwise authorized by law, during a lapse in appropriations. It should be noted that the term "shutdown of the Federal Government" is a significant misnomer since as the Office of Legal Counsel, Department of Justice, has pointed out "... a majority of current expenditures occur under multi-year, permanent or indefinite appropriations that do not lapse on the expiration of the current fiscal year."³

¹ Second Continuing Resolution for Fiscal Year 1996--Veto Message From the President of the United States (H. Doc. No. 104-134). *Congressional Record*, v. 141, No. 180, Nov. 14, 1995. p. H12238.

² Temporary Increase in the Statutory Debt Limit--Veto Message from the President of the United States (H Doc. No. 104-132). *Congressional Record*, v. 141, No. 179, Nov. 13, 1995. p. H12150.

³ U.S. Department of Justice. Office of Legal Counsel. *Testimony of Walter Dellinger, Assistant Attorney General, Office of Legal Counsel, Before a Joint Hearing of the Senate Budget Committee and the House Budget Committee*, Sept. 19, 1995, p. 4, (unpublished).

This report examines the cause of Federal shutdowns, their implementation, and their effects. It describes the basic authority for closing down the Federal government, presents some background on "lapses in appropriations" history, and discusses past and present Justice Department legal opinions critical to enforcing Federal shutdowns. Definitions of "essential" versus "non-essential" Federal services and personnel during a shutdown, crucial in determining who reports for work and who does not are included. The impact on Federal compensation and the rules governing shutdown furloughs are explained. Finally, the report concludes with a discussion of recent Federal shutdown experiences, the likely number of Federal employees affected, and some cost estimates of past Federal shutdowns.

SHUTDOWN CAUSE AND PROCESS

The shutdown of the Federal Government occurred because there was:

- Failure to pass regular appropriations bills by the October 1, 1995 deadline;
- Lack of an agreement on stop-gap funding for Federal Government operations through a continuing appropriation act/resolution; and
- No agreement to lift the Federal debt ceiling.

Appropriations Lapse

The basic authority for closing down the Government because of a lapse in appropriations stems from an April 25, 1980 opinion of Attorney General Benjamin R. Civiletti prepared for President Jimmy Carter which states:

It is my opinion that, during periods of "lapsed appropriations," no funds may be expended except as necessary to bring about the orderly termination of an agency's functions, and that the obligation or expenditure of funds for any purpose not otherwise authorized by law would be a violation of the Antideficiency Act (31 USC 665).⁴

Administration implementation of the Federal shutdown essentially follows the same rules applied in the wake of the Civiletti ruling, except that the definition of what constitutes an "emergency" in a shutdown situation has been more narrowly drawn.

On August 16, 1995, at the request of OMB Director Alice Rivlin, Assistant Attorney General Walter Dellinger, Office of Legal Counsel, Department of Justice, issued an opinion regarding the "permissible scope of Government

⁴ U.S. Congress. House. Subcommittee on Civil Service. Committee on Post Office and Civil Service. *Cost of Shutting Down Federal Government on November 23, 1981*. [Committee Print No. 97-6] 97th Cong. 2d Sess. Washington, U.S. Govt. Print. Off., March 25, 1982, p. 23. (Hereafter cited as *Cost of Shutting Down*.)

operations during a lapse in appropriations."⁵ The Dellinger opinion updates the 1981 Civiletti opinion. It again enumerates the basic prohibitions set forth in the Antideficiency Act (31 USC 665) against Government spending during lapsed appropriations, entering into contracts or other obligations, and providing Government services and employees beyond those essential "to emergency situations, where the failure to perform those functions would result in an imminent threat to the safety of human life or the protection of property."⁶

The Dellinger opinion points out that, since the 1981 Civiletti ruling, the Antideficiency Act has been amended in one key area. In 1990, language was added which modified the "emergency" definition for employing Federal personnel in a shutdown action.⁷ The 1990 amendment states in relevant part: "as used in this section, the term 'emergencies involving the safety of human life or the protection of property' does not include ongoing, regular functions of Government the suspension of which would not imminently threaten the safety of human life or the protection of property."⁸

The 1990 amendment to the Act was intended to preclude an overly broad definition and interpretation of the term "emergency" to ensure that threats to the "safety of human life or the protection of property" are compelling and immediate and not slight, distant, or perfunctory. The example cited in the Dellinger memorandum to illustrate the point is: "The brief delay of routine maintenance on Government vehicles ought not to constitute an 'emergency,' for example, and yet it is quite possible to conclude that the failure to maintain vehicles properly may 'compromise, to some degree' the safety of the human life of the occupants or the protection of the vehicles, which are Government property."⁹

Lapses in appropriations to fund the Government are not uncommon. From FY1962 to FY1981, the two decades immediately preceding the Civiletti decision, the General Accounting Office (GAO) found that interruptions in agency funding took place thirty-two times. Such lapses appeared to be the rule rather than the exception, according to GAO, which noted that from 1961 to 1980, "85 percent of appropriations bills for Federal agencies have passed after the start of the fiscal year." Prior to the landmark 1980 opinion, Federal agency managers, while cognizant of the anomaly of continuing to operate during a lapse in appropriations, and while concerned about the legal implications thereof, did precisely that. They did so under the belief that "Congress does not

⁵ U.S. Department of Justice. Office of Legal Counsel. *Memorandum for Alice Rivlin, Director, Office of Management and Budget. Government Operations in the Event of a Lapse in Appropriations*. Washington, Aug. 16, 1995, 9p. (Hereafter cited as *Government Operations/Lapse in Appropriations*.)

⁶ *Ibid.*, p. 3.

⁷ *Ibid.*, p. 2.

⁸ See, 31 USC 1342.

⁹ *Government Operations/Lapse in Appropriations*, p. 9.

actually intend that the Federal Government shut down while the agencies wait for the enactment of appropriations or the passage of a continuing resolution."¹⁰ GAO found that Congress had "implicitly lent credence to this view" by retroactively passing contingency resolutions to fund the Government to the beginning of the fiscal year, and did not apply the enforcement feature of the Antideficiency Act against agencies operating during a lapse in appropriations.¹¹ The discretionary attitude of agency managers came to an abrupt end with the issuance of the Attorney General opinion of April 1980, which stated in relevant part, "... the Department of Justice will take actions to enforce the criminal provisions of the Act in appropriate cases in the future when violations of the Antideficiency Act are alleged."¹² In the wake of the Civiletti ruling, there have been several brief Federal Government shutdowns, most of them occurring over weekend time periods.

Once an appropriations bill for those agencies is enacted and signed by the President, those agencies are funded and authorized to incur obligations and make payments. As such, each agency is immune from any imminent shutdown action, and, should this action take place after a Federal shutdown has begun, furloughed employees are immediately authorized to return to work.

The Dellinger memorandum points out that significant Government spending is not only authorized but mandatory during a shutdown period.

Not all government functions are funded with annual appropriations. Some operate under multi-year appropriations and others operate under indefinite appropriations provisions that do not require passage of annual appropriations legislation. Social Security is a prominent example of a program that operates under an indefinite appropriation. In such cases, benefit checks continue to be honored by the treasury, because there is no lapse in the relevant appropriations.¹³

The prelude to the funding impasse was the threatened veto by President Clinton of at least six of the appropriations bills pending in Congress. A larger issue is disagreement between the Republican-passed budget proposal to balance the Federal budget in seven years and the Administration's ten-year counter-proposal, with each side presenting dramatically different blueprints, in terms of spending, Federal cut-back proposals, and long-term funding priorities. When

¹⁰ U.S. General Accounting Office. *Funding Gaps Jeopardize Federal Government Operations*. Washington, U.S. Govt. Print. Off., March 3, 1981, p. 1. (Hereafter cited as *Funding Gaps*.)

¹¹ *Ibid.*, p. 2.

¹² U.S. Department of Justice. Office of the Attorney General. Letter Legal Opinion of Attorney General Benjamin R. Civiletti to the President. Washington, April 25, 1980, p. 6.

¹³ *Government Operations/Lapse in Appropriations*, pp. 3-4.

the continuing resolution was vetoed, President Clinton told Congress that he would sign a clean bill that dealt only with interim funding of the Government.

Insofar as Congress and the legislative branch are concerned, most presidents have routinely signed the legislative branch appropriations act, and they have not had to face shutdown action because of a lapse in appropriations. This year, however, President Clinton vetoed it,¹⁴ thereby relegating Congress and the legislative branch agencies to a shutdown status similar to the executive branch.

It should be noted that the Constitution (Article II, Section 1) forbids the salary of the President or of Article III judges (Article III, Section 1) to be reduced while they are in office, a provision that effectively guarantees their compensation regardless of any shutdown action. However, the funding to cover the payment of the salaries¹⁵ has not been enacted and payment may be delayed. There is a permanent appropriation for salaries of Members of Congress (see 2 USC 31, note) but not for legislative staff. In general, House and Senate staff, although affected by a shutdown, have in the past reported to work.

Bills were introduced in Congress that would greatly mitigate the effects of a Federal shutdown. Representatives George W. Gekas (D-Pa.), James P. Moran (D-Va.), and Albert Russell Wynn (D-Md.) introduced bills that would have permitted the Federal Government to avoid shutdown during a funding lapse by authorizing a permanent continuing funding resolution to take effect during such periods. The effect of any such authorization would be to ensure uninterrupted Government operations funded at the level of the preceding fiscal year and uninterrupted Federal employee pay.¹⁶ Similar recommendations have been endorsed by the General Accounting Office over the years.¹⁷

¹⁴ H.R. 1854 was vetoed October 3, 1995. See: Legislative Branch Appropriations Act, 1996--Veto Message from the President of the United States. (H. Doc. No. 104-122) *Congressional Record*, v. 141, October 6, 1995. p. H 9741-9742. H.R. 2492, a Legislative Branch Appropriations Act for Fiscal 1996 identical to H.R. 1854, was approved by the President November 19, 1995.

¹⁵ The President's salary is funded under the Treasury, Postal Service, and General Government Appropriations Act, H.R. 2020. H.R. 2020 was signed by the President on November 19, 1995. The regular appropriations for the judiciary are in the Commerce, Justice, State, and Judiciary Appropriations Act of Fiscal 1996, H.R. 2076. There was no conference action as of November 20, 1995.

¹⁶ See H.R. 2006, H.R. 2007 (Gekas); H.R. 2069 and H.R. 2184 (Moran); and H.R. 2273 (Wynn).

¹⁷ U.S. General Accounting Office. *Funding Gaps Jeopardize Federal Government Operations*. [PAD-81-31] Washington, U.S. Govt. Print. Off., Mar. 3, 1981, pp. 37-47.

Debt Ceiling Impasse

It was feared that Federal agencies and employees would also experience the negative fiscal effects of the failure by Congress and the White House to agree on lifting the current Federal debt ceiling. As was noted earlier, President Clinton, on November 13, 1995, vetoed debt ceiling legislation. The President had said that unless "a clean debt ceiling bill" had been offered by the Congress, he would be forced to take veto action.

Secretary of the Treasury Robert E. Rubin announced on November 15 that he was taking action to "save the U.S. government from the first default in history."¹⁸ Secretary Rubin has authorized withdrawal of the entire \$21.5 billion held in the Federal employees' thrift savings plan known as the G-fund. He is also withdrawing \$39.8 billion of the \$350 billion reportedly held in the Civil Service Retirement Fund.¹⁹

Shutdown Process

The Office of Management and Budget (OMB) is responsible for issuing instructions to agencies on implementing a Federal shutdown, including the furloughing of "non-essential" Federal employees. Throughout the shutdown period, agencies are apprised of the latest developments in resolving the budgetary impasse.

On July 26, 1995, OMB Director Alice Rivlin directed agencies to defer action on furloughs or other cutback actions pending completion of a government-wide plan.²⁰ Concurrently, White House Chief of Staff Leon E. Panetta requested that agencies submit contingency plans for shutting down the Government for possibly as long as two months.²¹ On August 22, 1995, Ms. Rivlin issued a new directive to Federal agencies, which effectively rescinded her earlier memorandum, and instructed them to review their contingency shutdown plans, conform them to the Dellinger ruling, and submit them to OMB no later than September 5, 1995.²² On September 19, 1995, Ms. Rivlin testified before a joint hearing of the Senate Budget Committee and the House Budget

¹⁸ Clay Chandler, Rubin acts to prevent default. *The Washington Post*, November 16, 1995. p. A1, A30.

¹⁹ For a discussion of the debt limit issue, see *The Debt Limit*, a CRS Issue Brief No. 93054, by Philip D. Winters. Updated regularly.

²⁰ Information supplied by the Office of General Counsel, Office of Management and Budget (OMB).

²¹ Devroy, Ann and Stephen Barr. "Panetta Asks Agencies for Contingency Plans on Federal Shutdown." *Washington Post*, July 29, 1995, p. A7.

²² U.S. Executive Office of the President. Office of Management and Budget. *Agency Plans for Operations during Funding Hiatus*. Washington, Aug. 22, 1995.

Committee that contingency plans had been received from virtually all agencies except the Department of Defense.²³

ESSENTIAL SERVICES AND PERSONNEL

A memorandum issued by OMB in 1980 defines "essential" Government services and "essential" employees as those

- Providing for the national security, including the conduct of foreign relations essential to the national security or the safety of life and property;
- Providing for benefit payments and the performance of contract obligations under no-year or multi-year or other funds remaining available for those purposes;
- Conducting essential activities to the extent that they protect life and property, including:
 - Medical care of inpatients and emergency outpatient care;
 - Activities essential to ensure continued public health and safety, including safe use of food, drugs, and hazardous materials;
 - The continuance of air traffic control and other transportation safety functions and the protection of transport property;
 - Border and coastal protection and surveillance;
 - Protection of Federal lands, buildings, waterways, equipment and other property owned by the United States;
 - Care of prisoners and other persons in the custody of the United States;
 - Law enforcement and criminal investigations;
 - Emergency and disaster assistance;
 - Activities that ensure production of power and maintenance of the power distribution system;
 - Activities essential to the preservation of the essential elements of the money and banking system of the United States, including borrowing and tax collection activities of the Treasury; and
 - Activities necessary to maintain protection of research property.²⁴

The Dellinger opinion basically reaffirms the definition of "essential" Government services and employees set forth in the 1980 OMB directive and serves as a guideline to Administration shutdown plans. Pursuant to it and White House directions to agencies through OMB, agencies are required to determine which jobs fit these definitions, enumerate them in their individual

²³ Testimony of Alice M. Rivlin, Director, Office of Management and Budget, Before a Joint Hearing of the Senate Budget Committee and the House Budget Committee, September 19, 1995, p. 3, unpublished.

²⁴ U.S. Executive Office of the President. Office of Management and Budget. *Memorandum from the Director of OMB to the Heads of Executive Departments and Agencies: Agency Operations in the Absence of Appropriations*. Washington, Sept. 30, 1980, pp. 1-2.

shutdown plans, and instruct their employees accordingly. Since the definition of "emergency" has been more narrowly drawn, pursuant to the 1990 amendment to the Antideficiency Act, the likelihood is that fewer Federal employees may be rated "essential." Those rated "essential," although guaranteed to be paid retroactively, will not receive compensation until the appropriations bill for their agency is enacted and signed.

FEDERAL FURLOUNDS

The immediate and critical effect of an impending government-wide shutdown is the need to place all non-essential Federal employees on furlough. Furloughs are the "placing of an employee in a temporary non-duty, non-pay status because of a lack of work or funds, or other nondisciplinary reasons."²⁵

There are two different kinds of furloughs: *adverse action furloughs* and *reduction-in-force (RIF) furloughs*. Furloughs occurring during a Federal shutdown period are essentially adverse action furloughs, although they are commonly referred to as "emergency" furloughs as well. They are administered under the same authority (5 CFR 752) as the adverse action furlough, except that the 30-day notice on furloughs does not apply in shutdown or "emergency" situations. Under adverse action/shutdown/emergency furloughs, Federal employees are placed in a temporary, non-duty, non-pay status for 22 working days, or 30 calendar days, or fewer.²⁶

While in furlough status, Federal employees may seek other jobs in the private sector (except those that would violate conflict-of-interest or Hatch Act statutes) and elsewhere in the Federal Government as well. They remain eligible for unemployment insurance, although the length of any furlough and differences in eligibility rules among States and localities may preclude any significant benefits. Federal employees may not volunteer to work for their agency in an unpaid status.

Employees subject to adverse action furloughs (includes shutdown/emergency furloughs) have clearly defined legal rights, as follows:

²⁵ See 5 USC 7511.

²⁶ Reduction-in-Force (RIF) furloughs, on the other hand, are administered under the authority of 5 CFR 351. RIF furloughs last for more than 22 working days or 30 calendar days, but not longer than a year. RIF furloughs require a 60-day notice (120 days for Department of Defense employees), except that when a RIF is caused by unforeseen circumstances, a notice period of less than 60 days, but not less than 30 days may be authorized. To mitigate their effect, RIF furloughs may be implemented on consecutive days or discontinuously for one or two days per week or month. Agencies can achieve budget savings from other agency accounts, such as travel, training, overtime, office equipment purchases, etc., and implement hiring or promotion freezes, or do both to reduce the need for RIF furloughing.

- 30 days' advance written notice by agency (may be waived in shutdown/emergency furlough actions);
- 7 calendar days for employee to answer orally and in writing to the proposed notice;
- Right of representation by attorney;
- A timely written decision by the agency; and
- An appeal right to the Merit Systems Protection Board (See 5 CFR 1201, Subpart B.)

Shutdown furloughs are not considered a break in service and are generally creditable, for retaining benefits, seniority, and for

- Career tenure, the first 30 calendar days of each non-pay period is creditable service;
- Completion of probation, an aggregate of 22 workdays in a non-pay status is creditable service;
- Time-in-grade requirements, non-pay status is creditable service;
- Retirement purposes, an aggregate non-pay status of 6 months in any calendar year is creditable service;
- Health benefits, enrollment continues for no more than 365 days, continuously, in a non-pay status;
- Life insurance, enrollment continues for 12 consecutive months in a non-pay status, without cost to the employees or to the agency; and
- Annual and sick leave, an aggregate of 6 months non-pay status in a year is creditable service.²⁷

Federal Employees Health Benefits Program (FEHBP) benefits continue for a year in a non-pay status, and the Government continues to pay its share of the health premium costs. However, Federal employees are still liable for their share of their health plan premium. They may continue to pay their share while on furlough, or they may elect to have their premium costs accumulate and have them deducted in a lump-sum from their pay once they return to work.²⁸

Federal unions play a key role in planned (though not shut-down) furlough situations, because agencies are required to negotiate about their terms and impact on employees. If the union and the agency fail to agree on furlough implementation, the union may take the issue to the Federal Service Impasses Panel, under the Federal Labor Relations Authority.

As yet, no official figures exist for the number of Federal employees rated as "non-essential" and furloughed during the current shutdown. Although they

²⁷ U.S. Office of Personnel Management. Office of the Director. *Memorandum to Directors of Personnel: Personnel Implications of Sequestration*. Washington, Aug. 15, 1990, p. 7.

²⁸ U.S. Office of Personnel Management. Interagency Advisory Group. *Memorandum to Directors of Personnel. OPM's Updated Guidance on Furloughs*. Washington, Aug. 1, 1995 (unpublished), p. 10.

clearly number in the hundreds of thousands, they are still a distinct minority of the Federal workforce. In 1982, for instance, staff estimates prepared by the then House Post Office and Civil Service Committee showed 241,508 executive branch employees dismissed as "non-essential" in the Federal shutdown that took place on November 23, 1981, or 12 percent of total executive branch employment, which was 2,081,110 at that time.²⁹ The term "shutdown of the Federal government" is a significant misnomer, since a majority of current government expenditures occur under multi-year, permanent or indefinite appropriations that do not lapse on the expiration of the current fiscal year, and a large majority of the Federal workforce may well report for duty. They include most DOD civilian employees (849,099) and all U.S. Postal Service employees (837,540), which together comprise 58 percent of the current Federal employment (2,929,913).³⁰

RECENT SHUTDOWN EXPERIENCES

There have been several shutdowns of the Federal Government over the past two decades, all related to funding lapses requiring furloughs in the Federal service, most of them quite brief. One, which took place on November 23, 1981, lasted one day; another, on October 17, 1986, lasted half a day. The most recent took place over the Columbus Day Holiday weekend in October 1990, and its effects were mitigated by the holiday. Federal facilities not otherwise closed over the weekend period, notably national parks and museums, were shut down, but agreement was reached between the President and Congress on the day after the holiday and a longer furlough was averted.³¹

Questions have arisen about whether Federal employees furloughed because of Government shutdowns would receive retroactive pay for furlough days once they are returned to on-duty status. There is no assurance of such reimbursement. However, in prior shutdowns Federal employees placed on furlough were paid retroactively when Congress passed and the President signed subsequent legislation authorizing such payment.

²⁹ *Cost of Shutting Down Federal Government on November 23, 1981*, p. 14.

³⁰ U.S. Office of Personnel Management. Office of Workforce Information. *Federal Civilian Workforce Statistics. Employment and Trends as of March 1995.*, Washington, U.S. Govt. Print. Off., June, 1995. 76 p.

³¹ U.S. General Accounting Office. *Government Shutdowns: Data on Effects of 1990 Columbus Day Weekend Funding Lapse.* Washington, U.S. Govt. Print. Off., Oct. 1990, 36 p. (Hereafter cited as *Government Shutdowns*.) For a discussion of funding gaps since 1981, see CRS Report 95-77: *Continuing Resolutions and Funding Gaps: Fiscal years 1981-1995*, by Edward Davis and Robert Keith, Dec. 30, 1994.

COSTS OF FEDERAL GOVERNMENT SHUTDOWNS

The estimated costs of shutting down the Federal Government during a lapse in appropriations are sketchy at best. GAO has attempted to evaluate such government-wide costs, but incomplete and lack of response by various agencies hampered this undertaking. Certain limited costs have been identified over the years, however. GAO found costs of about \$1 million resulting from having to issue split or late paychecks in October 1979 and approximately \$1.1 million from having to prepare agency shutdown plans in 1980.³²

In 1991, GAO found that the estimated partial costs for the Federal Government shutdown over the Columbus Day Holiday week-end in 1990 was \$1.7 million. GAO also prepared hypothetical cost estimates keyed to a three-day workweek shutdown and projected potential costs at approximately \$400 million. The difficulties of compiling such cost data were summarized by GAO as follows:

The data provided by the agencies were prepared in a very short time frame (generally in less than 2 days). Thus, they can not be considered a complete story of the effects that delays in the enactment of funding legislation would have on agencies' operations and delivery of program services to the public. When actual data were not available, we asked the agencies to estimate. Thus, the data, particularly concerning costs and savings, should often be viewed as preliminary estimates by the agencies.³³ In addition, certain intangible costs such as lost productivity and adverse affects on Federal employee morale were widespread throughout the agencies, according to the GAO.³⁴

³² *Funding Gaps Jeopardize Federal Government Operations*, p. 111.

³³ "Government Shutdowns," pp. 2-3.

³⁴ *Ibid.*, pp. 10-11, 18-20, 24.

NAVA-HOPI TOURS, INC.

December 5, 1995

FAX 202-226-7388

The Natural Resource Committee
The House of Representatives
House Office Building
Washington, DC 20515

Gentlemen:

The closure of the Grand Canyon National Park, as well as other Parks in Northern Arizona including Petrified Forest-Painted Desert National Park, Walnut Canyon National Monument, Sunset Crater Volcano-Wupatki National Monuments, and Montezuma's Castle National Monument was a major economic impact to our company -- and for that matter, continues to be.

In regards to the closure of the Grand Canyon National Park, we found the federal employees confused and unavailable for direction. On the first day of the closure, we began calling at 7:00 am to the East and South Gates to ascertain if we could still enter and what services were going to be provided. It took until 2:30 pm that afternoon to even receive a fax reply from the Grand Canyon National Park. Obviously, by that time our coaches had already left. Our passengers were already told we didn't know what to expect upon our arrival, because the Government couldn't decide what to do.

When the ultimate shutdown occurred, our transportation bus which has serviced Grand Canyon since 1928 except for an interruption during World War II, discontinued entering the Park, but stopped at a lodge outside of the Park so that we could still provide transportation for visitors and employees at the Grand Canyon National Park. Our ridership dropped to near zero on the northbound and we were only carrying a few passengers, mainly employees, southbound. We felt it our responsibility to maintain this regularly scheduled service and did so throughout the shutdown.

Post Office Box 339
Flagstaff, Arizona 86002
(602) 774-5003, 1-800-892-8687
FAX (602) 774-7715



See the Grand Canyon
Daily Bus Service Year Round
Charter Service
Tours of Scenic Northern Arizona

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The sightseeing tour was permitted to continue by entering the Grand Canyon via the East Rim Drive, which we always do on our tour. We were permitted to stop by Desert View and then the other viewpoints were barricaded; however, we did use wall stops for our passengers. We found that most of the remaining Park Service employees at the Canyon during the shutdown were amicable during a difficult situation; however, because some were not, we were concerned that after the re-opening our Conditional Use Permit at the Park may be in jeopardy. Obviously, our tour was not the caliber of our normal sightseeing tour; but at least we were able to provide an opportunity for many visitors to see at least a portion of the Grand Canyon.

We totally discontinued our tours to the other National Parks and Monuments because these areas were totally closed and barricaded.

The impact was great. Our drivers who usually drove tours to other parks were without work. We operated the tour and transportation to the Grand Canyon National Park, but with greatly reduced ridership -- the transportation service was down 90% and the tour at least 50%. Our costs for the equipment and driver remained the same -- our revenue was simply lost.

The impact continues. Our ridership has not returned to normal yet and the travelling public is still concerned about the Grand Canyon National Park closing on the 15th of December, thus many are not making plans to visit during the holiday season. Our December looks like the worst we have had in years. And to make matters worse -- the weather is the prettiest and warmest on record. The visitors were here until the Parks closed.

And, no, our drivers did not get back pay as other government employees did for being off from work. As a small business, we cannot afford to pay employees for not working, as the Government is able to do!

But, beyond the closures themselves, tied into this budget package is the park entry fees for 1996. We still don't know what the park entry fees will be next year and can't quote to our clients what fees should be expected in planning either individual or group visits to Northern Arizona. Are the fees going to be individual, are they going to be based upon vehicle size (i.e. motorcoach); or is it going to be a combination of both? We have heard everything. This is as great an impact to our company as the closure.

Page 3

I urge you to take definitive steps to:

1. Never close our National Parks and Monuments again.
2. That State Route 64 which follows the East Rim Drive always remains under the jurisdiction of the State of Arizona and that access to the Grand Canyon always be maintained through this route.

Note: The Management Plan now being implemented by the Grand Canyon National Park provides for the removal and relocating of this highway at a more southerly route; thereby eliminating the possibility of seeing the Grand Canyon during any Park closure by the Park Service.

3. That the fees for admission into the National Parks and Monuments be projected and determined in a more timely basis so visitors can anticipate their costs. These fees need to be based on individual, per person access regardless of mode of transportation. However, it would be my hope that those modes of transportation providing for mass transit (i.e. motorcoaches) which is assisting the parking problems created by private vehicles, which is also providing interpretive information on the Park, and which is protecting the resources through education and example, be provided an incentive to continue their service rather than be burdened with increased fees and bureaucratic red tape.

Sincerely,

Kerrren A. Vollmer
Vice President/Co-Owner

southern highland craft guild

December 5, 1995

Don Young, Chairman
House Resources Committee
Congress of the United States
1324 Longworth HOB
Washington DC 20515

Dear Mr. Chairman:

Thank you for allowing me to submit testimony relating to your upcoming Bill HR 2677. If you will allow me, I would like to discuss how this has affected our organization.

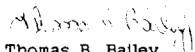
On Thursday, November 16, 1995, Rick Wyatt, Concessions Specialist/ Blue Ridge Parkway, notified the Folk Art Center that our operations would close at 6:00pm on Friday, November 17, because according to the Deputy Director of the National Park Service "no progress has been made or is imminent that would provide us appropriations".

The Southern Highland Craft Guild, headquartered at the Folk Art Center on the Blue Ridge Parkway, is a sixty-five year old non-profit membership organization with over 700 members in a nine-state area. These are 700 plus family businesses who depend on their sales through the Guild, especially during the season from Thanksgiving through Christmas. The income lost (perhaps \$18,000 during the two days of forced closing) had a huge impact on our organization and its members because it cannot be recouped. Visitation to the Folk Art Center is 350,000 annually. The center, built on the Blue Ridge Parkway in 1980 through a cooperative agreement with the National Park Service, is located only 1/2 mile off Hwy. 70 and we also have another entrance which makes us accessible without getting on the Parkway.

The Folk Art Center is privately owned, not federally funded. Guild staff does not receive retroactive compensation after a shutdown. We would like to encourage you and your colleagues to support legislation to prevent private concessionaires from needless closures in the future.

Thank you for sponsoring this hearing and for allowing me to submit this testimony.

Sincerely,


Thomas B. Bailey
Acting Director

ISBN 0-16-052400-8



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