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Senate

(Legislative day of Monday, June 19, 1995)

The Senate met at 8:30 a.m., on the expiration of the recess, and was called to order by the President pro tempore (Mr. THURMOND).

PRAYER

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

Great is the Lord, and greatly to be praised and His greatness is unsearchable. I will mediate on the glorious splendor of Your majesty—Psalm 145: 3, 5.

Almighty God, help us to think magnificently about You: Your glory and grace, Your greatness and goodness, Your peace and power. We acknowledge that our prayer is like dipping water from the ocean with a teaspoon. Whatever we receive of Your infinite wisdom and guidance, it is infinitesimal in comparison to Your limitless resources. So we come humbly and gratefully to receive, to draw from Your divine intelligence what we need for today's deliberations and decisions. We thank You for the women and men of this Senate and their staffs who support their work. Help them humbly to ask for Your perspective on perplexities and then receive Your direction. Give them new vision, innovative solutions, and fresh enthusiasm. We commit this day to love and serve You with our minds. Today, when votes are counted on crucial decisions, help them neither to relish victory nor nurse the discouragement of defeat, but do everything to maintain the bond of unity in the midst of differences and then move forward. This we pray in Your holy name. Amen.

The PRESIDENT pro tempore. The Chair, in his capacity as a Senator from the State of South Carolina, suggests the absence of a quorum.

The clerk will call the roll.

The legislative clerk proceeded to call the roll.

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 President, I ask unanimous consent that the order for the quorum call be rescinded.

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

Mr. SANTORUM. I thank the Chair.

MORNING BUSINESS

The PRESIDENT pro tempore. Under the previous order, there will now be a period for the transaction of morning business.

BALANCING THE BUDGET

Mr. SANTORUM. Mr. President, I rise this morning to begin the freshman focus. The freshman class, all 11 of us of the 104th Congress, have taken about the role of coming to the floor on a regular basis to focus the Senate on issues of importance really to the next generation of Americans. We believe that as freshmen we have a special role to play in looking toward the future and seeing how we can focus the attention of the Senate on solving the long-term problems that face this country.

Today, under the able leadership of Senator THOMAS from Wyoming, who has been a real champion in organizing this effort and bringing the freshman class in the Chamber on a very regular basis, we are going to talk about the Clinton ''budget.'' When I say Clinton ''budget,'' I use the term ''budget'' in quotes because we do not really have what I think anyone would seriously consider a detailed budget of how the President is going to solve the deficit problem that faces this country. In fact, we have 6 pages—photocopied on both sides, that is 12 pages total—of budget specifics as to how he is going to reduce the budget deficit to zero over the next 10 years.

Now, it is interesting; if you look at what is going to be required to balance the budget over the next 10 years, it requires about $1.6 trillion in spending cuts. That is according to the Congressional Budget Office.

Now, you say: How do they figure that out? How does the Congressional Budget Office come up with the assumption that we need to cut spending an aggregate amount of $1.6 trillion? They make certain basic assumptions, economic assumptions.

The economic assumptions that the Congressional Budget Office makes is a percentage growth in the economy. They say, well, we estimate over the next 10 years that the economy will grow on average a certain percentage per year. The estimates, frankly, if you look at them, are pretty flat. I think about 2.3 percent growth per year over the next 7 years because they were doing a 7-year budget.

Now the President has come up with 10. They extended it up to 10 years. It does not take into account recessions. And most economists will tell you, over the next 10 years we are scheduled to have at least one recession, probably two recessions. Now, they may not be deep recessions, but they will talk about much lower rates of growth and maybe even some negative growth during that period of time.

Now, what happens when we have recessions? Well, when we have recessions, tax revenues go down, expenditures to the Federal Government go up because unemployment claims go up, welfare payments go up, other kinds of Government supports, safety net programs, are much more in use.

The Congressional Budget Office, I think, was sort of averaging out the high and low periods of growth above 2 or 3 percent and periods of growth below and saying, on average, it is roughly 2.3 percent or maybe a little higher, 2.4 percent in the future.

They also make an assumption on interest rates. Why are interest rates important? Well, when you have nearly $5 trillion of debt that you have to finance, interest rates are important. The higher the interest rates, the higher the costs, the higher the

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

deficit. So interest rate projections also affect what the bottom line deficit will be. So they have projected out interest rates, again on a conservative basis, because again interest rates fluctuate. If you look at the last 10 years of the history of this country, the interest rates went from double digits to 3 to 4 percent. So you may see a wide variation in the next 10 years. In the next 10 years, you will see a wide variation. They try to work it out, act conservatively. You want to have realistic numbers here. And they came out with some interest rate projections.

Now, they use the combination of growth projections and interest rate projections to determine their basic economic assumptions of what the deficit will be. And then they say, ''Now, to meet zero, you have to cut so much money out of Government programs or raise taxes to get to zero.''

How does the President accomplish his 10-year balanced budget? Well, he does not do it by looking at what the Congressional Budget Office has done and then making the spending cuts or tax increases necessary to get to a balanced budget. In fact, in his plan he has, instead of $1.6 trillion over 10 years which is needed to balance the budget according to the Congressional Budget Office, he has $1 trillion in cuts, substantially less than what is necessary. Yet he gets the balance.

You say, How does he do that? How does he cut less money than is required to get the balance and still get there? Here is how he does it. He does it by changing the assumptions. He assumes a higher rate of growth in the economy. He assumes lower interest rates. Sort of wishes it away. Just decides, ''Well, we know we will have higher growth and lower interest rates, and as a result we will have less financing costs. Because interest rates are lower, we will have higher rates of growth, which means more tax revenues and less Government expenditures. So we will reduce the debt through economic assumptions.''

Well, that is nice. It is an easy way to do it. I guess if he wanted to, he could go back and just estimate even higher growth rates and lower interest rates and not have to do anything. But that is not real.

What is the actual effect on the numbers? It is interesting. Look at Medicare. Under the President's budget, if you look at the President's Medicare number, not what he says he is going to have to reduce spending by in Medicare, but the actual amount of money he spends on Medicare every year over the next 10 years, in the first 3 years the President spends less on Medicare than we do, but it is not as big a cut as we have. Now, you say, ''Wait a minute. How can that be? If he spends less on Medicare next year than we do under the Republican budget, less on Medicare in year two than we do on Medicare and less on Medicare in year three, how can his cuts be less?''

Well, he assumes a lower rate of growth in Medicare and then cuts from that. So what he has done is—we have growth of 10 percent per year programmed in because that is what Medicare is doing. It is growing at about 10 percent a year. We have that programmed in for the next 10 years. What the President has done is he assumes, first, that Medicare growth is not going to continue at 10 percent, it will only continue at 7 percent and then cuts from that. So, as a result, the cut is not as much, but the number is actually lower than the number that we are using. So he sort of cuts in part by assuming it away and cuts the other part by actually doing it.

So, to suggest that the President is going to cut Medicare less than we are or change Medicare less than we are is just ridiculous. His numbers actually are lower than our numbers.

So, I would just suggest, if you look at the specifics of what the President has done, he has assumed away this budget deficit. He has suggested that we can get rid of the budget deficit by having rosy economic projections, rosy projections on growth and interest rates and not do the hard work of actually having to make decisions on how we are going to pare back the size of Government.

As a result of that, as a result of his unwillingness to face the music, to use the Congressional Budget Office projections, which he said in the State of the Union, just down at the other end of this hallway, right down here. Walk out the middle door here and just keep walking and you will come to the House of Representatives. And you walk through that door and keep walking, you will walk right into the podium of the House of Representatives. Right there, right at the other end of the hall, the President got up and said, ''We will use the Congressional Budget Office scoring because they have been the best at doing it. We all have to use the same numbers.'' He said that.

Now, I know it is going to come as a shock to many that he has not lived up to his promise, but he did not. He is not using their numbers anymore. Why? Well, the same reason every President has not used their numbers. Because their numbers are tougher. It is harder to balance the budget when you use real numbers. It is easier when you get your friends at the Department of the Treasury to sort of wish this stuff away. Well, unfortunately we cannot wish it away.

Mr. THOMAS. Will the Senator yield?

Mr. SANTORUM. If the Senator will suspend for 1 second. I want to make sure that we end with day 34 of the President's unwillingness to come to the American people with a serious budget proposal to balance the budget. We are now in day 34, as I said before. We only have 101 days to go before the next fiscal year. As I said before, I will probably put a little thing over here for the ''1.'' Hopefully I will not have to. Hopefully I will not have to come back. But until the President gets serious about this and is honest with the American public about how they are going to balance the budget, I am going to be back.

I will be happy to yield.

Mr. THOMAS. If the Senator would yield. Let me first say how much I appreciate and congratulate the Senator on his continuing efforts to get some real understanding. I think some time ago the freshman class, those elected to the body in November, came here more dedicated to more serious work to balance the budget than about any other issue. One of the most difficult things for all of us, particularly people listening and voters, is what are the real facts? I mean, we start out and everybody wants to balance the budget. ''Well, we do not need an amendment,'' they say. ''We will do it.'' Then we come down to do it. But we cannot do it on the backs of these. You cannot do it here.

I guess my question is: It is sort of interesting that most of the President's budget is backloaded, and it happens after the year 2000. Now, that is 6 years from now. That is the rest of this Presidential term and one other term. Is there any significance to the fact that most of the pain comes after the year 2000?

Mr. SANTORUM. As a matter of fact, if you look at the percentage of the cuts the President makes in discretionary and mandatory programs, all the cuts he has to make, 20 percent of them—we have 10 years in the President's budget. You would think that the responsible thing to do would be to cut the budget—if you are going to do 100 percent of his cuts, if you take all the cuts he is going to make, you do it equally over the period of years, a straight line, 10 percent a year; 10 years, 100 percent of the cuts.

What the President does is cut very little the first year, cuts virtually nothing. In fact, of all the cuts he suggests, only 2 percent occur in the first year. If you look at the second year, only 3 percent occur in the second year. After the first 2 years, when you should have cut 20 percent to get on your line of 100 percent, he has cut 5 percent. You go to the third year, he cuts 5 percent. So over the first 3 years he has cut 10 percent of the amount needed to cut over the 10 years.

Where are the big cuts? Where is the big lifting, the heavy burden the last 2 years, the last 3 years? Twenty percent in the last year; 18 percent the year before that; 15 percent the year before that.

I mean, well over—well, about 50 percent of the cuts occur in the last 3 years. So he back-end loads this thing. He does not do heavy lifting early on. It is left to the next generation, not surprisingly, and next Presidents to deal with this.

Again, that is another form of wishing it away. I am sure every President has presented budgets at one point in

time that suggest they will balance the budget, but they never suggest we do it starting now, they always suggest we do it down the road sometime. That is not the responsible way to do it.

Mr. ASHCROFT assumed the Chair.

Mr. THOMAS. It is interesting that Mark Phillips from the Concord Coalition says:

Funny thing about these elusive outyears, they never seem to arrive.

Is it not also true that the tax reductions, the tax cuts the President has go into effect much earlier than do the spending cuts?

Mr. SANTORUM. That is always the way it is with taxes. For example, you can look at the Clinton budget in 1993. We had tax increases and spending cuts. Tax increases went into effect right away. We felt all those tax increases immediately. What we have not felt yet from the first budget in 1993 of the President is the spending cuts. They do not come around. They have not occurred. So now we are back and having to make the tough decisions on actually reducing spending.

Again, the Senator is right with the tax cuts. The President wants to get the tax cuts in now because it is election time; you want to help people out, give back a little of their taxes. Now he wants to cut them right before the election. It is clear, the spending cuts do not come.

Mr. THOMAS. One question. This is sort of unclear. We had the President, of course, and his advisers saying it was not prudent to set a time. That is when we had 7 years and he had no budget. Now he has a time and Mrs. Tyson says that is exactly what we should do, even though she decried it before.

Mr. SANTORUM. Decried it, she was outraged that someone would do this. This was going to be the fatal blow to our economy. She went at great length to say that setting a time certain to bring the budget into balance would be disastrous for the economy, and now that the President has been convinced to do it, it is now a good idea.

It amazes me, it absolutely amazes me how they just—as Representative OBEY from Wisconsin said about the President of his party—President Clinton's decision is like the weather, if you do not like it, wait and it will change. I think that is pretty much the way his advisers see it, that he has no responsibility to tell the country what they believe; their responsibility is to tell the President a line on what they believe.

Mr. THOMAS. The Senator is right. Mrs. Tyson, on February 6, said that their deficit path is a sound deficit path, both for the economy in the near term and forcasting the economy, something she said they were dealing with, that they have it under control.

This was in February, and then this body rejected that budget 99 to zip. She said more recently that we have to balance the budget, we want to get a balanced budget and to do it in a time certain that makes some sense.

My question is, though, under the best analysis—it is confusing—will this 10-year budget that has been sent down by the President balance in 10 years?

Mr. SANTORUM. This is hard. It is very hard for Members of the Senate and I know the general public to look and say, How does this all work, because you are looking 10 years down the road, in the case of the Republican budget 7 years down the road.

How do they know what they are going to do is actually going to accomplish a balanced budget? Like anybody else who has to deal with projections in the future, whether you are a businessman making projections or a family trying to save for a college education, whatever the case may be, if you are looking into the future and trying to plan things, everyone will tell you, every financial adviser, everybody else will say,

Be conservative in your projection; don't assume that things are going to be great, and everything. Let's try to take a realistic, not worst case—because you don't want to always assume worst case—but take a realistic underestimation of what you think will happen and plan on that. That is sort of a good conservative way to look at it. Don't give it up, don't give the store all away by wishing rosy projections.

That is what the Congressional Budget Office has done. What the President has done has really not been the prudent thing to do. What he has done is just assume everything is going to be great, that we will not have a recession.

Think about this, that we will not have a recession in the next 10 years; that we will not have high interest rates over the next 10 years, that everything is going to continue to grow at a very steady and healthy pace over 10 years. Never has that occurred in a post-World War II economy. Never has that occurred. But yet the President estimates that to be able to achieve his goals.

So as a result, I think most economists who have looked at this have said this is unrealistic, this is not going to happen and what the President has done is simply not belly up to the bar and tell us how he is going to really do this. As a result, we are going to see deficits. If we go the Clinton route, we are going to see deficits well into triple figures, well into the billions.

Mr. THOMAS. I thank the Senator. I have to say, again, I cannot think of anything more important to this country and more important to all of us than having a legitimate debate about facts with regard to balancing the budget, and the idea that somehow we can politically balance the budget and the pain comes in 10 years and we doctor the figures so that it looks good simply does not deal with the problem that is a real national problem to you and to me and to our kids and our grandkids.

So I appreciate very much the efforts that the Senator has made to seek to get these facts out.

Mr. SANTORUM. I say to the Senator that the view he just expressed is a view that is shared by folks across the political spectrum. The Washington Post yesterday, or the day before, I do not remember which, editorialized—one of the great staunch defenders of this President—editorialized against the President and his budget and his assumptions and how he went about coming to his balanced budget and said that the President hurt himself and his credibility, which is difficult to do, but it hurt his credibility by proposing a budget that simply is a smoke-and-mirrors, wishing-the-problem-away kind of budget.

So I think objective sources have looked at what the President has done and rejected it out of hand as a political document, going up on national television, with a 5-minute address trying to, again, through speeches, convince the American public he is on their side. But when you see the actions, the actions do not match the words. Whether it was on his health care speeches or whether it is on his welfare reform speeches or whether it is on the budget deficit, the President will give a great speech. He will give a great speech. He always does. He is a good communicator, and he will get up and give a great speech about what he believes in. But do not listen to the speech, watch what he does. Look at the documents. Look at the plans. Look at what he actually is proposing. Ignore the speech and watch the actions, and you will find that the speech does not match the actions and the actions come well short of what is needed to solve these problems.

Mr. INHOFE. Will the Senator yield on that point for a moment?

Mr. SANTORUM. Yes, I yield.

Mr. INHOFE. I had an experience I will share with the Senator. As I do every Thursday morning, I did a talk radio show back in my State of Oklahoma. I am sensing something that I did not sense in the last few years and that is an awareness—and I think maybe this came with the election of November 1994—the people are finally aware of what is really going on in this country.

They brought this up and I went back and looked it up. They said they have added up the figures—maybe you already talked about this—but in this revised budget he sent down, the figures come up, according to CBO, to over $1 trillion added to our debt.

Keep in mind, this is from a talk radio show, listeners calling in from Oklahoma today stating that they are actually aware of how much this is being added to the debt. For so many years, the average person in America did not really stop and think about the difference between deficit and debt. So they listened to the President come in and talk about, as President Clinton did during his campaign, that he had a program that was going to eliminate the deficit and had great deficit reductions.

I have often recommended to people to read an article that was in December's Reader's Digest called ''Budget Baloney'' where they describe how politicians try to deceive the people back home as Clinton is trying to do today by making them think that they have a program that is going to eliminate or cut the debt in some way. They describe it this way: Suppose you want a $10,000 car but only have $5,000; you tell everybody you really want a $15,000, so you settle for a $10,000 car, so you have cut the deficit by $5,000. That is essentially what he is trying to do.

The American people are awake now and the people know the difference. They are better informed. And if any message came from the election of November 8, it is that we are tired of the smoke and mirrors, as the Senator from Pennsylvania describes it so accurately, and we want action for a change.

I remember in 1993, in his budget message, the President stood in the House Chamber and said that the CBO is the most reliable operation here—not OMB, not any of the rest, but CBO. Yet, CBO says that his deficits are going to average, over the next 10 years, about $200 billion. So we are talking about a $2 trillion increase in our national debt. The people are not going to tolerate that.

Mr. THOMAS. If the Senator will yield, it seems to me there are a couple of reasons why we are becoming more aware—tangible reasons. We have had a debt and deficit for a long time and we all kind of brushed it off and put it on the credit card. But now we are going to have to raise the debt limit $5 trillion this year and probably another one before this administration is out.

Second, interest payments become probably the largest single line item in the budget next year—probably more than defense. So that becomes real. It takes money out of people's pockets and from other things. Finally, there is the example, it seems to me, of Medicare. It is not a question of whether you do something; it is a question of whether you have reform, or you will be into reserves in 2 years and broke in 7 years. So we have played with this as an abstract thing over the years, I believe, and now all of us are beginning to believe it is not abstract. It is very real and it is there. I just think it is so important that we deal with facts. There is some pain involved. But to try and act as if there is none, that just will not handle the problem.

Mr. INHOFE. I agree with the Senator. But when you say there is pain involved, look at the pain that is associated with continuing on the road we are on right now. The Senator from Pennsylvania just had a young child, and I congratulate him. I hope people realize this young man just had a brand-new baby boy. During that baby boy's lifetime, if we do not change the pattern that we are on right now, according to all of those who are prognosticators of the future, he will have to pay 82 percent of his lifetime income just to support Government.

I remember the other day during our national prayer breakfast we had somebody from one of the Communist countries prior to the time they got their freedom. He bragged and said they only have to give the Government—he said, ''We get to keep 20 percent.'' I said, ''What do you mean?'' He said, ''Every month or so, we have to give the Government 80 percent of everything we make.'' And he is celebrating that. I thought about that. Senator SANTORUM's newborn baby is going to have to pay 2 percent more than that to support Government if we do not make a change. He is too young to be able to come in and lobby and say do not do that to us.

So we hear from all these people saying they are going to cut these social programs. Here we are with a defense system right now that is going to be down below what it was in 1980 when we could not afford spare parts. Those things we really need Government for are being neglected by this administration, and I think the people have awakened.

Mr. SANTORUM. I want to say that the Joint Economic Committee is going to have a hearing on the President's budget. I am a member of that committee. I am looking forward to hearing the President's people on his budget and these economic assumptions.

It is, in my opinion, a very cruel hoax on future generations, and on the current electorate, to suggest that we can balance the budget without doing the things that are necessary in reducing spending and changing Government, and that are required by any sound economic view of the future. We are going to talk about that today. Senator MACK has stepped up and said we are going to look at the Clinton budget, examine it and give him an opportunity to convince us that he is right. I am looking forward to that. I am willing to give the President and his people their day, but I am very distressed at this continuing pattern of this President, just trying to pull the wool over the eyes of the American public.

The fact of the matter is that the folks, like my son, Daniel, who was born on Father's Day, are the people that are going to have to pay the price and consequences of the actions we have today. Somebody has to come to the floor of the Senate and defend those children's future. The Senator from Oklahoma is right. They do not have a chance to talk for themselves, so someone has to stand up and do it for them.

My father is an immigrant to this country, and I remember talking to my grandfather on many occasions about why he came to this country and brought my father over as a relatively young person. He said, ''Well, the biggest reason he came to America is because he wanted a better life for his children.''

Now, have we gone so far in this country, where this generation of Americans cares more about themselves than about their families and their futures? If we have, what does that say about the likely prospects for the future of this country?

What we have is a bunch of people, including the President, who come before the American people and try to scare them into believing that somehow we are going to hurt them and that we, the Republicans, do not care about them, and scare them into keeping the status quo in place, which they know hurts future generations, but, frankly, future generations do not vote now.

Mr. INHOFE. I suggest to the Senator from Pennsylvania, your father sounds like he was a student of history and he looked at what this country is all about. It reminds me that if we remember in our history, when de Tocqueville came here, he came over to study our business system. He was so impressed with the great wealth this Nation had accumulated that he wrote a book. The last paragraph says that once the people of this country find out they can vote themselves money out of the public trust, this system will fail.

We are so close to that point, and yet, this great discovery that was reflected in the election of November shows me that people are saying that we are almost there and we cannot afford to let it continue.

The one thing that the three of us have in common is we are all freshmen, we are new here. I think maybe that is why we are a little bit more exercised on this. We remember the mandate very well. That is all I heard during not just the election, but I have had 77 town meetings since the election. The first thing coming out of the chute is the budget. ''I do not care what you do, do something to stop the deficit.'' That is what we are committed to doing.

Mr. THOMAS. The Senator mentioned something about de Tocqueville. Earlier in his book he said, as he looked at the new democracy and he looked at the new system of people governing themselves, which at that time was a new experiment, he said that the strength of this country was people doing for themselves and helping each other on a local community basis. That is very true. Now we move more and more—and the budget has to do with the direction we take in Government, certainly. When we decide to have less Government which is less costly, we do that as a philosophy, and most everybody subscribes to that. This is the labor that goes with it to cause that to happen. You know, it is all tied together, and we cannot be responsible morally and fiscally, unless we do something about this imbalance that has gone on for 25 years.

Mr. INHOFE. We also have to realize—I do not want to take us off the track of the budget, but de Tocqueville

was also concerned about some of the social problems he saw forecast in this country. He said,

America is great because America is good. When America ceases to be good, America will cease to be great.

So a lot of people in our history, going all the way back to Washington, talked about and addressed public debt, and Jefferson was also outspoken on this. I think we are here in a political revolution in this country, and I think it is an exciting thing. The President will have to be very persuasive.

Mr. THOMAS. Does Senator SANTORUM have a de Tocqueville quote, also?

Mr. SANTORUM. No, I do not, but I do have an editorial from one of my papers, in the Lancaster Intelligencer, which said that the difference between the Republican budget and the President's budget, and they were very supportive of the President's budget, is that the President's budget is compassionate. The President's budget is compassionate because it does not tear apart all these programs that are here in place in Washington.

I would suggest to them that compassion—if compassion is measured by a group of people in Washington willing to take people's hard-earned money and give it to people that they see fit to give it to, if that is the measure of compassion I can tell you it is very easy for me. It is no skin off my back to vote money from somebody else and give it to somebody else.

Some people say that is compassion. If I go to someone who is working 16-hour days, 6 days a week, and I tax him more money and give it to somebody else who may not be working as hard or may have a problem, whatever the case may be—I am sort of removed from this. It is not hurting me. I am not taking any money from me here. I am taking it from somebody else and giving it to somebody else. Where is that compassion?

The word compassion, if you look at the derivation of the word compassion, it means ''with suffering.'' I am not suffering with anybody. I am not suffering with anybody. I am telling you to give money. And I am taking it from you and giving it to him. Where am I involved in the suffering here? There is no suffering.

It makes you look nice. It is great to be able to go into a community where you are handing out money. Look, I love to present checks. Oh, it is great to take other people's money, who worked hard for it, and have me give it to people. It is a wonderful feeling. You feel great. But are you really compassionate? Is that action truly compassionate? Is there any ''suffering with,'' that is going on here? No, no, it is not compassion at all. It is politics. And it is easy and it is fun. Oh, I know it is fun to just take that money away from those people who are making too much money and give it to folks who are not making enough. It is sort of the modern day Robin Hood. But there is no suffering here.

What the Senator from Wyoming said is absolutely right. This country is a great country because we have people who cared about people, who did ''suffer with,'' who did care about their neighbor, who did know who their neighbors were and went out and did something about it. And because Government has gotten so big and is starting to do so much for people, we stop doing so much for each other because it is not our job anymore. It is not our job to help take care of our fellow neighbor. There is a Government program that does that and just call this office, toll free.

That is not what made America great. Toll-free numbers for calling a Government bureaucrat is not what made America great. What made America great, what the Senator from Oklahoma said, is the goodness of America. I can tell you there is nothing good about taking money away from people who work hard for it and giving it to people who we want to for whatever reason we want to. That is not good. That may be necessary in some cases. There are people in this country who do need help and there are Government programs that do it. But do not come here and say that is good, or that is compassionate. It may be necessary sometimes.

What is good is if you participate individually, if you get out there and help your neighbor and become part of the fabric of community, which is what de Tocqueville wrote about over 100 years ago. That is what makes America great. That is what we are trying to get back to—understanding that families and communities and neighborhoods are important to the fabric of our society. And if we continue to lose them we will lose America.

So, the Lancaster Intelligencer is dead wrong. There is nothing compassionate about keeping the Federal Government in control of people's lives. It is anything but compassionate because there is no suffering here. There is only more suffering out there.

Mr. THOMAS. The Senator has made a great point. One of the exciting things, it seems to me, about this Congress is that we have for the first time in many years an opportunity to take a look at Government programs that have been in place for 30 or 40 years, such as the War on Poverty—which has failed. There are more people in poverty now than when it began.

So we are not talking about taking away the safety net. We are not talking about doing away with the assistance to people who need assistance. In welfare we want to help those, but help them back into the workplace. And that is exciting, to have for the first time a chance to say, Is there a better way to provide this assistance? Is there a more efficient way to do something, rather than just continuing to fund failed programs? I think that is the exciting thing we are doing.

Mr. INHOFE. I think it is inherent in the bureaucracy. We have to address it that way.

I can remember a very famous speech that was made, back in 1965. My colleague and I, we may be freshmen here but we are the two oldest Members of the freshman class. We can remember this well. The speech was called ''A Rendezvous With Destiny'' by Ronald Reagan. It was his first political speech. It was back during the Goldwater campaign.

In this speech he said something very profound. He said, ''There is nothing closer to immortality on the face of this Earth than a Government program once started.''

I learned this lesson when I was mayor of the city of Tulsa. This is kind of an interesting story and tells you what is happening here today.

I went in and made a decision that over a 5-year period I would keep the level of government, city government, the same size yet increase the delivery of services. I did this because at that time the average large city doubled in size every 5 years. I thought, let us try to stop that. So I started firing people for inefficiency. And when I saw them later and said, ''I thought I fired you,'' and they said, ''Well I have been reinstated,'' I found out in government you cannot fire people for inefficiency. I found the way to do it. You defund departments and get them all.

There are some bureaucracies that were at one time performing a function that was needed; the problem went away, but the bureaucracy continues. This is what we are talking about, going through, having sunset provisions where we can say, Is this thing really needed? Is this in the public interest anymore, as it was 40 years ago when that particular agency was started?

It is not a lack of compassion, as the Senator from Pennsylvania has said in such an articulate way, because we are compassionate. But when I have townhall meetings, I talk to senior citizens. Sometimes when I have them during the day, 90 percent of them are senior citizens or retired people. They come up. Of course when you tell them what is going to happen if we continue on this road, what is going to happen to their grandchildren and great grandchildren and generations to come, I find these people are not selfish. They just do not want to be cut unless others are cut.

The Senator might remember when the Heritage Foundation did a study here a few years ago where they said if you put on a growth cap of 2 percent for just a matter of 5 years on all Government spending, you will balance the budget in that period of time and will not have to cut or eliminate one Federal program. Just stop the increase, the accelerated growth. That is, I think, what we are trying to do.

Mr. THOMAS. That is the interesting and not well understood point. Two years ago—when the President talks

about deficit reduction, the fact is there was no cut in spending. The fact is the spending still continues at 5 percent and the cuts, the deficit reductions were bookkeeping things and raising taxes. We still continued. So we are talking not about cutting overall spending. We are talking about reducing the growth. I thank the Senator.

Mr. INHOFE. The Senator might remember, he and I were both in the House of Representatives back when President Bush—I criticized him publicly because of some of the assumptions he came up with in his budget resolution as to growth assumptions. A lot of people do not realize for each 1 percent growth in economic activity, there is a generation of new revenue of about $24 billion. He was a little overly optimistic on some of the projections his people put forward for him also on gas tax revenues and some of the other things.

I think we want to be realistic. We want to get to where we are going and that is to eliminate the deficit by the year 2002. I would like to do it by the year 2000 instead of 2002. I think most of us would. But we are on the road to doing something realistic. Let us stay with it.

Mr. THOMAS. We are. I thank the Senator for his comments.

Mr. GRASSLEY addressed the Chair.

The PRESIDING OFFICER. The Senator from Iowa.

SMALL RURAL HOSPITALS

Mr. GRASSLEY. Mr. President, I will join Senator BAUCUS and Senator ROCKEFELLER in introducing the Rural Health Improvement Act of 1995.

The purpose of this legislation is to establish within Medicare a rural hospital flexibility program.

Such a program is badly needed. Many smaller rural communities, and their hospitals, are unable to sustain the full range of hospital services necessary to qualify for participation in the Medicare Program. There are several reasons for this. Among the most important is that the Medicare rules and requirements for full service hospitals are burdensome and inflexible. Compliance with them is difficult for smaller rural facilities. Furthermore, Medicare reimbursement is inadequate. This latter problem is compounded by the fact that these hospitals are likely to be dependent on the program—most of their patients in any given year are likely to be Medicare beneficiaries. Thus, most of their reimbursement comes from the Medicare Program.

As a consequence, under the current Medicare rules and reimbursement levels, many of these small, rural hospitals across the country could go out of business. If they do, their communities would lose their current access to emergency medical services.

This legislation could make the difference between survival and closure for these hospitals. In Iowa, there are at least 10 hospitals, perhaps more, which could qualify for participation in the program this legislation would establish.

This legislation would help those hospitals to continue offering essential hospital services in at least four ways: It would provide more appropriate and flexible staffing and licensure standards. It would reimburse both inpatient and outpatient services on a reasonable cost basis. It would promote integration of these hospitals in broader networks by requiring participating States to develop at least one rural health network in which the rural critical access hospital would participate. And it would require the Secretary of Health and Human Services to recommend to the Congress an appropriate reimbursement methodology under Medicare for telemedicine services.

Hospitals which participate in this program could thus continue to provide an essential point of access to hospital level services in their rural communities. Essentially, these hospitals could pare back the services they offer to emergency care services and to 24-hour nursing services, while continuing to participate in the Medicare Program on a reasonable cost basis. In this way, they would continue to be the major point of access to emergency medical care in their communities.

Again, I am pleased to join my colleagues, Senator BAUCUS and Senator ROCKEFELLER, and I commend their leadership on this problem.

Mr. FRIST addressed the Chair.

The PRESIDING OFFICER. The Senator from Tennessee.

Mr. FRIST. Mr. President, I ask unanimous consent to speak as if in morning business for 6 minutes.

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

THE PRESIDENT'S BUDGET

Mr. FRIST. Mr. President, I wish to continue the discussion begun this morning by my fellow freshman Senators on the President's budget proposal introduced last week.

Mr. President, I am pleased to see that President Clinton has joined Republicans in at last recognizing the need—the critical need—to balance the Federal budget.

But while the President's new position is a dramatic policy reversal from his previously stated view, and his new budget proposal is an improvement over his last one which did nothing to reign in the growth of government, the President's budget does not go nearly far enough.

Mr. President, the President's logic that slowing the path of deficit reduction would ease the pain on the elderly, on students, on the disabled, and the economy just does not hold up. In fact, the reverse is true. Delaying balancing the budget is more costly in the long run, as we run up more and more debt and higher and higher interest payments. And according to CBO, expected reductions in interest rates that would result under the Republican balanced budget plan are not certain to materialize under the President's plan. This means that under the President's plan, home mortgages, business loans, credit card interest, and virtually everything that is affected by interest rates in this country would be more expensive. And finally, delaying balance for 10 years runs the risk that we may never get there if we do not put our country on a strict diet of spending discipline beginning now.

President Clinton has recognized that there must be spending restraint on entitlement programs, such as Medicare and Medicaid, if we are to achieve balance, and I commend him for at least talking the talk of entitlement reform. But the President's specific proposals are troublesome. The Clinton June budget actually spends $1 billion more in nondefense discretionary spending than did his February budget. And it relies on overly optimistic estimates relating to economic growth and the cost of increases in Medicare and Medicaid. These rosy estimates, while appearing to be only slightly different from congressional estimates in the early years, are greatly magnified over a 10-year period. As a result, deficits will be much higher if analyzed using Congressional Budget Office figures.

According to the Congressional Budget Office—who Mr. Clinton once exalted and now deplores—Mr. Clinton's latest budget will fall far short of its goals, and like the last budget Mr. Clinton sent to Capitol Hill, will still leave the Nation in debt by as much as $234 billion by the year 2002.

It is clear to me what the President wants to do. He very much wants to balance the budget. He knows that balancing the budget is the right thing to do. But he really does not want to make the hard choices that must be made if we are going to truly put America back on the road to fiscal health.

The President's budget proposals relating to health care are indicative of the President's split-personality budget. He first takes a lower baseline for Medicare and Medicaid, which in plain terms means how much these programs are projected to cost over the next 10 years. This averts some pain by saying, ''It's really not as bad as we thought.'' Then the President's budget proposal reduces spending for Medicare—only by cutting payments to providers. In effect, the President is saying, ''Let's reduce spending for Medicare, but only if it doesn't hurt anyone.'' There are no proposed changes for payments to beneficiaries or real reform of the system.

Mr. President, this approach does not make any sense in 1995. We must reform Medicare to save Medicare, to improve it, to preserve it. We have to change the program so that it is preserved for generations to come. We will never ensure long-term solvency of the Medicare program by just continuing

to cut payments to health care providers. Republicans have instead proposed restructuring the Medicare program to save it and improve it. The Republican plan would expand choice, for our seniors and our disabled, and would increase market efficiencies and reduce waste. The President's plan, on the other hand, would only postpone bankruptcy of the Medicare program until 2005.

Mr. President, while I admire the President's goals, I believe that the President's latest budget submission is yet one more case of failing to adequately address the crisis at hand and choosing instead to respond to critics by producing a budget designed for domestic political consumption rather than the welfare of the American people.

I hope the President will work with the Republicans. We, on our side of the aisle, have made some tough choices, and there are more to come. But I know the American people are with us, and they will put the interests of the country ahead of special interests. They voted for the fundamental change that Republicans have proposed and we must honor our commitment to the Americans who sent us to Washington last November.

I thank the Chair and yield the floor.

Mr. WARNER addressed the Chair.

The PRESIDING OFFICER. The Senator from Virginia.

Mr. WARNER. Mr. President, I wish to commend our distinguished colleague. We are indeed fortunate, not only here in the Senate but the United States, to have one who made this important career change having dedicated his life to saving lives in his career. Now, he brings to the institution of the Senate enormous knowledge, not only personal but that gained from working with his colleagues in the medical profession for these many years, such that we can have the benefit of his wisdom and experience as we address the critical issues relating to health care. I express my appreciation to the Senator for these remarks this morning. They are very timely.

TRIBUTE TO GEORGE STAFFORD

Mr. DOLE. Mr. President, one of the most remarkable public servants in Kansas history was Frank Carlson, who served in this Chamber for 18 years.

During his career, Senator Carlson also served for 4 years as a member of the Kansas House of Representatives, 12 years in the U.S. House of Representatives, and 4 years as Governor.

Senator Carlson did many great things in his career, including helping to draft Dwight Eisenhower for President in 1952.

But I am here this morning to talk about another great thing that Frank Carlson did. And that is the fact that he brought George Stafford to Washington, DC.

George passed away last week, and I wanted to take a minute to remember this outstanding Kansan and outstanding American.

George was executive secretary to Frank Carlson during his term as Governor, and followed him to Washington as his Senate administrative assistant.

He served in that role for 17 years with great intelligence and integrity, always reaching out to provide advice and support to young Kansans who were new in town.

In 1967, then-President Johnson appointed George to serve on the Interstate Commerce Commission. He remained on the commission until 1980, serving as its chairman for 7 years.

George's years in Topeka and Washington are not the only examples of the service he gave to his country. He also defended freedom in World War II, rising to the rank of Captain, and receiving both the bronze star and the purple heart.

Like many in Kansas and in Washington, I was proud to call George Stafford my friend.

I know that Senator KASSEBAUM joins with me in extending our sympathies to Lena Stafford, George's wife of 48 years; his children; Bill, Susan, and Quincy; and his five grandchildren.

RETIREMENT OF GEN. GORDON SULLIVAN

Mr. DOLE. Mr. President, I rise today to commend a truly remarkable individual, Gen. Gordon R. Sullivan, on his retirement after 36 years of service to our Army and to our Nation.

I had the distinct honor of working closely with General Sullivan over the years when he served as the deputy of the Command and Staff College at Fort Leavenworth, KS and during his command of the Big Red One at Fort Riley, KS.

Indeed, it was my pleasure to introduce General Sullivan before the Senate Armed Services Committee during his confirmation as chief of staff of the Army just 4 years ago.

In my view, Gordon Sullivan was exactly the right man at the right time to lead our Army during one of the most difficult periods of restructuring and downsizing. He kept the right perspective, and put it best in his own words, ''smaller is not better, better is better.''

Throughout his 4 years as Army Chief of Staff, General Sullivan kept his focus and vision. His priorities were our soldiers whom he prepared to fight and win our Nation's wars. And their families who support our solders and willingly sacrifice for their purpose.

I frequently conferred with General Sullivan throughout this term as Army Chief. His views and counsel were always on the mark. Gordon Sullivan brought tremendous wisdom to the job and a style of leadership which reflected his greatness.

Our Army will sorely miss General Sullivan, but it is stronger and better for his service. The legacy he leaves, a ready Army, a future force that will be unmatched, and the deep love and devotion of his solders is fitting of this great man.

I ask my colleagues to join me in commending Gen. Gordon R. Sullivan for his sacrifice, his leadership, and his commitment to our solders and to our Nation.

God's speed and blessings to him and to his wife Gay, and their family.

TRIBUTE TO CLAIRE STERLING

Mr. MOYNIHAN. Mr. President, on Saturday last, in Arezzo, Italy, Claire Sterling died, age 76. So passed, as her great friend Meg Greenfield put it, ''one of the great journalists of all time.''

She was born in Queens, took her degree from Brooklyn College, and went from there to the Columbia graduate school of journalism. In time she joined the staff of the Reporter where she was a colleague of Ms. Greenfield for some 17 years, albeit from her post in Rome.

In her youth, as a student involved with student politics at Brooklyn College, and later as a union organizer, she came in contact with the Stalinist left which gave her a perspective, almost a second sense concerning ideological politics that ever thereafter informed her accounts of world politics at the highest, and yes, lowest, even criminal and clandestine levels. What liberals did not wish to know—many liberals, that is—and conservatives could not grasp, she instantly understood, and sublimely construed. There is a Hebrew saying, ha mevin yavin: those who understand, understand. Claire Sterling understood and not just at metaphysical heights. Who else would have persuaded the rebels opposing French rule in Algeria to let her know which trains she could take back to the coast which were not scheduled to be blown up.

Meg Greenfield allows as how ''it is hard to think of her as dead, for she was so alive.'' And so we will remember her, even as we offer our condolences to her beloved husband Tom, and her son Luke, daughter Abigail, and her sister Ethel.

Mr. President, I ask unanimous consent that the full text of the articles from the New York Times and the Washington Post be printed in the RECORD.

There being no objection, the articles were ordered to be printed in the RECORD, as follows:

[From the New York Times, June 18, 1995]

CLAIRE STERLING, 76, DIES; WRITER ON CRIME AND TERROR

(By Eric Pace)

Claire Sterling, an American author and correspondent based in Italy, who was known for her writings on terrorism, assassination and crime, died yesterday in a hospital in Arezzo, Italy. She was 76 and lived outside of Cortona, near Arezzo.

She had cancer of the colon, her husband said.

Mrs. Sterling was based in Italy for more than 30 years and traveled widely. Her most

recent book, ''Thieves' World: The Threat of the New Global Network of Organized Crime'' (1994, Simon & Schuster), was praised by Stephen Handelman, of the Harriman Institute of Advanced Soviet Studies at Columbia University, as making ''a significant contribution to post-cold-war debate'' by affirming ''that the growing interdependence among nation-states and financial institutions has made it easier for crime syndicates to cooperate across national boundaries.''

In an earlier book, ''Octopus: the Long Reach of the International Sicilian Mafia'' (1990), she examined the Sicilian Mafia and charged gangster-chieftains based in Palermo with creating a multinational empire with the United States as its longtime main target.

In her 1984 book ''The Time of the Assassins,'' Mrs. Sterling examined the attempt by a Turk, Mehmet Ali Agca, to kill Pope John Paul II in 1981. She contended that Mr. Agca had ''come to Rome as a professional hit man, hired by a Bulgarian spy ring.'' She presented what she called ''massive proof that the Soviet Union and its surrogates have provided the weapons, training and sanctuary for a worldwide terror network aimed at the destabilization of Western democratic society.''

Mrs. Sterling's contention about a Bulgarian role in the attack was disputed, but writing in 1991, she maintained that Italian courts in 1988 had ''expressed their moral certainty that Bulgaria's secret service was behind the papal shooting.''

She also attracted wide attention with her 1981 book ''The Terror Network,'' which traced connections among terrorist groups around the globe. William Abrahams, who edited the book for Holt, Rinehart & Winston, said that while she was writing it, the Italian Government posted a guard at her house to protect her.

A decade later, the New York Times columnist Anthony Lewis reported that William J. Casey, the Director of Central Intelligence in the Reagan Administration, had held up a copy of ''The Terror Network'' before a group of official intelligence experts and had ''said contemptuously that he had learned more from it than from all of them.''

Mrs. Sterling's first book was ''The Masaryk Case'' (1969), about Jan Masaryk, the Czechoslovak Foreign Minister who was reported to have leaped to his death in 1948 from a window of his Prague apartment. She concluded that he had been killed by Soviet or Czechoslovak Stalinists to keep him from defecting to the West.

In her decades abroad, she also wrote articles for The New York Times, Atlantic Monthly, The Reporter magazine, Life, Reader's Digest, Harper's, The New Republic, The Washington Post, International Herald Tribune and The Financial Times.

Mrs. Sterling was born Claire Neikind in Queens, received a bachelor's degree in economics from Brooklyn College, and worked for a time as a union organizer among electrical workers.

In 1945 she received a master's degree from the Columbia Graduate School of Journalism, which awarded her a Pulitzer Traveling Scholarship.

She went on to work in Rome for what she described in a 1981 interview as ''a fly-by-night American news agency.'' She learned Italian, and when the agency went out of business, she returned to the United States and joined the staff of The Reporter magazine, which began publication in early 1949.

Mrs. Sterling recalled that when she applied for the Reporter job, Max Ascoli, the magazine's Italian-born publisher and editor, said, ''If anybody's going to write about Italy around here, it's me.''

In 1951, she married Tom Sterling, a writer. She remembered that ''Max Ascoli's wedding present to me was a six-month assignment in Rome.''

Mrs. Sterling's six-month assignment lasted 17 years, ending only when The Reporter ceased publication in 1968. By then, the Sterlings were accustomed to life in Italy, where Mr. Sterling had written some of his more than a dozen books. So Mrs. Sterling, keeping Italy as her base, began writing her Masaryk book.

She is survived by her husband; a son, Luke, of Cortona; a daughter, Abigail Vazquez of San Francisco; two grandchildren, and a sister, Ethel Braun of Manhattan.

[From the Washington Post, June 18, 1995]

CLAIRE STERLING, INVESTIGATIVE WRITER, DIES

(By Bart Barnes)

Claire Sterling, 75, a U.S. journalist and author of investigative books that explored connections between the Soviet government and terrorist organizations around the world, died of cancer June 17 at a hospital in Arezzo, Italy.

In a journalistic career that spanned almost five decades, Mrs. Sterling covered and wrote about armed revolutionary movements in Third World countries, U.S. gangsters, World War II refugees and political assassinations. She was based in Italy for most of that period, and from there she wrote stories for The Washington Post and other newspapers. But her work also took her to Eastern Europe, Africa, the Middle East and Asia.

Her books included ''The Masaryk Case'' (1969), In which she argued that the 1948 death of Czech Foreign Minister Jan Masaryk was murder, not suicide; ''The Terror Network'' (1981), in which she argued that the Soviets were sponsoring and supporting terrorist organizations in several countries; and ''The Time of the Assassins'' (1984), in which she accused the Soviet Union of complicity in the 1981 attempted assassination of Pope John Paul II.

She began her career in journalism shortly after World War II, working in Italy for the now-defunct Overseas News Service. It was an era when women were rare and often unwelcome in the news business, and Mrs. Sterling became known as an adventuresome and energetic reporter who sometimes used creative methods to get her stories.

In Italy, she boarded a Palestine-bound ship with Jewish war refugees, taping her U.S. passport to her arm, which she had encased in a cast as if it were broken. The ship was intercepted by British authorities, and she was taken to an internment camp. But she was released when she produced the passport proving her U.S. nationality.

During the 1950s, she wrote about independence movements in North Africa, and she often traveled with bands of armed insurgents, including once when she was five months pregnant. When her husband expressed concern about this, she told him not to worry—the rebels had promised not to blow up any trains she was on.

Mrs. Sterling was born in New York. She graduated from Brooklyn College and received a degree in journalism from Columbia University.

After a short stint with the Overseas News Service, she joined the staff of Reporter magazine in 1949. She interviewed New York mob boss Lucky Luciano and wrote an unflattering profile of Clare Booth Luce, the U.S. ambassador to Italy during the Eisenhower administration. She wrote stories from sub-Saharan Africa, the Middle East and Asia.

After Reporter folded in 1968, Mrs. Sterling wrote articles for Harper's magazine, did freelance writing and wrote books.

In 1968, she covered the brief period of social and political liberalization in Czechoslovakia under the leadership of Alexander Dubcek, which became known as the Prague Spring. In the course of reporting that story, she began looking into the 1948 death of Masaryk, the foreign minister, who had been found dead in the courtyard of Prague's Czernin Palace, apparently after falling from a window. The death had been ruled a suicide.

From previously published material, interviews and new documents, Mrs. Sterling concluded that Masaryk, a popular political figure and a leader of the Czech government in exile during the wartime occupation by Germany, had been murdered by Communist agents, probably to prevent his defection to the West. She speculated in her book ''The Masaryk Case'' that he had been overpowered by security agents, suffocated with pillows and flung from the window.

Her second book, ''The Terror Network,'' was based on an article she had written for Atlantic Monthly in which she explored similarities between the kidnappings and murders in the 1970s of former Italian premier Aldo Moro by the Italian Red Brigades and of West German industrialist Hans-Martin Schleyer by the German Red Army Faction.

In this book, Mrs. Sterling traced what she said were extensive political and military links between terrorist organizations, all of which, she suggested, received material but clandestine support from Moscow. ''In effect,'' she wrote, ''the Soviet Union simply laid a loaded gun on the table, leaving the others to get on with it.'' The book was well received by the newly inaugurated administration of Ronald Reagan, but liberal critics complained that Mrs. Sterling's argument was unsupported by conclusive evidence.

In ''The Time of the Assassins,'' Mrs. Sterling investigated claims by Mehmet Al Agca that he was acting on orders from the Bulgarian secret service in his 1981 attempt on the life of Pope John Paul II. In 1986, an Italian jury acquitted three Bulgarians and three Turks of conspiracy in the plot for lack of proof. Mrs. Sterling continued to insist that the Soviet Union was behind it.

She married novelist Thomas Sterling in 1951. They lived in Rome and Cortona, Italy.

In addition to her husband, she is survived by two children, Luke Sterling, a painter who lives in Cortona, and Abigail Vazquez of San Francisco; and two grandchildren.

WAS CONGRESS IRRESPONSIBLE? THE VOTERS HAVE SAID YES

Mr. HELMS. Mr. President, on that memorable evening in 1972 when I learned that I had been elected to the Senate, I made a commitment to myself that I would never fail to see a young person, or a group of young people, who wanted to see me.

It has proved enormously beneficial to me because I have been inspired by the estimated 60,000 young people with whom I have visited during the nearly 23 years I have been in the Senate.

Most of them have been concerned about the magnitude of the Federal debt that Congress has run up for the coming generations to pay. The young people and I always discuss the fact that under the U.S. Constitution, no President can spend a dime of Federal money that has not first been authorized and appropriated by both the House and Senate of the United States.

That's why I began making these daily reports to the Senate on February 22, 1992. I wanted to make it a matter of daily record precisely the size of the Federal debt which as of yesterday, Wednesday, June 21, stood at $4,898,068,854,045.71 or $18,593.15 for every man, woman, and child in America.

THE RECALL OF THE CHINESE AMBASSADOR

Mr. PELL. Mr. President, I learned with regret last week that the People's Republic of China has recalled its ambassador to the United States, Li Daoyu, because of the visit of Taiwan President Lee Teng-hui. I am disappointed that the Chinese government has chosen this step as a form of protest over Lee's visit.

President Lee came to the United States on a private visit after he was invited to speak at his alma mater. He was granted a visa as a simple act of courtesy and his trip does not represent a change in our government's one-China policy. The United States believes strongly that notable speakers from around the world should be free to travel here to speak their views. I feel that Beijing's reaction to Lee's visit is both excessive and unproductive. Lee's visit was a small matter and should be seen as insignificant for overall Sino-United States relations.

There is a great reservoir of friendship between the peoples of China and the United States. I think of that friendship as an iceberg. Right now we may see problems at the tip, but underneath is a large, enduring solidness. I feel certain that sturdy base will help us outlast minor irritants to the relationship, such as this one. It is my deep wish that Beijing would simply agree to disagree with Washington on this matter, return Ambassador Li to his post quickly, and move on to the truly important matters we have between the two countries.

AMERICAN CENTER PLZEN

Mr. PELL. On May 6, 1995, I was honored to be part of the delegation headed by Ambassador Madeleine Albright and accompanied by Gen. Charles G. Boyd, commander in chief, U.S. European Command, to represent President Clinton at ceremonies marking the 50th anniversary of the liberation of Plzen in the Czech Republic.

Having served as a foreign service officer in Prague in 1946 after World War II, it was a particular personal honor to be present at such a warm outpouring of appreciation and gratitude shown by the people of the Czech Republic toward the gallant contributions made by the service men and women of Gen. George Patton's Third Army.

While in Plzen I was also honored to participate in the opening of American Center Plzen, with Prime Minister Klaus, the United States Ambassador to the Czech Republic, Adrian Basora, Ambassador Albright, and General Boyd. The creation of the American Center in Plzen was the personal accomplishment of a U.S. Peace Corps volunteer from Barrington, RI, John R. Hess.

The Center is a tribute to the enthusiasm and commitment of John Hess and the citizens of Plzen. Significantly, it was completed without having to commit any U.S. tax dollars. I asked Mr. Hess if he would send me a report on the creation of American Center Plzen, so that his work could serve as an example to others reaching out to our neighbors around the world. I ask unanimous consent that his report on American Center Plzen be printed in the RECORD.

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

REPORT ON AMERICAN CENTER PLZEN

This is a report requested by U.S. Senator Claiborne Pell about my activities as a U.S. Peace Corps Volunteer in establishing American Center Plzen without use of American taxpayers money. Senator Pell was in Plzen at the time of the Center's opening.

The idea of having an American Center for American-Czech business and cultural exchange in Plzen began with then Deputy Mayor of Plzen, Zdenek Prosek when in 1993 he discussed the thought with the U.S. Ambassador, Foreign Commercial Service, USIS, and representatives of the Czech American Enterprise Fund (CAEF). All thought well of the concept. CAEF liked the plan because there would be business investment opportunities for them and the others because it could help to create U.S. and Czech business growth as well as expand U.S. and Czech cultural understanding. The purpose of the Center would offer something to both the United States and to Plzen. A Center would make it easier for U.S. businesses to establish themselves in Western Bohemia as investors and for export possibilities. It would also enhance and build upon the warm feelings held by the West Bohemian people toward the U.S. resulting from General Patton's liberation of this area in 1945. Plzen would benefit as the Center will open access to U.S. business for joint ventures and could obtain the balanced economy sought by city leaders. CAEF offered to donate the equivalent of $35,000.00 as ''seed money'' for the project to cover any first year operating deficits. The United States Embassy clearly stated that no U.S. funds were available for the purpose of establishing the Center. Advisory assistance would be offered.

The city of Plzen made it known that it would bear all costs. Deputy Mayor Prosek (now Lord Mayor) told the Embassy and CAEF that the City would donate a historic building in the city center and would restore it at Plzen's expense. Plzen certainly did that spending the equivalent of $1,250,000 on the renovation as well as donating the building. Mayor Prosek also stated that a Foundation would be created with a Czech Director to operate the Center under Czech law and would be self supporting. It was agreed among the parties that a Peace Corps Business Volunteer as a catalyst to ensure that the project would be designed and implemented in a manner to assure success would be assigned to Plzen.

As that volunteer I discussed with project planners and architects hired by the city the layout of the building to meet the purpose of the project. It was agreed among the project designers, the architects, and myself that the building must be competitive for well into the 21st Century and must meet western standards. The building would have a social center, a meeting room for seminars, permanent offices, temporary offices for companies seeking partners, an information area, and a place for cultural displays. The building has over 100 communication outlets for phones, faxes, and computers. It is centrally air conditioned and handicap accessible. In addition, all offices have raised floors for ease of cabling. Ability to communicate was a major thrust and attention to computer, fax, and telephone access was a priority of the building infrastructure. The City also wanted the building completed in time for the 50 year Liberation Ceremony to take place in May 1995.

A working committee consisting of ten people was formed and met regularly to review plans. The committee assisted in hiring the Director for the Center as well as talking with the U.S. and Czech business communities about the Center. The makeup of the committee included five Czechs and five Americans. Four Czechs were from Plzen and one Czech and three Americans were from Prague.

Plans for the building were completed in June 1994 and were approved by the City. Building restoration began in September 1994 and was completed in late April 1995. The City paid all the expenses for the building. No U.S. taxpayer money was a part of the building renovations. The building is expected to be self sufficient financially by January 1997 through rental charges for offices, meetings, special services, etc.

The Foundation has been established and has two Boards, one advisory which includes American Chamber of Commerce in the Czech Republic, Peace Corps, an American Embassy person, and Chamber of Commerce Plzen. The voting Board is chaired by a Czech who is also Chair of the Business Innovation Center in Plzen. There are four Czechs and one American on the voting Board.

A few American and Czech companies have made donations of operating equipment such as fax machines and computers to the Center which are greatly appreciated.

A Peace Corps Business Volunteer will continue as an advisor to the Center until late January 1996. Peace Corps does not plan to assign another volunteer to this project after that date.

CONCLUSION OF MORNING BUSINESS

Mr. WARNER. Mr. President, am I correct that the Senate now turns to S. 440?

The PRESIDING OFFICER. Morning business is closed.

NATIONAL HIGHWAY SYSTEM DESIGNATION ACT

The PRESIDING OFFICER. Under the previous order, the Senate will now resume consideration of S. 440, which the clerk will report.

The assistant legislative clerk read as follows:

A bill (S. 440) to amend title 23, United States Code, to provide for the designation of the National Highway System, and for other purposes.

The Senate resumed consideration of the bill.

Mr. WARNER. Mr. President, I see in the Chamber joining me the distinguished Senator from Rhode Island, the

chairman of the committee, and I anticipate the arrival very shortly of the distinguished Senator from Montana, the comanager of the bill.

Mr. President, at the conclusion of the session last night, the Senate gave unanimous consent to a list of amendments. They are printed in today's RECORD, and the managers are very anxious to work with Members to resolve these amendments. I think several of them can be accepted. At this time, I cannot predict whether or not there will be further rollcall votes other than final passage associated with this bill.

The leadership is quite anxious to finish this bill today, and I indicate to all Members a willingness to deal with these amendments, and I am hopeful that Members will shortly come to the floor to work with us.

Mr. CHAFEE. Mr. President, I wish to echo what the distinguished Senator from Virginia has said. We are here to do business. The shop is open. If people have amendments, bring them on over. We are working on several now to resolve them. But others who have problems, now is the time.

The schedule is such that between now and 11:30 there is time for discussion and debate. There will be no votes before 11:30. At 11:30, we have a chance to vote. I would like to see us move to final passage and vote then. But if not, at 12 o'clock, we go back on the cloture motion. And the vote on that, as I understand, is at 2 o'clock. At the conclusion of that vote, if we have not finished this bill, we will be back on it again. But I know the leadership is very anxious to get this over with because there is a host of other measures with which they want to deal.

So I say to all within listening and viewing distance, come over, bring your amendments and let us dispose of them.

Mr. WARNER. Mr. President, for the ready reference of Senators, the list of amendments adopted by unanimous consent last night appears on page 2 of today's Calendar of Business.

Mr. President, seeing no Senator seeking recognition, I suggest the absence of a quorum.

The PRESIDING OFFICER (Mr. COVERDELL). The absence of a quorum having been suggested, the clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

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

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

Mr. FRIST. Mr. President, I ask unanimous consent that I be permitted to speak as in morning business for a period of not more than 10 minutes.

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

HELP FOR THE FARMERS

Mr. FRIST. Mr. President, during the most recent recess, I had the privilege of meeting with 36 farmers, who make up an agriculture advisory board from across the State of Tennessee. We actually met in Knoxville, TN. The women and men on that board are real farmers, not just representatives of farmers, but people who personally earn their living on a farm.

One gentleman, exhausted from the dawn-to-dusk pace of a farm in early summer, told my staff quite candidly that he simply would not have time to meet with a Senator unless it turned out to be a rainy day. That kind of humble feedback is in itself an important reason for us in the U.S. Senate, as elected representatives, to go home and talk to real people. Some members of this agriculture board from the western part of my State could not join me at that meeting because that very day they were struggling with the floodwaters that were destroying and threatening to destroy their crops. Nothing—nothing—could have served to make the need for Federal disaster relief more concrete and more real for me than the voice of a good man on the phone near panic over the rising waters.

It was a fascinating day. When I had asked these 30 farmers to tell me what they would like their duly elected Senator to know today about agriculture, they were forthright and firm in their advice and their counsel. On two points they were very clear. Sam Worley of Hampshire, TN, said:

> We want a smaller Federal Government that thinks not short term but long term.

He went on and expressed that they wanted to be treated fairly in the spending reductions that they expect and that they know are necessary for the long-term health of this country for that next generation.

These hard-working Tennesseans resent the media portraying them as parasites. They are willing to sacrifice, each and every one, as long as all Americans do, to balance the budget. They shuddered when I shared with them the fact that a child born today acquires an $18,000 share in the Federal debt—a share of the Federal debt that they will be expected to pay the interest on over the course of a lifetime. They made it very clear to me that they are ready to do their part, as long as we do not try to balance the budget on the backs of the farmers.

What else did these men and women have to tell me? They are frustrated with the perverse incentives of our welfare system. Mike Vaught of Lacassas, TN, told me of being unable to find an overseer to live on his farm because he could not provide the cable TV that was available in the public housing just miles away. They are frustrated with the intrusive Federal agencies that often act at cross purposes with each other. The Environmental Protection Agency orders action that the Soil Conservation Service prohibits. Jimmy Shellabarger of Jackson, TN, told me that he is frustrated by the huge fines for minor infractions of complicated rules. David Robinson of Jonesboro said,

> We are tired of being held to expensive standards of production when our global competitors are allowed to ignore these same standards.

These farmers also asked for tax relief. This may surprise some of my colleagues across the aisle, but the tax relief that they asked me for, that they spoke about, was a cut in the capital gains tax rate. These are mainly middle-class Tennesseans. Some have experienced or been very close to bankruptcy, riding the roller coaster of commodity prices. But they fully understand what seems to elude so many of my colleagues, that a cut in the capital gains tax rate is critical to middle-income Americans; that it will stimulate the economy to the benefit of everyone in America.

In closing, I want to tell you what James Wooden of South Pittsburg, TN, said. He said, ''I am going to talk to you just like we do under the shade tree.'' I will remember those words of James Wooden when the 700-page farm bill, full of Washington lingo, comes by my way. We all need to go out under the shade tree and listen to the people across this country and let the people, firsthand, tell us what they know.

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

Mr. DOLE. Will the Senator withhold?

The PRESIDING OFFICER. The Chair recognizes the majority leader.

NATIONAL HIGHWAY SYSTEM DESIGNATION ACT

The Senate continued with the consideration of the bill.

Mr. DOLE. Mr. President, first I want to remind my colleagues the two managers are here on the highway bill and have been here since 9:30 and would very much like to complete action on this bill by noon today because at noon we have 2 hours of debate on the Foster nomination and then another vote. And then hopefully after that we would go to securities litigation legislation.

I have just talked with Virginia Senator, Senator WARNER. Maybe many of these amendments will never be called up, but it will be helpful if our colleagues on either side will let the managers know. If we are not going to call up the amendments or if you have an amendment, it would certainly be better to offer it at 10:30 in the morning rather than 10:30 tonight. The reason we are here every night until 10 o'clock, 11 o'clock, is because people will not cooperate during the daytime. They are the same ones who complain in the evening after 7 or 8 o'clock. So I would tell my colleagues, if you have an amendment, the managers are here.

Mr. WARNER. Mr. President, if I might say to the distinguished leader, half of these amendments are not matters related to the bill. They are not matters either the Senator from Montana nor I can really settle out because

other chairmen and ranking members of other committees are involved in the subject of the amendments.

It seems to me it takes a good deal of work to get these things done by persons other than the managers of the pending bill.

Mr. DOLE. I note the presence of the distinguished chairman of the committee, Senator CHAFEE. There are a number of amendments under the jurisdiction of the Commerce Committee, Energy Committee, whatever. As the Senator from Virginia has pointed out, they are not under the jurisdiction of the committee that has the bill on the floor.

In any event, I know many of my colleagues may have conflicts at this moment because there are amendments here by Senator BOXER, three by Senator EXON, one by Senator FORD, Senator HATFIELD, Senator KERRY, Senator LAUTENBERG, Senator NICKLES, Senator MCCAIN, Senator SARBANES, Senator SMITH, Senator STEVENS, and Senator MURKOWSKI. We would hope whoever is willing to come to the floor would do so. If they do not intend to offer their amendments, if they would notify the managers on either side then we can move on because we do have a lot of legislation we will finish before the July 4 recess begins. It is up to our colleagues when that may happen.

Mr. WARNER. Mr. President, I might inform the leader Senator HATFIELD has just withdrawn his amendment.

Mr. DOLE. We are making progress.

Mr. WARNER. Now we are making progress.

Mr. DOLE. Now can we have a bit from the other side?

Mr. BAUCUS. I might say to the leader, in response to his question, that means automatically one or two others are dropped. Automatically, too, that means others are dropped.

Mr. DOLE. I think that means Senator MCCAIN's amendment will disappear.

Mr. BAUCUS. Also another one on this side, too, will not be offered as a consequence of that last development.

Mr. DOLE. We are making progress as we speak.

Mr. BAUCUS. Maybe the Senator could find another one that has the same ripple effect?

Mr. DOLE. Could I ask, will there be any of these other amendments requiring rollcall votes?

Mr. WARNER. Mr. President, I say to the distinguished leader and others, at this present time the managers of the bill do not know of a request for a rollcall vote other than final passage.

The PRESIDING OFFICER. The Chair recognizes the Senator from Rhode Island.

Mr. CHAFEE. Mr. President, I agree with the analysis of the distinguished Senator from Virginia. We are making some progress.

We would appreciate your sticking around a little longer, though. We have just disposed of three in 30 seconds. It is like a house of cards. If we pull one card out, perhaps the whole thing will come collapsing down and we will finish. In any event, we are striving. We will call on these individual Senators to see if they are satisfied.

I think the point the managers make here is a very valid one. These amendments, many of them, do not involve this committee. They involve other committees. And we are caught in a crossfire here. The Commerce Committee or the Energy Committee—they have nothing to do with us. I do not even know why they are on this bill.

Mr. WARNER. Mr. President, there are a number of them relating to the Banking Committee. As such, I know Senator D'AMATO has been trying to be very helpful on it. Other committee chairmen are working together with their ranking members. It is most unusual.

Mr. DOLE. Perhaps—perhaps we can, if our colleagues do not object, then we can go to third reading, say at 11:30? That would be one way too expedite the process. We have indicated to one of our colleagues, the eldest, there may not be any votes until 11:30. But that does not mean we should not proceed. I think we are making progress and I want to congratulate the managers. I do believe I can see some of these may be tied together. Some may not have any—some may be more related to the next bill than this bill, as I understand it. Some that do not want the other bill to come up.

In the meantime, while we are waiting for our colleagues to come, I know there must be a rush on the subway as I speak. They are all heading for the floor at the same time.

Mr. President, while we are waiting additional action on this bill, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

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

The PRESIDING OFFICER (Mr. FAIRCLOTH). Without objection, it is so ordered.

Mr. WARNER. The managers wish to thank Senators. We are making considerable progress. I would like to make a report, together with my distinguished colleague.

On the horizon is the opportunity perhaps to vote final passage at about 11:30, or at such time thereafter, or before 12, as the leadership of the Senate may designate.

But to bring Senators up to date, referring to page 2 of today's calendar, the amendments pending from last night by the Senator from California, Mrs. BOXER, are withdrawn; Senator CHAFEE withdrawn; Senator FORD, we have reason to believe that is going to be withdrawn; Senator HATFIELD, withdrawn; Senator KERRY, we have reason to believe that will be withdrawn; Senator LAUTENBERG has resolved his amendment. We have reason to believe Senator NICKLES' amendment will be withdrawn. Senator MCCAIN has been resolved.

That leaves Senator SARBANES, and Senator SMITH is very close to reconciliation. Senator CHAFEE is working on that with Senator SMITH. There still remains an amendment by Senators STEVENS and MURKOWSKI, the Senators from Alaska, but we are hopeful that that matter can be resolved. It relates to the Committee on Energy, of which Senator MURKOWSKI is the chairman. We hope that can be resolved. Neither of the managers of the pending bill have any dealings with that.

Mr. BAUCUS addressed the Chair.

The PRESIDING OFFICER. The Senator from Montana.

Mr. BAUCUS. Mr. President, I would like to join in commending Senators who have worked out resolutions of amendments. The Senator from Virginia has done an admirable job, a wonderful job talking with Senators and working out resolutions.

On the Democratic side, we are about finished. Senator EXON has three amendments. I hope, because those are Commerce Committee amendments, that the chairman of the Commerce Committee and his staff can work out agreements with Senator EXON. Senator EXON is on the floor now ready to proceed with his amendments. I hope that those can be worked out. We are very close to final passage. Very close. I expect we can finish this bill before noon.

The PRESIDING OFFICER. The Chair recognizes the Senator from Nebraska.

Mr. EXON. I thank the Chair, and I thank the managers of the bill. While the dialog was just briefly going on between the two managers, I have received information we have clearance for the second Exon amendment now on both sides of the aisle. I will take those in order.

Mr. WARNER. Mr. President, the Senator from Nebraska is correct. On the second amendment, clearance has been arranged.

AMENDMENT NO. 1462

(Purpose: To increase safety where the rails meet the roads)

Mr. EXON. Mr. President, I send an amendment to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report the amendment.

The bill clerk read as follows:

The Senator from Nebraska [Mr. EXON] proposes an amendment numbered 1462.

Mr. EXON. Mr. President, I ask unanimous consent that the reading of the amendment be dispensed with.

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

The amendment is as follows:

At the appropriate place in the bill insert the following:

SEC. . SHORT TITLE.

This amendment may be cited as the ''Federal Highway and Railroad Grade Crossing Safety Act of 1995''.

SEC.—INTELLIGENT VEHICLE-HIGHWAY SYSTEMS.

(a) IN GENERAL.—In implementing the Intelligent Vehicle-Highway Systems Act of 1991 (23 U.S.C. 307 note), the Secretary of Transportation shall ensure that the National Intelligent Vehicle-Highway System Program addresses, in a comprehensive and coordinated manner, the use of intelligent vehicle-highway technologies to promote safety at railroad-highway grade crossings. The Secretary of Transportation shall ensure that two or more operational tests funded under such Act shall promote highway traffic safety and railroad safety.

SEC.—STATE HIGHWAY SAFETY MANAGEMENT SYSTEMS.

(a) AMENDMENT OF REGULATIONS.—The Secretary of Transportation shall conduct a rulemaking proceeding to amend the regulations under section 500.407 of title 23, Code of Federal Regulations to require that each highway safety management system developed, established, and implemented by a State shall, among countermeasures and priorities established under subsection (b)(2) of that section—

(1) include public railroad-highway grade-crossing closure plans that are aimed at eliminating highrisk or redundant crossings (as defined by the Secretary);

(2) include railroad-highway grade-crossing policies that limit the creation of new at-grade crossings for vehicle or pedestrian traffic, recreational use, or any other purpose; and

(3) include plans for State policies, programs, and resources to further reduce death and injury at high-risk railroad-highway grade crossings.

(b) DEADLINE.—The Secretary of Transportation shall complete the rulemaking proceeding described in subsection (a) and prescribe the required amended regulations, not later than one year after the date of enactment of this Act.

SEC. . VIOLATION OF GRADE-CROSSING LAWS AND REGULATIONS.

(a) FEDERAL REGULATIONS.—Section 31311 of title 49, United States Code, is amended by adding at the end the following new subsection:

''(h) GRADE-CROSSING VIOLATIONS.—

''(1) SANCTIONS.—The Secretary shall issue regulations establishing sanctions and penalties relating to violations, by persons operating commercial motor vehicles, of laws and regulations pertaining to railroad-highway grade crossings.

''(2) MINIMUM REQUIREMENTS.—Regulations issued under paragraph (1) shall, at a minimum, require that—

''(A) the penalty for a single violation shall not be less than a 60-day disqualification of the driver's commercial driver's license; and

''(B) any employer that knowingly allows, permits, authorizes, or requires an employee to operate a commercial motor vehicle in violation of such a law or regulation shall be subject to a civil penalty of not more than $10,000.''.

(b) DEADLINE.—The initial regulations required under section 31310(h) of title 49, United States Code, shall be issued not later than one year after the date of enactment of this Act.

(c) STATE REGULATIONS.—Section 31311(a) of title 49, United States Code, is amended by adding at the end the following new paragraph:

''(18) GRADE-CROSSING REGULATIONS.—The State shall adopt and enforce regulations prescribed by the Secretary under section 31310(h) of this title.''.

SEC. . SAFETY ENFORCEMENT.

(a) COOPERATION BETWEEN FEDERAL AND STATE AGENCIES.—The National Highway Traffic Safety Administration, and the Office of Motor Carriers within the Federal Highway Administration, shall on a continuing basis cooperate and work with the National Association of Governors' Highway Safety Representatives, the Commercial Vehicle Safety Alliance, and Operation Lifesaver, Inc., to improve compliance with and enforcement of laws and regulations pertaining to railroad-highway grade crossings.

(b) REPORT.—The Secretary of Transportation shall submit a report to Congress by January 1, 1996, indicating (1) how the Department worked with the above mentioned entities to improve the awareness of the highway and commercial vehicle safety and law enforcement communities of regulations and safety challenges at railroad-highway grade crossings, and (2) how resources are being allocated to better address these challenges and enforce such regulations.

SEC. . CROSSING ELIMINATION; STATEWIDE CROSSING FREEZE.

(a) STATEMENT OF POLICY.—

(1) Railroad-highway grade crossings present inherent hazards to the safety of railroad operations and to the safety of persons using those crossings. It is in the public interest—

(A) to eliminate redundant and high risk railroad-highway grade crossings; and

(B) to limit the creation of new crossings to the minimum necessary to provide for the reasonable mobility of the American people and their property, including emergency access.

(2) Elimination of redundant and high-risk railroad-highway grade crossings is necessary to permit optimum use of available funds to improve the safety of remaining crossings, including funds provided under Federal law.

(3) Effective programs to reduce the number of unneeded railroad-highway grade crossings, and to close those crossings that cannot be made reasonably safe (due to reasons of topography, angles of intersection, etc.), require the partnership of Federal, State, and local officials and agencies, and affected railroads.

(4) Promotion of a balanced national transportation system requires that highway planning specifically take into consideration the interface between highways and the national railroad system.

(b) PARTNERSHIP AND OVERSIGHT.—The Secretary shall foster a partnership among Federal, State, and local transportation officials and agencies to reduce the number of railroad-highway grade crossings and to improve safety at remaining crossings. The Secretary shall make provision for periodic review to ensure that each State (including State subdivisions and local governments) is making substantial, continued progress toward achievement of the purposes of this section.

(c) CROSSING FREEZE.—If, upon review, and after opportunity for a hearing, the Secretary determines that a State or political subdivision thereof has failed to make substantial, continued progress toward achievement of the purposes of this section, then the Secretary shall impose a limit on the maximum number of public railroad-highway grade crossings in that State. The limitation imposed by the Secretary under this subsection shall remain in effect until the State demonstrates compliance with the requirements of this section. In addition, the Secretary may, for a period of not more than 3 years after such a determination, require compliance with specific numeric targets for net reductions in the number of railroad-highway grade crossings (including specification of hazard categories with which such crossings are associated).

(d) REGULATIONS.—The Secretary shall issue such regulations as may be necessary to carry out this section.

Mr. EXON. Mr. President, I appreciate the cooperation of the two managers. I have been trying to work with them to move this expeditiously ahead. I think we have made some great progress overnight. At least two of the amendments that were in question have now been resolved.

The first amendment that I have just offered is the Federal highway-railroad grade-crossing safety amendment. This legislation builds on the important work already done by the U.S. Senate. The provisions in this amendment should be familiar and are familiar to the Senate, and it is noncontroversial.

Mr. President, I am pleased to offer the Federal highway and railroad grade crossing safety amendment. This legislation builds on important work already done by the U.S. Senate. The provisions in this amendment should be familiar to the Senate and noncontroversial.

Most deaths and injuries which occur in the rail industry are as a result of trespassers and motorist violation of railroad grade crossing laws. About 600 people a year die as a result of railroad crossing accidents and about 600 people a year die as a result of trespassing on railroad property. An automobile and a train collide once about every 90 minutes in the United States. In 1992 approximately 2,500 people were either killed or seriously injured as a result of railroad grade crossing accidents.

This is one area of death and injury which is almost entirely preventable. The amendment I offer is meant to complement landmark rail safety legislation approved last year as part of the so-called Swift Rail Act, named in honor of former House Chairman Al Swift.

As the former chairman of the Senate Surface Transportation Subcommittee, I chaired a number of hearings on railroad and grade crossing safety. Those hearings indicated that although significant progress has been made in reducing the number of rail related deaths, there is still room for improvement, especially when it comes to grade crossing safety. Unfortunately, in the past, jurisdictional disputes with the House of Representatives got in the way of a number of important Senate grade crossing safety initiatives. Now that the House of Representatives has reorganized, I am hopeful that good ideas will not be slain by the sword of jurisdiction.

States and local governments must be encouraged to enforce their laws against grade crossing violations and must be encouraged to finally close crossings. The split jurisdiction between the Federal Highway Administration, The Federal Rail Administration, States, local governments, and railroads has led to a gridlock of responsibility. This amendment helps shatter that gridlock.

It is time to make the places where rails meet roads safer for rail workers, drivers, and pedestrians.

This amendment should be very familiar to the Senate. Its provisions are

taken from legislation unanimously approved by the Senate last year.

Provisions taken from the railroad safety bill unanimously approved by the Senate in 1994 consist of provisions dropped from the final Swift Rail Act because they were outside the jurisdiction of the House Energy and Commerce Committee.

These provisions require that grade crossing safety be made part of at least two intelligent vehicle highway systems projects; ensure that States include grade crossing closure and safety enhancement plans in their highway safety management plans; stiffen penalties for truck violations of grade crossing safety laws and encourage cooperation between State and Federal authorities on grade crossing safety.

Finally, the amendment gives the Secretary power—but only as a last resort—to impose a statewide freeze on grade crossings where a State has failed to make substantial, continued progress toward crossing reduction and improvement.

Mr. President, with the amendment, the Senate can vote to save lives. Again, this amendment should be noncontroversial and simply represents unfinished business from last year.

I say to the managers of the bill that we have agreed to strike the two provisions that your committee had objection to, and we are going simply with the proposition that was originally cleared by the Commerce Committee.

Mr. WARNER. Mr. President, we accept the amendment.

Mr. BAUCUS. Mr. President, before accepting the amendment, I would like to commend the Senator from Nebraska. About 600 people a year die at railroad crossings. It seems to me we in Congress have an obligation to do what we can do to reduce that number.

The Senator from Nebraska came up with an ingenious idea to reduce the deaths. All the Members are indebted to him for his efforts. I commend the Senator.

The PRESIDING OFFICER. The question is on agreeing to the amendment.

The amendment (No. 1462) was agreed to.

Mr. EXON. Mr. President, I move to reconsider the vote by which the amendment was agreed to.

Mr. WARNER. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

AMENDMENT NO. 1463

Mr. EXON. Mr. President, I send an amendment to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report the amendment.

The bill clerk read as follows:

The Senator from Nebraska [Mr. EXON] proposes an amendment numbered 1463.

Mr. EXON. Mr. President, I ask unanimous consent that the reading of the amendment be dispensed with.

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

The amendment is as follows:

At the appropriate place in the bill add the following:

SEC. . TRUCK LENGTH AND THE NORTH AMERICAN FREE TRADE AGREEMENT.

Any Federal regulatory standard for single trailer length issued pursuant to negotiations and procedures authorized under the North American Free Trade Agreement, shall not exceed fifty-three feet.

Mr. EXON. Mr. President, the Exon truck-length amendment is a very simple and straightforward provision. It only applies to Federal regulations on length issued pursuant to the North American Free-Trade Agreement.

Last year, I chaired a hearing on this issue. Pursuant to the NAFTA agreement, the governments of Mexico, Canada, and the United States of America are negotiating the harmonization of traffic safety laws. The Senate has been very concerned about these negotiations and following the approval of NAFTA approved a resolution expressing the sense of the Senate that these negotiations should bring Canadian and Mexican traffic safety up to United States levels, not to lower United States standards. I am pleased to report that the Clinton administration expressed their desire to involve Congress in the adoption of any new safety rules arising out of these negotiations.

Since the Federal Government maintains no single trailer length standard, there is a risk that a future administration could use the NAFTA negotiations to increase lengths beyond the generally accepted 53-foot standard. If the administration sets a single trailer length standard pursuant to NAFTA negotiations, that exceeds 53 feet, congressional action would be necessary to implement the longer Federal standard.

The amendment does not restrict State action.

The amendment does not affect Federal legislative action.

The amendment does not affect Federal regulatory action not related to the North American Free-Trade Agreement.

The amendment is consistent with the intent of the Reigle-Exon NAFTA-truck safety resolution approved by the Senate following the approval of NAFTA and in no way disrupts the long combination vehicle freeze Senator LAUTENBURG and I authored as part of ISTEA.

I ask my colleagues to adopt this narrow amendment which will preserve congressional discretion over truck safety and the NAFTA.

This does not affect truck lengths at all, as far as normal processes are concerned. What this amendment would do is to prevent the administration, through any real or imagined parts of the NAFTA agreement, to increase truck lengths unilaterally without any consideration at all by the Congress. I think this is a safety matter, but it is very narrowly drawn and has been cleared by, as far as I know, all participants who have an interest in this matter.

Mr. WARNER. Mr. President, indeed, we have endeavored to clear this amendment, but we have just been notified that a Senator has interposed an objection to the amendment. Perhaps given that objection, the Senator from Nebraska might wish to expand his explanation of this amendment in the hopes that that expanded explanation might meet the objections of the Senator who has interposed it.

Mr. EXON. I thank my friend. I will be glad to expand on it a little bit further and maybe satisfy the concerns of all in this particular area.

We have so many last-minute objections by so many people that I do not know who they are. It has been very difficult to kill these rats when they keep coming out of the hay bin.

I repeat again, we have had in the Commerce Committee and in the committee of jurisdiction on this particular piece of legislation various studies and indepth hearings all aimed at safety, safety on the highways of America. There is a discussion ongoing right now as to whether or not we should increase by law the length and the width of trucks traveling on our highways.

Generally speaking, this is a matter that has been split. The Commerce Committee has been generally recognized to have jurisdiction over truck lengths. The committee that is headed by the two distinguished managers of this bill have always had jurisdiction over the width. I cannot go into an explanation of why one committee has length and the other committee has width. That is too complicated a matter for me to understand, and I cannot explain it because I do not know the reason for it myself.

But we are not changing any of that, and we are not changing any lengths of trucks in this amendment. All that we are saying in this amendment—very clearly defined—is that the administration, under the authority granted the administration in the NAFTA agreement, cannot automatically extend the lengths of trucks over and beyond what is the law of the land at the present time.

There is some indication that in order to facilitate the movement and to make it easier for some of the Mexican trucks to enter the United States, the administration might have the authority, under the terms of NAFTA, to supersede the laws presently in place in the United States with regard to lengths of trucks.

All this narrowly defined amendment does is it writes into law and snatches away that part of the law that some might interpret as authority for the administration unilaterally, without any consultation with the Congress, let alone laws, unilaterally to authorize longer trucks on our highways under NAFTA that would otherwise be prohibited. That is a simple, straightforward explanation. With that, I do not know what the objection would be. If there is an objection, I would be glad to attempt to address it.

Mr. WARNER. An objection will be interposed, and we will discuss the objection with the Senator from Nebraska.

At this time, I ask unanimous consent that the pending amendment be temporarily laid aside, such that the managers can continue with other amendments.

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

Mr. WARNER. Mr. President, the managers are continuing to make steady progress. We retain our hope that we can vote on final passage before 12 noon. I urge those very few Senators—it is down to two or three Senators now that would require further reconciliation of their views.

Mr. President, on a personal matter, if I might make a few remarks. I commend the chairman of the Environment and Public Works Committee. Twenty-five years ago, I first met the then Governor of Rhode Island. In 1969, we formed a team in the Department of the Navy where he, as Secretary, and I, as principal deputy and Under Secretary, undertook a task at the height of the Vietnam war to give leadership to the Department of the Navy and to participate in other activities in the Department of Defense.

Now, 25 years later, we are still together. I do not say this with regret, but I do note that he is still the boss and I am still the first deputy, so not much has changed in a quarter of a century. There sits a man that has always stepped forward to lead in this country, be it in the time of war, as he did in World War II, as a marine fighting in the Pacific, and then being recalled back to duty during the Korean conflict, as a captain, company commander, and then as Governor. And now as a U.S. Senator, he has distinguished himself as a public servant. He is greatly respected in the U.S. Senate, as well as in his own State. It is a privilege for me to once again be in partnership, but as always, No. 2.

I thank the Chair.

Mr. CHAFEE. Mr. President, I thank the distinguished Senator from Virginia for his generous remarks. He is right that in our long-time friendship we have worked together. It has not been a one-two relationship. It has been a partnership. He and I worked together in the Defense Department starting in January 1969 in the Navy, as Secretary and Under Secretary, and we were in those posts together for 3½ years.

The distinguished Senator from Virginia then became Secretary of the Navy and went on after that to head the bicentennial commission, was elected to the U.S. Senate in 1978, and he has served here with great distinction. So it is indeed a marvelous friendship and association that we have had together. And now on the Environment Committee, where he is handling this legislation so effectively, doing such an excellent job as chairman of the subcommittee dealing with this type of legislation.

So I thank my long-time friend—I will not say ''old'' friend, but ''long-time'' friend—for the joys that we have had together and the joint achievements that I believe we have accomplished.

Mr. WARNER. Mr. President, I thank my good friend and colleague. I hope we have many more years working together here in the U.S. Senate.

I note the presence on the floor of the Senator from Maine. I extend to him an apology. On two occasions I have indicated the clearance of the Senator's amendment. But subsequent thereto, objections arose. I believe it is now resolved, and I would appreciate if the Senator from Maine could advise the managers. The Senator from Virginia will continue to ascertain the status of the Senator's amendment. I am hopeful that it can be resolved. I thank the Senator from Maine, however, for his patience on this matter.

I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The bill clerk proceeded to call the roll.

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

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

Mr. COHEN. Mr. President, I ask unanimous consent that I be allowed to proceed as in morning business.

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

The Senator from Maine is recognized.

THE NOMINATION OF DR. HENRY FOSTER

Mr. COHEN. Mr. President, I would like to offer a few comments on the nomination of Dr. Foster to be Surgeon General. We are going to have further debate this afternoon. We are going to have one more rollcall vote in terms of whether or not the proceedings should come to a close and a vote take place on Dr. Foster.

I must say that this is one of those issues which has really galvanized the American people, those who are interested in this issue. We have letters and calls pouring into our offices from those who are strongly in favor, and those who are equally determined to oppose his nomination. The rhetoric is hot. It is, in fact, intemperate. I think the passion of the letters finds its voice right here in the U.S. Senate. That voice, at times, is angry, raw, and even ugly.

Mr. President, the charge has been made that we are sacrificing Dr. Foster on the altar of right-wing radicalism. I must say that there have been a number of good and decent people who have found their integrity and character shredded on the altar of left-wing liberalism. That is one of the problems that I see taking place in this Chamber and elsewhere. There seems to be a double standard on display, what we might call a case of situational ethics.

What comes to mind is the debate that took place when Ronald Reagan, for example, nominated Robert Bork to be a member of the Supreme Court. I recall that debate very well. Judge Bork's writings were plucked from the past. Those writings were provocative. He was, in fact, a provocative professor who challenged conventional wisdom. He disagreed with the rationale that was found and articulated in Roe versus Wade. He found no right of privacy lurking or hidden in the penumbra of the Constitution.

What took place with Bob Bork is that he was demonized. It was charged that he would take us back to the boneyard of conservatism, to the dark ages, maybe even to hell itself. I say that by virtue of a photograph that I remember that was on the cover of Time magazine.

It was a portrait, a photograph, of Robert Bork with his judicial robes on looking much like a cape. Of course, he had the beard. There was a red glow to the entire cover. And one could almost see the hint of horns emerging from the top of his head. One would have thought that Mephistopheles himself was about to be appointed to the Court, would corrupt the Court, would rip up the Constitution and shred our rights of privacy.

I might point out, sometime thereafter Judge Ruth Bader Ginsburg, who actually was endorsed by Robert Bork, also found fault with the Court's reasoning in Roe v. Wade. She said the Court had reached the right result but for the wrong reason. Yet we did not hear much criticism coming from the left, the liberal element in our society, at that time.

I mention that because I think we are reaching a point in the confirmation process in which it is going to be very difficult to have good and decent people willing to step forward and subject themselves to the confirmation process. My own friend, John Tower —I think what took place in this Chamber against John Tower was a disgrace. I saw a good man who had his character shredded by allegations and innuendo and false charges. He was so bloodied up that the critics said, ''He has been too damaged to be a successful Secretary of Defense. President Bush, why don't you just cut him down from that tree that he is swinging from and take him back to Texas?'' So we saw another challenge to an individual which I felt was unwarranted.

How many Republican nominees were rejected because of membership at all-white clubs? It did not matter that they were not racist. It did not matter that they had employed blacks or Hispanics or other minorities in their businesses or even in their homes. If they were members or had memberships in an all-white club, that was enough to bring down their nomination.

The same rule, however, was not applied when it came to people like Webster Hubbell, who also belonged to an

all-white club at that particular point. But we had a different standard imposed.

So I suggest we have to get away from this double standard that when those who raise questions about someone's nomination by virtue of their difference of philosophy, that we not charge it is based upon right-wing radicalism any more than it is based on left-wing radicalism. We have to put a stop to this situation. We have to remember that Bill Clinton won the election. He is the President of the United States. It is my own judgment he is entitled to the nominees of his choice.

We may disagree with those nominees, but every time we disagree with Bill Clinton's philosophy, President Clinton's philosophy, or that of the individuals he nominates, we should not then, by virtue of our disagreement with their ideology or practice, turn it into a character issue and then begin an all-out assault on character.

We obviously have a duty to challenge philosophy and policies when they are fundamentally in conflict with our own. But we also have to deal fairly with these individuals. We have to remember, also, the axiom that bad appointments make bad politics. The President of the United States, when he makes an appointment, is held accountable for that individual's record, that individual's character, that individual's performance. And, barring evidence of incompetence as far as technical qualifications are concerned, professional qualifications, barring clear and convincing evidence of moral deficiencies that would prevent that person from occupying that position, I think we have an obligation to confirm the President's nominees.

What we have to stop in this system is, really, shredding the character of the individuals who come before the body for confirmation. If we disagree philosophically, let us be very up front about it and base it on that. What I see taking place is something of a variation of what Senator MOYNIHAN of New York talked about in his brilliant piece a couple of years ago, called ''Defining Deviancy Down.'' What he was talking about at that time was events that took place in the 1920's or 1930's, some decades ago, that we would look at and say, ''What a horrible thing that was.'' The Saint Valentine's Day massacre was one he pointed to. There were, as I recall, seven people involved in that. Four were killed by three others, or vice versa. That incident made worldwide news. It has gone in the history books. Today, it is likely that might not appear in bold headlines in the Metro section of the New York Times or the Post or elsewhere.

We have seen so much violence spread in our society we have become inoculated against it, almost. We have been immunized against a sense of outrage about the level of deviancy because we defined it down.

It seems to me we have to also talk about defining civility down. We have, I think, lost some of our moorings. We now resort not only to challenges of philosophy but to challenges of character. In doing so, I think we have lowered the standard for civil debate and discourse in this country.

The anger we see outside of these Chambers is being reflected inside the Chambers. We do not want to tolerate or promote barbarism outside the gates. We do not want to promote it inside the gates. I think what we have to do is lower the rhetoric and the charges and the countercharges about who is sacrificing whom on which altar and stop imposing double standards and situational ethics and come back to what I believe to be the correct standard. Either we find Dr. Foster to be medically, professionally unqualified to serve in this position, or we find him to be so morally bankrupt that it would be a discredit and an injustice to have him serve in that position.

Frankly, I do not find that we have measured up to that burden of proof. I believe Dr. Foster is a good and decent man. I believe President Clinton is entitled to have his nominee confirmed, even though we might disagree or I might disagree with his particular views or practice. Nonetheless, that is not the test that should be imposed. The test should be, Is he professionally qualified and does he have a moral character to serve in that position?

There are those on this side who believe fundamentally he has misrepresented the number of abortions that he performed during the course of a long practice. That is, perhaps, a legitimate issue to be raised. But I do not think we ought to be engaged in savaging each other, in attacking each others' motives. This is a serious issue and is one that ought to be debated in that fashion without resorting to a lot of hurtling of invective.

Mr. President, I hope my colleagues will in fact allow a consideration of Dr. Foster on the merits. That was in fact allowed for Judge Bork. He was defeated. It was allowed for Senator Tower, whose nomination was also defeated, and others whose names never really made it to the floor by virtue of their membership in what were described as racist clubs or organizations.

My hope is that we can return to a level of civil discourse in this society of ours, rather than the shouting and the anger that we see being displayed from day to day, and really try to deal with these issues on the merits.

I think Dr. Foster is entitled to have his name considered on the merits. We hope there will be enough Members who will vote to terminate any attempt to filibuster his nomination.

Seeing the hour of 11:30 is about to be reached, I yield the floor.

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

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

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

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

NATIONAL HIGHWAY SYSTEM DESIGNATION ACT

The Senated continued with the consideration of the bill.

Mr. WARNER. Mr. President, on behalf of the management, we continue to make good progress. It is obvious we will not have a vote before 12 o'clock, at which time under the previous order the Senate then goes forward to debate the Foster nomination.

Mr. BAUCUS. Mr. President, I thank the Senator. I do not know if the Senator knows this, but Senator EXON has withdrawn both his other amendments.

Mr. WARNER. Good.

Mr. BAUCUS. The only potential amendments remaining, in addition to the managers' amendment, are potential amendments by Senator LAUTENBERG, Senator NICKLES, Senator SARBANES, Senator SMITH, and Senators STEVENS and MURKOWSKI.

Mr. WARNER. Mr. President, I am pleased to say to my colleague—and to announce to the Senate—that Senator SMITH's amendment is now in a situation where it will be resolved. I am not sure of the final outcome. But we will be informed.

Mr. CHAFEE. There will be an amendment.

Mr. WARNER. There will be an amendment, which I have learned of from the distinguished chairman of the committee.

Mr. CHAFEE. Mr. President, the Smith amendment we are working out now, and the language. It is my understanding that will be an amendment that will be acceptable.

Mr. BAUCUS. It may be acceptable. We are still running the trap lines over on this side.

Mr. CHAFEE. Well, in other words, I would not envision a vote on it.

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

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

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

The PRESIDING OFFICER (Mr. KYL). Without objection, it is so ordered.

EXECUTIVE SESSION

NOMINATION OF HENRY W. FOSTER, JR., TO BE MEDICAL DIRECTOR IN THE REGULAR CORPS OF THE PUBLIC HEALTH SERVICE AND TO BE SURGEON GENERAL OF THE PUBLIC HEALTH SERVICE

The PRESIDING OFFICER. Under the previous order, the hour of 12 noon

having arrived, the Senate will now go into executive session to consider the nomination of Dr. Henry W. Foster, Jr., to be Surgeon General. The clerk will report the nomination.

The legislative clerk read as follows:

The nomination of Henry W. Foster, Jr., to become Medical Director in the Regular Corps of the Public Health Service, subject to qualifications therefor as provided by law and regulations, and to be Surgeon General of the Public Health Service.

The Senate resumed consideration of the nomination.

Mr. KENNEDY. Mr. President, as I understand, there is an agreement to vote at 2 o'clock. So there is a 2-hour time limitation, an hour to be controlled by the Senator from Kansas, Senator KASSEBAUM, and the other hour to be controlled by the Senator from Massachusetts.

The PRESIDING OFFICER. That is the order.

Mr. KENNEDY. I yield myself 8 minutes.

Mr. President, over the period of the last 24 hours, I have tried to look at this whole nomination, including the extensive hearings that we had as well as the debate on the floor, to try to determine what is really before the U.S. Senate.

What we have before the U.S. Senate is an extraordinary nominee—an extraordinary human being—who is eminently qualified to serve as the nation's Surgeon General. And I thought back to the beginning, and asked myself: ''What shape did the process take?''

We know that Dr. Henry Foster's name was brought to the attention of President Clinton by a very distinguished former Republican Cabinet Member, Dr. Louis Sullivan, with whom many of us worked very closely during his leadership at the Department of HHS. We know that Dr. Foster's nomination was seconded, effectively, by the presence of Lamar Alexander, a Republican Governor, who recognized the work of Dr. Henry Foster and his leadership ability in confronting the problem of teenage pregnancy and asked him to develop a program to do so. Those are two Republicans that right from the start recommended Dr. Henry Foster for this important position.

And even on the Labor Committee, Senator FRIST—Dr. FRIST—the one Member of the U.S. Senate who is a doctor and who knows Dr. Foster and who has supported his nomination, coming forward and speaking on behalf of Dr. Foster's extraordinary record and qualifications as a physician, educator and community leader.

So, looking back from the very beginning, we see that this nomination was borne of the effort to put forth someone who has been recognized as having a distinguished record—and he has had a distinguished record, which I will speak to—but also someone who was not going to be necessarily identified with any one particular political party, but rather with strong bipartisan support.

We have heard a great deal on the floor of the Senate and in the press, that Dr. Foster was selected for narrow partisan or political reasons. The fact of the matter is that he was nominated because of a very distinguished record.

And what a record it has been—what a record it has been. Dr. Foster possesses an extraordinary record of service. We have a nominee who has demonstrated his commitment to the neediest people in our country and our society. After he graduated from medical school, he could have practiced medicine in any of the cities of this country and in many rural areas and had a very comfortable life. But, no, he did not do that.

What did he do? He went to the poorest areas of America. Why? Because he wanted to serve his fellow human beings. He went to the rural South—and treated women and their children. Most of Dr. Foster's patients had never even seen a doctor before. He went into homes and houses down there that, in many instances, did not even have electricity or hot water. He went there to help and assist deliver babies. To provide pre-natal care to women who had never had access to pre-natal care before. He is a baby doctor. A baby doctor who is about service to his community. Service to people. He is a good and decent man who has committed his entire life—his entire life—to service. Not only did he engage in an program of service in rural Alabama, but his record shows that he was widely recognized for his dedication, ability, leadership and expertise.

He was recognized as a physician. He was recognized as an educator. He was recognized as a researcher in sickle cell anemia and infant mortality and the problems facing the youngest and most vulnerable in our society.

He was recognized by the Institute of Medicine, perhaps the most prestigious assemblage of the medical profession in our country, being elected to that prestigious body with a regular membership of only 500 members. In 1992, he was elected by the membership to serve as one of only 21 members of the Institute's governing council—one of only 21 members selected by the members of the Institute—his peers. What an extraordinary, extraordinary recognition of a man who was selfless, dedicated and passionate about serving those living in the poorest areas of this country.

During his career, after numerous accomplishments, he was selected to be Dean of the Meharry School of Medicine—a distinguished medical school. Did he stop with that? No. What did he want to do? He wanted to be a teacher in the classroom as well as dean of the medical school. Why? Because he wanted to work with young people. He wanted to help train them, and bring more qualified and compassionate doctors into the field of medicine.

Was he satisfied with that? No. He went to his community and developed a program to deal with the problems of teenage pregnancy and the school dropout problem. He developed a program that has made such a difference in the lives of young people, that it has been recognized by a President, George Bush, a Republican President of the United States.

Now that is the record of Dr. Foster. That is the record that is before the U.S. Senate. That is the record of service before us. By voting for Dr. Foster, we are not doing Dr. Foster a favor, we are doing a favor to all Americans. We are doing a favor to those parents of those teenagers who are confronted with the sad prospects of teenage pregnancy, welfare dependency, and hopelessness. We are doing a favor to all those who struggle with the life-threatening illness of cancer. We are doing a favor to all those whose families or friends or neighbors are afflicted with AIDS. We are doing the United States of America a favor, which needs a highly principled and dedicated person to serve his country. That is what we have here: A good, outstanding, selfless individual.

Now, you would not understand that, necessarily, from those who have spoken in opposition to this nomination, because they have their own message, and their message is very clear. They want to send a very particular message. Sure, they have distorted his record, misrepresented his record, and in spite of the fact that Dr. Foster at the committee hearings, and the committee itself, thoroughly answered and refuted the shallow allegations against him, they are repeated again and again and again and again and again. And those that repeat them do a disservice to themselves, they do a disservice to themselves.

What their message is and why this is being done is very clear to me. They are doing this because they want to say to any and every doctor in America, ''If you ever perform an abortion, if you ever do so, even to save the life of the mother, you'll never get a position of confidence or leadership in the U.S. Government, because you'll never make it through the confirmation process by the U.S. Senate.''

That is the message. We understand that. They are not fooling anyone. When, on one hand you have Dr. Foster's extraordinary record of service and on the other, you have the repeated distortions, misrepresentations, and shallow allegations, the message is very clear and it is motivated by narrow political concerns and interests. That is the message that is being sent to doctors in this country. That is the message that is here.

Dr. Foster's opponents prefer to play a negative card. When all of America is struggling to look upward, higher—to reach out for a better future for themselves and their children—his opponents would have us languish in darkness. They do not want to recognize the

light, the hope, that Dr. Foster represents for the future of this country.

During the course of Dr. Foster's testimony at the hearings, Senator PELL asked him what has been one of the most inspiring moments of his life. And Dr. Foster answered, ''Well, it was just after I and my classmates had graduated from seventh grade, and my father brought us out to the edge of town and treated all the children in our class to an airplane ride.'' Two children in the front with the pilot, children in the back—Dr. Foster described the way he felt when that plane took off.

He said, ''When we got up in that air, every child that was in that class looked out and they could see trees as far as the eye could see. They could see that there was a broader land, that there are lakes out there and there are hills.''

Perhaps for the first time, they saw that there was a broader America than just the school house where they went to the school, and their own small home where they grew up, in a segregated society with little opportunity.

He said:

> That plane ride was one of the most inspiring moments of my life, because it taught me that there is a future out there, and that I could be a part of it. My hope and dream of service is to provide that same ''airplane ride'' to the young people all across this country.

That is the soul of Dr. Foster. You would not know it listening to the distortions and misrepresentations of the opposing side; you would not know the true record of the nominee who is before us. You would not know it when they repeat and repeat and repeat these charges that any fair-minded person would understand have been responded to.

How many political primaries are we going to have on the floor of the U.S. Senate? The election is 18 months away. What was yesterday? Super Wednesday? What is today? Super Thursday? What are we going to say to every person that is nominated? Do we tell them that they are going to go through this pillory to serve the American people?

That is the issue. Are we going, in this institution and in this body, to appeal to the better instincts of its membership? Or are we going to be slaves to those kinds of interests that are holding hostage the nomination process here before the U.S. Senate? I hope, Mr. President, that the higher angels of our character will come out today when we vote at the hour of 2 o'clock.

I see my colleague on the floor, the Senator from Washington, who has been such a leader on this issue and who speaks with such eloquence and insight into the qualifications of this nomination.

I yield her 5 minutes.

Mrs. MURRAY. I thank my colleague from Massachusetts for his outstanding work on this nomination. I remind my colleagues that we should be here debating the nomination of Dr. Henry Foster and what message and tone he can bring to this office. But we are not. We are here debating whether or not Dr. Foster will have the opportunity to have an up-or-down vote on the floor of the Senate.

I have been working with Dr. Foster for a number of months now. It is extremely disappointing to see this fine man, after all he has been through, being denied a vote on the floor of the Senate. I hope our colleagues across the aisle can step back today and think about the larger message. Think about what will happen if we block this vote today and do not allow this man with great dignity to have the vote that he deserves after the last 5 months.

Throughout this debate, I have been focusing on what Dr. Foster brings to this office. Certainly, he brings the issues of women's health care clearly to the forefront of this Nation for the first time in our history, and that is a good thing. Certainly, he brings the ability to send a message to our teenagers, a vision of hope, a vision that they can be somebody. That is something that is needed in this Nation.

But I fear, Mr. President, that many of our American viewers today do not realize that that is not what this vote is all about. This vote has become a vote about Presidential politics, and I find that very sad. As we have worked to get to the last three votes, it has been surprising and saddening to hear what some of my colleagues have expressed. They do not feel they can vote for this candidate—not because he is not qualified, not because they think the process should be fair. They tell me they do not want to be seen as giving one Presidential candidate a vote over another Presidential candidate. It has become an issue of winners and losers. Who are the winners? Who is going to win? I can tell you who the losers are. The losers are the American people. The American people will be the losers because not only will they lose a fine candidate for Surgeon General, they will lose because the process has been sullied, and I think that is a sad statement for this Nation.

I think the winner—no matter what the outcome of this vote—is Dr. Foster. He is a man of dignity, a man of courage, and he is a man of honor. Every one of us—every one in this Nation—should stand up and give this man a loud round of applause. He deserves it. He has lived through torture—name calling, watching his whole, entire life be put in print—and he has shown all of us, as he sat before the committee, that he is a man of dignity. Dr. Foster certainly is the kind of person that deserves to be in the Surgeon General position, and he is also a man we all want to be like. He is a man of honor, and he should be very proud today that he has shown this Nation how to be a leader and what we should expect of leaders and what we want our Nation's leaders to look like.

I hope that all of our colleagues will step back and think about the larger message as they vote today. This man deserves a vote on the floor of the Senate. But above all, he deserves our applause for going through this process and showing us what a leader really looks like.

I thank my colleagues and I yield the floor.

Mr. KENNEDY. I yield 5 minutes to the Senator from California, Senator BOXER.

The PRESIDING OFFICER. The Senator from California [Mrs. BOXER] is recognized.

Mrs. BOXER. Mr. President, I thank my friend from Massachusetts and my friend from Washington for their extraordinary leadership in trying to get a very simple premise fulfilled, and that premise is that Dr. Foster deserves an up-or-down vote. It is wrong to deny this man a vote. Let him stand or fall on his merits or demerits.

I saw him standing next to the President yesterday at the White House, saying, ''All I ask for is fairness.'' He wants a vote, and 57 Members of the Senate—Democrats and Republicans—said, ''That is right, Dr. Foster; you deserve a vote.'' But a minority said no. If I were one of them, I would not have slept very well last night because it is a mean-spirited thing to do to a decent American. It is not fair. If Americans are anything, they are fair.

Dr. Foster is a pawn in a political game—a pawn in a political game—a physician who went to work in rural America when he could have had a cushy job. He is a physician who went into the toughest, most difficult parts of our Nation to help lower the infant mortality rate, and he did. He is one who took on the problem of teenage pregnancy. It is incredible that my colleagues on the other side of the aisle who are trying to block this vote criticize his program. What did they ever do in their lives to help stop teenage pregnancy? Let us hear what they have done. Oh, they throw the stones. What have they done? Have they walked into the toughest parts of America and taken a problem on that nobody else wants to take on? I do not think so.

They have a pretty cushy job right here. But they throw stones at a man who should be honored—and, by the way, he has been honored by President Bush, a Republican, I might say, who gave him a Thousand Points of Light Award. He was honored by Dr. Louis Sullivan, a former Republican Secretary of HHS, who recommended him for this job. People say President Clinton was playing politics. I have to tell you, this was the most bipartisan appointment I have seen. Senator KENNEDY made that point at a press conference yesterday. It is a truly bipartisan appointment.

Dr. Foster is being denied a vote because two Republican candidates for President want to block a vote on him. The Republicans are being told, ''You have to be loyal. Do not allow a vote on this man. It will hurt our chances.''

Playing politics is not what a U.S. Senator is supposed to do. They are

supposed to be fair. They are supposed to be just. They are supposed to step up to the plate and put political considerations behind them and give a man a chance.

I have to tell you, maybe these two political candidates for President will do well in the short run. But do you know what I think? In the long run, I do not think they will do very well because they are out of step with mainstream America. If you ask the American people what are the two important things they want to see in a President, it is fairness and courage. And it is not fair to deny this man his day. It is not courageous to cower to the right wing of one political party. So, in the long run, mainstream America is not going to look kindly at these two candidates—mark my words.

I think this debate has been somewhat disturbing. Last night I was on a TV show with one of the leading opponents of Dr. Foster, and that Senator called Dr. Foster an abortionist. I think it is an outrage. He owes Dr. Foster an apology. Dr. Foster brought thousands of babies into this world and he is called an abortionist? Thirty-nine abortions over 38 years, a legal medical procedure, and he calls him an abortionist on national TV. He is lucky he cannot be sued for defamation of character.

Dr. Foster is an ob-gyn, an obstetrician/gynecologist, a decent man, and he deserves a vote. I stand very proudly with the Senator from Massachusetts, with the Democratic women Senators, with the 11 Republicans who had the guts to stand up and say fair is fair, and I hope and pray that we have a different result today. If we do not, I think the fallout will be much greater than anyone now anticipates.

Mr. President, I yield the floor.

The PRESIDING OFFICER. Who yields time?

Mr. KENNEDY. Mr. President, how much time remains?

The PRESIDING OFFICER. The Senator from Massachusetts has 40 minutes remaining.

Mr. KENNEDY. I just yield myself 15 seconds, and then I will yield 5 minutes to the Senator from California.

In one of the most important considerations in debate, the silence on the other side is deafening—their willingness to engage in this debate and discussion, and we have nothing to speak about on the other side.

I yield 5 minutes to the Senator from California.

Mrs. FEINSTEIN. Mr. President, I thank the Senator from Massachusetts. I thank the Senator from Washington for all the work she has done on this matter.

I really address my remarks, Mr. President, to 43 Members of this body, and I want to share with them some of my thoughts and see where they register with them.

Let me start by saying that my basic belief regarding this nominee is that—in the absence of any compelling evidence of misconduct, insufficiency of professional qualifications, or flaws in character—the Senate owes it to the President and the nominee to conclude its advise-and-consent role and grant its approval. I say that particularly in view of what has happened to his predecessor.

In my belief, it is not appropriate for a minority of the Senate to prevent a vote on a Presidential selection based on unsubstantiated arguments about what Dr. Foster might have known or should have said. That is not the Senate's role.

In addition, it is unprecedented to deny the President even an up or down vote on a well-qualified nominee for a public health position such as Surgeon General.

Therefore, I believe that Dr. Foster is entitled to an up or down vote by the Senate. Not a procedural vote, but a real majority vote that will show the Nation that a majority of Senators favor Dr. Foster.

Let me also say that I believe that many of the concerns raised by Dr. Foster's opponents over the last 5 months have been a smokescreen of false issues, innuendo, and other distractions designed to obscure the central issue here, which is a woman's right to choose an abortion.

However, I am grateful that Dr. Foster's nomination has been investigated approved by the Labor Committee by a 9–7 vote and finally been brought to the Senate floor. It is my hope that in the remaining time for debate, Dr. Foster's real qualifications can be made clear and any remaining issues can be raised and answered, once and for all, and that a few more Senators can be persuaded.

The concerns of Dr. Foster's critics boil down to a few basic elements, which we have continued to hear over and over. These arguments are:

Dr. Foster has insufficient professional qualifications and credentials to serve as Surgeon General;

Dr. Foster provided contradictory information on the number of abortions he has performed;

Dr. Foster knew about the Tuskegee experiment, in which 400 black men with syphilis were left untreated, before it was revealed in 1972;

Dr. Foster performed sterilizations of mentally retarded women during the 1970's; and

Dr. Foster's I Have a Future teenage pregnancy prevention program focuses on contraception rather than abstinence.

While most of these issues have already been thoroughly addressed and dismissed, I would like to briefly summarize the factual responses to each of them, based on what I have learned:

On the issue of Dr. Foster's qualifications and credentials, I believe that they are impressive. Dr. Foster, is in rough chronological order:

A graduate of Morehouse College and the University of Arkansas medical school;

A former U.S. Air Force captain;

An examiner for the American College of Obstetricians and Gynecologists;

An advisor to the National Institutes on Health and the FDA on maternal and child health;

A member of the National Board of Medical Examiners, the accreditation council for graduate medical education, and the board of the March of Dimes;

A Distinguished Practitioner recognized in 1987 by the National Academies of Practice;

Acting president of Meharry Medical College, where he has served for the last 21 years as dean of Medicine and Chairman of Obstetrics.

On the issue of the contradictory estimates of abortions Dr. Foster performed and his overall credibility:

A review of 38 years of medical records determined that the actual number of abortions Dr. Foster has performed or been the doctor of record are small in number [39]—particularly in view of his estimated delivery of 10,000 live babies.

The initial confusion surrounding this number resulted from Dr. Foster having been listed as the attending physician for additional procedures that he himself did not perform, as well as disputes over whether hysterectomies Dr. Foster performed to protect the health of women should be counted as abortions if pregnancies were discovered during the procedure.

During his hearing, Dr. Foster provided the following explanation of the early contradictions: ''In my desire to provide instant answers to the barrage of questions coming at me, I spoke without having all the facts at my disposal.'' The majority of the committee found this explanation reasonable enough to approve the nominee.

On the claim that Dr. Foster consented to the infamous experiments at the Tuskegee Institute:

While Dr. Foster was at Tuskegee during the time of the study, his expertise was maternal and child health rather than sexually transmitted diseases;

A full committee investigation showed that the possibility Dr. Foster knew about the study is tenuous at best, resting on assumptions about what he should have known or might have been told, rather than direct evidence; the doctor whose statements have been used to suggest Dr. Foster failed to act promptly has stated repeatedly that Dr. Foster did not know of the study before it was revealed in 1972.

Without any direct or concrete evidence that Dr. Foster actually knew about the experiments and failed to take action, it is not reasonable to judge him a participant or to burden him with the responsibility of having to shut down an experiment he did not control nor was he a party of this ill-conceived study.

On the assertion that Dr. Foster performed sterilizations of mentally retarded women:

Dr. Foster sterilized retarded girls at the request of their parents under the established practice guidelines and ethics of the times, and wrote sensitively about these cases and the danger and tragedy of forced sterilization in 1974;

If there were any real questions about Dr. Foster's ethics, he would not have been endorsed by every major medical association in the United States.

On the claim that I Have a Future Program does not promote abstinence:

This after-school program focuses on delaying teenage pregnancy, including providing education about abstinence and increasing self-esteem as a way of preventing early sexual activity. Only if necessary are participants referred to medical personnel for information about contraception;

Every press article and description I have seen talks about how the program emphasizes abstinence and does not just throw condoms at the kids. Whether or not all program brochures include the word ''abstinence'' or not is not the central issue.

In fact, the central motivation for the I Have a Future Program was Dr. Foster's observation that simply providing contraceptives to at-risk teens was not an effective form of pregnancy prevention for at-risk teens, and self-esteem and personal goal-setting must be included.

Should he be denied because abstinence was not on a piece of paper?

In all, here is a man who has impressive qualifications, an upstanding character, and reputation for integrity in his home community and among his professional peers. He has no glaring flaw that justifies denying him confirmation.

Instead—and this is increasingly clear—there is just one real reason that he is being opposed: he performed 39—the number is disputed—medically necessary legal abortions as part of a career that includes 10,000 deliveries of live babies.

What I would like to point out is that 39 is an amazingly small number, considering the human situations that Dr. Foster has encountered—women who have been raped; women whose mental or physical condition is such that they could not give birth; questions of major fetal deficiencies.

The fact is that out of 10,000 live babies delivered, there were few cases where Dr. Foster performed a medically necessary and appropriate abortion. To me, this is a very small number.

Were the procedures legal? Were they in accord with medical standards and performed as part of his established responsibilities? The answer to these questions, of course, is yes. Nothing has been raised to contradict this statement.

What is clear to me from the last 5 months of debate over Dr. Foster's nomination is that there is now a question whether any obstetrician could ever hold the office of Surgeon General if they have performed even one legal, medically appropriate abortion.

That clearly is the question in my mind. I really believe the issue is that simple. And I strongly believe that the answer to that question should be yes.

I believe this body has but one choice and I am hopeful that, of the 43 there are 3 who will come forward and simply say, in fairness, Dr. Henry Foster deserves a vote in this body.

I yield the floor.

Mr. COATS. Mr. President, I doubt that anything I say will shatter the deafening silence the Senator from Massachusetts alluded to. But it will at least interrupt. We have a number of speakers. Mrs. KASSEBAUM, who normally would be managing this, is chairing a hearing of the Labor Committee. I know the Senator from Massachusetts, who was a former chairman of that committee, understands that sometimes they do not end as quickly as you would hope. She will be here as soon as she can. A number of other Members plan to speak on our side. Several of them are tied up in that same hearing but will be here shortly.

Mr. President, if yesterday's vote is any indication, Dr. Foster will not be confirmed as the next Surgeon General of the United States when we take this vote at 2 o'clock. I believe that conclusion is justified by the record. The Labor and Human Resources Committee held what everyone has described as thorough and fair hearings. Dr. Foster was given every opportunity to present, at whatever length of time he required and in whatever detail or depth he required, his qualifications, his experience, and to present his answers to the questions that were raised.

Many have concluded, on the basis of that hearing, those who sat through the hearing and those who have examined the record, that Dr. Foster did not satisfactorily answer the many disturbing questions that were raised, that a disturbing pattern of behavior and of responses—whether directed by the White House or not I do not know for sure—emanated from those hearings and left many with serious questions. I detailed many of those in a letter to my colleagues, a very lengthy letter comparing the public documents, matters of public record, which in many numerous instances was in direct contradiction to Dr. Foster's version of the various incidents; issues in this debate that arose. Some of those will be addressed here today. That, however, has been a matter of examination for all Senators. They have all had the opportunity to do that, and in a sufficient length of time to do that.

I believe that the conclusion that Dr. Foster is not the right man for this job is justified by the record. Questions of medical ethics that were raised are not just disturbing, in my opinion they are disqualifying. Questions of credibility in this Senator's opinion have never been adequately answered leaving us with a candidate that the New York Times says ''fails the candor test.''

These problems, problems that the administration and problems that the nominee himself were largely responsible for, I believe have decided the outcome of this procedure. But I would like to spend a moment this afternoon on the broader lessons that should be taken from the tenure of the former Surgeon General, Dr. Elders, and the apparent failure of this nominee to receive the necessary support for this position, lessons that hopefully will inform the selection of the next nominee for this office.

The President of the United States needs to understand that there are millions of Americans committed to the protection of innocent life and the protection of the innocence of childhood. They are not fanatics to be demonized. They are part of the responsible mainstream of American life.

They understand that this administration disagrees with them. But what they do not understand is why this administration has chosen to actively assault their deepest beliefs, to disdainfully dismiss their highest ideals, to treat them as if they were beneath civility.

This bias has been particularly obvious in the Office of Surgeon General. The former occupant of the Surgeon General's Office, Dr. Joycelyn Elders, abdicated her role as spokesman for public health entirely, and became what appeared to be a full-time spokeswoman for radical causes. And this nominee has shown, as I believe the record indicates, little sensitivity for the moral concerns of countless Americans whom he himself called ''right-wing extremists.''

There is almost a mantra coming out of the White House, a mantra coming out of the Democrat Campaign Committee, a mantra being heard on this floor that any opposition to the President, almost on any subject, is the work of right-wing extremists. Boy, what a powerful group they are. I am not sure even if we can identify who they are. But any opposition raised to what the President deems his priority, his agenda for America, is dismissed either by the President or by his spokespeople as just the work of the right-wing extremists and, therefore, to be dismissed.

I would suggest it goes to something far deeper than that. It goes to an undercurrent that threads its way throughout American life, American culture. It goes to the values that many Americans hold dear, people who do not even belong to any particular political party, people who would not begin to identify themselves as right wing or extremist or anything else—just concerns that affect everyday Americans, American families, American parents, those of us that are concerned with some of the breakdown in our culture and some of the undermining of our values.

So we raise questions about the bully pulpit that is being used by the administration, by the President and by the Office of Surgeon General to advocate an agenda that many of us feel is out of the mainstream of what the Democrats describe as the mainstream, but very much in the mainstream of what America has tried as America's agenda. We can debate this. We can debate what is the best course of action to take, and what direction we ought to go and what our values ought to be. We are not very successful at legislating those values. And I do not think it is possible to legislate those values. These problems are not going to be solved in this Chamber. They are going to be decided and solved around the kitchen table, in the family rooms, and where Americans live and work, and where the most discourse takes place among our citizens.

But there are many who are concerned that the Office of Surgeon General has been used as an advocacy post for a certain agenda, an agenda that many of us feel is out of step with America's agenda, and the agenda of at least a very substantial majority of our people.

This use of this position for this purpose makes the work of the Surgeon General literally impossible because the role of that office traditionally has been—and I think in most of our definitions should be—the role of building consensus around important public health issues. Instead, it is hard to argue any other way but that the administration has turned public health into an ethical battleground by enphasizing not issues that unite us but issues that divide us. And more than that, they have ridiculed anyone who dares to disagree, including the Catholic Church, the pro-life movement, and millions of parents who do not believe that condoms are a universal substitute for moral conviction.

This administration by this attitude has undermined the public health discussion in America, and it has squandered the potential that exists for the Surgeon General and the Office of Surgeon General.

Now the President, it appears, will have again a choice to make with another nominee—whether that nominee will bind our Nation or rend it, whether it will unite the Senate or divide us. I have some questions for the administration, questions that I think deserve serious consideration and deserve an answer. Mr. President, when will you finally nominate someone who can unite us as Americans around important issues of public health instead of polarizing us? When, Mr. President, will you choose a candidate for this office who is not an advocate of the most divisive issues of our times but is an advocate for those issues that can bring us together as a people? When, Mr. President, will you allow us to return our focus from moral controversies to issues of public health? We are not asking you to send us someone that we always agree with. But we are asking you to send us someone who does not bitterly divide us as a people. If your administration fails to do this, the consequences will be immediate, and I am afraid unfortunate. Because if the President insists that the Office of Surgeon General is a bully pulpit for radicalism, for advocacy, we will be forced to ask if the office should exist at all. I hope this is a decision we do not have to make. And I hope that the President will make his next choice with a lot more care than he exercised on his last two choices.

Mr. President, I yield the floor.

Mr. KENNEDY. Mr. President, I yield 5 minutes to the Senator from Maryland.

The PRESIDING OFFICER. The Senator from Maryland is recognized.

Ms. MIKULSKI. I thank the Chair.

Mr. President, this is decision day on Henry Foster. This is not decision day on Joycelyn Elders. This is not decision day on Bill Clinton. We get to do that in November 1996.

This is decision day on Henry Foster. We should be talking about Henry Foster and is he or is he not qualified to be the Surgeon General of the United States of America. I believe he is.

Now, when one wants to ask: Where are those people who will unite us on broad issues of public health? Bill Clinton has done it. He gave us Dr. Phil Lee, a distinguished physician, who is our Assistant Secretary of Health, who is coordinating health policy in a time during shrinking budgets and higher need. He has given us Dr. Varmus to head the National Institutes of Health when George Bush delayed the appointment of the head of NIH because of a litmus test on fetal tissue. But Dr. Varmus is attracting the kind of young talent and retaining the seasoned talent for NIH to continue to be the flagship of research of the life science issues in America.

Bill Clinton is meeting his responsibility. Today, it is our responsibility to pick a Surgeon General. And we are not voting on Dr. Elders. We did that. We are voting on Henry Foster.

Henry Foster is a man unique unto himself, bringing his own credentials and expertise. He is not Joycelyn Elders in wingtips.

Now, let us get it straight. I regret that abortion has become the focal point of this debate rather than the broad policy issues of public health. We should be focusing on who can focus on prevention, primary care, and personal responsibility in a public health agenda. That is what it is all about, and Dr. Foster has done that.

We knew that, yes, there would be those who would focus on the big A word, abortion, so in a public hearing at the Labor Committee, chaired in a very outstanding way by Senator KASSEBAUM, I asked Henry Foster tough questions because I felt the public had a right to know. I said to Dr. Foster, ''Did you ever perform an illegal abortion?'' He said, ''Absolutely not. I have only done those things that were legal and medically necessary.'' I said, ''Did you ever do a trimester abortion?'' He said, ''Absolutely not.'' I said, ''Did you ever do an abortion for sex selection?'' He said, ''Absolutely not.'' I said, ''Did you ever sterilize mentally retarded girls without parental involvement?'' And he said, ''Absolutely not.''

So that is the record, and it is on the record. ''Absolutely not.'' And on this sterilization study that has been discussed, the record is clear. Dr. Foster's name is on a study of a variety of people who conducted hysterectomies on retarded women, and on those three in which he was involved—and he was involved in only three—there was parental involvement and parental consent. They were acting in loco parentis, in the guardianship role of parents. Now, we believe parents should be involved. I support parental consent for abortion. There was parental consent in this area. Henry Foster did the right thing as a clinician, and he did the right thing in involving parents.

So that is where we are on these issues. Now, the question becomes with Henry Foster, when is good good enough? This man has devoted his life to public service and the practice of medicine. To be Surgeon General of the United States, to serve your country, when is good good enough? Thirty-eight years in the practice of medicine. When is good good enough to be Surgeon General? When you serve in the U.S. military as a captain, as a physician, when you have done that job for your country, when is good good enough to be Surgeon General? When you practice medicine in a town like Nashville, and you are chosen to be head of your own bioethics committee, you are asked to be the dean of a medical school, is that not good enough credentials? What more do we want? Competency, well respected by your peers, 38 years of devotion, volunteer work in the community, starting a program called ''I Have a Future,'' going into the public housing projects to say to kids that you just say no.

Schoolmarmist admonitions with these Victorian values only get good headlines. They do not get good results. You have to go to those kids and reach out to them. And the way you get them to say no is when they say yes to the possibilities of a life where they can define themselves as full men and women, not only in terms of their sexual prowess.

That is what he did. And that is why George Bush wanted him to be a point of light, because these kinds of programs are a point of light.

The PRESIDING OFFICER. The Senator's time has expired.

Ms. MIKULSKI. Could I have 1 additional moment?

Let me just conclude by saying this. In a room in a meeting with Dr. Foster, I said to him, ''What do you want to do as Surgeon General?'' He said, ''I want to help all Americans live better and I

want to help poor kids do better and make sure they have a future.''

Dr. Foster has devoted his life to giving other people a chance. Let us give him a chance and not hide behind parliamentary procedure. Let us make this decision day for Henry Foster.

I yield the floor.

The PRESIDING OFFICER. Who yields time?

Mrs. KASSEBAUM addressed the Chair.

The PRESIDING OFFICER. The Senator from Kansas.

Mrs. KASSEBAUM. I believe the Senator from New Hampshire has been waiting. Am I correct on that?

Mr. SMITH. I have been here. Yes.

Mrs. KASSEBAUM. I would like to yield to the Senator from New Hampshire 15 minutes.

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

Mr. SMITH. The Senator from Pennsylvania has said he is only asking for 3 minutes. I will be happy to yield and then take my time after the Senator from Pennsylvania.

The PRESIDING OFFICER. The Senator from Pennsylvania is recognized.

Mr. SPECTER. I thank the Senator from New Hampshire.

The PRESIDING OFFICER. Is the Senator from Kansas or the Senator from Massachusetts yielding time to the Senator from Pennsylvania?

Mr. SPECTER. I ask the Senator from Massachusetts to yield 3 minutes.

Mr. KENNEDY. Three minutes.

The PRESIDING OFFICER. The Senator from Pennsylvania is recognized.

Mr. SPECTER. Mr. President, it is my hope that at least three additional Senators will vote in favor of closing debate so that Dr. Foster can receive a vote on the merits.

I believe Dr. Foster is entitled to his day in court. He is entitled to his vote in the Senate. The sole issue which is holding up this confirmation is the issue of abortion. Cutting to the bone, that is it, pure and simple. And I think it is simply wrong to deny Dr. Foster confirmation because he has performed an operation which is lawful under the Constitution of the United States. And you see the pattern emerging. In yesterday's Washington Times, it is Ralph Reed, Jr., who is calling the tune for those who are opposing Dr. Foster, and in today's Washington Post it is Gary Bauer who is handing out plaudits to those in the Senate who are opposing Dr. Foster. I believe it is inappropriate for this body to deny this man a vote on the merits and to deny confirmation for performing a medical procedure, abortions, lawful under the U.S. Constitution.

I would remind my colleagues, Mr. President, that there is nothing in the Contract With America, which was the basis of our Republican victory last November, nothing in the Contract With America, on abortion. And that is not a mandate from the American people defining the Republican stand. I would also remind my colleagues that if this body is going to become embroiled in this kind of an ideological battle, we are not going to be able to take up the issues which the American people elected us for. They did not elect us in 1994 on the abortion issue. They elected us to have smaller Government, less spending, reduced taxes, and strong national defense. Those are our core values and, if I may say, our core Republican values. And it is a very dangerous precedent for this body to have an ideological debate.

If we are going to subject people who want to be public servants to 60 votes, not the democratic majority, we are going to discourage people like Henry Foster and other qualified individuals from coming to this town, this Government, to serve. If there had been a demand for 60 votes for Justice Clarence Thomas, he would not be sitting on the Supreme Court of the United States today. And I know there have been nominees who have had a past filibuster test. But the appropriate standard, the nonideological standard is to say, ''Is he qualified when he performs a medical procedure which is constitutional?'' I yield the floor.

Mr. KENNEDY. We reserve whatever time we have. I believe the Senator from New Hampshire has been typically courteous to permit the Senator from Iowa to proceed for 3½ minutes.

Mr. HARKIN addressed the Chair.

The PRESIDING OFFICER. The Senator from Iowa is recognized for 3½ minutes.

Mr. HARKIN. Thank you, Mr. President.

Mr. President, I want to focus my comments a little on the comments made yesterday by the majority leader, Senator DOLE. I have been for some time involved in the whole issue of filibusters. Senators may remember I tried earlier this year to do something about filibusters. The filibuster is being used here today. So, I looked it up in the RECORD, and here is what Senator DOLE said yesterday. He said, ''Yes, supporters must obtain 60 votes.'' That is the way it works. I had the Congressional Research Service do a little work in that area. I have heard people say, ''Oh, this never happened before.'' It has happened a lot.'' He goes on to say, ''Since 1968 24 nominations have been subjected to cloture votes.'' As Paul Harvey might say, ''Now for the rest of the story,'' because that is not quite correct. The fact is, Mr. President, that nominations have been defeated by filibuster after failure to invoke cloture in only two cases: the first was Abe Fortas to be the Chief Justice of the Supreme Court in 1968; the other was Sam Brown to be an Ambassador in 1994. Both nominations were made by Democratic Presidents and defeated by Republican filibusters.

Senator DOLE was half right. He said that there had been 24 filibusters. What he did not say was that 22 of them went through, and they got their nominations. Only two did not make it—Abe Fortas and Sam Brown.

I might also point out, Mr. President, that Democrats have never blocked a nomination of a Republican President by filibuster and defeat of a cloture motion. Never. Not once. Now, until recently we never had cloture votes on nominations. Up until 1949 you could not filibuster a nomination. Then the rules were changed and you could. And even then comity prevailed on both sides of the aisle. During the Eisenhower administration we let Ike have whatever nominees he wanted. It was not until 1968 that the first filibuster was held. That was on Abe Fortas. And cloture was not invoked.

The second, I said, was in 1994 on Sam Brown. But during all those years when there were Republican Presidents, a Democratic Senate never defeated, not once, by a filibuster a nomination of a Republican President. Those are the facts. And they cannot be disputed, Mr. President. Those are the facts.

So I would say to my friends on the other side of the aisle, do not hide. Do not hide behind this procedure. Have the guts to come out and vote up or down on whether Dr. Foster ought to be the Surgeon General of the United States. And for once and for all, put behind us this filibuster procedure on nominations. I believe, Mr. President, we are going down a very bad road, a very bad road, because if we continue this, the worm will turn. There will be a Republican President and there will be a Democratic Senate. And then the shoe will be on the other foot. And I say that is the wrong road for us to go down. Let us invoke cloture and have an up or down vote. Let us not hide behind procedure.

Mrs. KASSEBAUM addressed the Chair.

The PRESIDING OFFICER. The Senator from Kansas.

Mrs. KASSEBAUM. Mr. President, I yield 15 minutes to the Senator from New Hampshire.

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

Mr. SMITH. I thank the Senator from Kansas for yielding me this time. Mr. President, I rise in very strong opposition to Dr. Foster being confirmed as President Clinton's nomination to be Surgeon General of the United States. I also at this point would like to thank Senator KASSEBAUM for the fine job that she did with the hearings that were conducted very fairly, and I thank Senator COATS for his leadership in bringing information to the forefront regarding this nomination.

As Senator COATS has ably pointed out during this debate, there are many troubling issues surrounding the confirmation of Dr. Foster. And I always feel somewhat sad to have to be involved in these debates when individuals like Dr. Foster are brought into the arena, so to speak, because appropriate research was not done on the

nomination prior to placing that person in the arena, which has happened in this case, I believe.

The issues that I am concerned about include the credibility of Dr. Foster's responses to questions about his knowledge of the Tuskegee syphilis study, the infamous experiment with hundreds of black men with syphilis where they were deliberately left untreated in the name of medical research.

In addition, several members of the Labor Committee have indicated they remain unconvinced that Dr. Foster was, as he claimed, ''in the mainstream'' of medical practice when he performed hysterectomies on mentally retarded women without securing independent-party written consent and even years after the State and Federal courts, as well as the U.S. Department of Health, Education and Welfare had proscribed those and similar practices.

One of the principal issues surrounding this nomination is the credibility of Dr. Foster with respect to the number of abortions that he has performed. Various times since he was chosen by the President to be Surgeon General, Dr. Foster has claimed 1, 12, 39, and 55 abortions. And there is even a transcript of a public proceeding in which he appears to have claimed that he performed 700. The interesting thing about this, whether it is 1 or whether it is 700, one of those individuals, you never know, could very well, had they had the opportunity to live a full life, been the nominee for Surgeon General of the United States of America at some point in the future.

All of these doubts about Dr. Foster were summed up just right I thought by the New York Times editorial entitled ''Ending the Foster Nomination,'' calling Dr. Foster a flawed nominee whose nomination involved sacrificing the principle that candidates for high office must fully disclose relevant facts and attitudes. The Times concluded that Dr. Foster's nomination deserves to be rejected.

Mr. President, even though there are many reasons to oppose the nomination other than his performance of and advocacy of abortions, let me focus my remarks this afternoon on just how extreme—I emphasize the word ''extreme''—Dr. Foster's abortion policy views are. Polls by Gallup and others have consistently found that over three-fourths of the American people believe that abortion should be prohibited except to save the life of the mother after the first 12 weeks of pregnancy. Yet in the 1984 speech to Planned Parenthood of Eastern Tennessee, Dr. Foster expressed his strong opposition to restrictions on abortion after 12 weeks, about 150,000 of which are performed annually. Dr. Foster said—and I quote—''We in the movement must work to prevent the erection of such barriers to late abortion access.'' That is after 12 weeks. In other words, Mr. President, Dr. Foster's view is that abortion should be legal, on demand, throughout pregnancy at any time. Let us explore for just a couple of moments what that means.

Last Friday Senator GRAMM and I introduced S. 939, the partial-birth abortion ban of 1995. Our bill is companion legislation to a bill called H.R. 1833 reported favorably by the House Judiciary Subcommittee yesterday.

Mr. President, partial-birth abortions are first performed at 19 to 20 weeks of gestation, very often much later.

To give my colleagues a clear understanding of how well developed an unborn child is that late in pregnancy, I have with me an anatomically correct model of a child—not a fetus, it is a child. It is a little child. Its face is formed; its arms, toes, fingers, eyes—this is a child.

Dr. Foster said he never performed a late-term abortion, and I have no reason to doubt that. I do not know. That is the statement that he made, and I am not accusing him of performing late-term abortions, but he is not blocking them either. So if you are not a murderer but you do not stop a murder, I think you can draw the conclusion.

I brought some photographs to show that premature babies of this very age are the victims of these partial-birth abortions. In this photograph, this is Faith Materowski. She was born at 23 weeks of gestation, just 3 weeks older than this little model would be, weighing 1 pound and 3 ounces, Mr. President. This photograph was taken about a month after she was born, and I am happy to report that Faith survived. She survived because her mother wanted her to live not die.

Let me explain, with the aid of a series of illustrations, exactly what is done to children about the same age in a partial-birth abortion. As I do, keep in mind that Dr. Martin Haskell, who by his own admission has performed 700 of these partial-birth abortions as of 1993—Lord knows how many after that—has told the American Medical News, the official newspaper of the AMA, that the illustrations and descriptions that I am about to present are accurate, technically accurate. In the first illustration, the abortionist——

Mrs. MURRAY. Will the Senator yield?

Mr. SMITH. I will not yield. I will be happy to yield when I finish and engage in questions and answers on your time.

In the first illustration, the abortionist, guided by ultrasound, grabs the baby's leg with forceps.

As you see in illustration 2, the baby's leg is then pulled from the birth canal. So you see the forceps now have grabbed the legs, pulling the baby from the birth canal.

In the third picture, in this so-called partial-birth abortion process, the abortionist delivers the entire baby, with the exception of the head—the entire baby. So I ask my colleagues to think about this, as to whether or not this is some impersonal thing or whether this is a child now in the hands of the abortionist. It could be a doctor, Mr. President. If it were a doctor who wanted to save that life, the life would be saved; the baby would be born and the life would be saved. The only difference is it is an abortionist.

In illustration No. 4, the abortionist takes a pair of scissors and inserts the scissors into the back of the skull and then opens the scissors up to make a gap in the back of the skull in order to insert a catheter to literally suck the brains from the back of that child's head.

That is what happens in the so-called partial-birth abortion. Anywhere from the 19th or 20th week up, this can happen. It is unspeakably brutal, and yet some say the child does not feel this. Take a pair of scissors and slowly insert them into the skin in the back of your neck a little way and see how that feels to you.

According to neurologist Paul Renalli, premature babies born at this stage may be more sensitive to painful stimulation than others. I would think my colleagues would be repulsed by this and most Americans would be appalled, sickened, and angered that such a brutal act could be carried out against a defenseless child. This is a child, I say to my colleagues. This is a child; a defenseless child.

I ask you, would you put your dog to sleep by inserting scissors in the back of the neck and using a catheter to suck out its brains? Yet, under the Supreme Court Roe versus Wade decision, the brutal partial-birth abortion procedure that I just described is legal in all 50 States—all 50 States. And, in fact, the National Abortion Federation has written:

> Don't apologize, this is a legal abortion procedure.

Exactly my point and exactly the connection with Dr. Foster. And before my colleagues stand up and accuse me of saying it, I am not accusing Dr. Foster of doing this. What I am accusing Dr. Foster of is ignoring the fact that it is taking place and accepting the fact that by any means, any means legal—and this is legal—by any means legal, a life can be taken. So lest my views get misrepresented on the floor of this Senate, I am making it very clear.

So when Dr. Foster says he wants to prevent the erection of barriers to late-abortion access, he is tolerating and condoning this. That is a late abortion, and he is tolerating it and allowing it to happen. Based on Dr. Foster's own statement, one can only conclude that he would oppose, and oppose strongly, the very bill that I have introduced. I have not heard otherwise.

The grotesque and brutal partial-birth abortion procedure that I just described and illustrated on the floor of the Senate today can and should be outlawed. And if the Surgeon General of the United States, whoever he or she may be, spoke out against it, it would

be outlawed, and that is the kind of Surgeon General that I want.

The bill that Senator GRAMM and I have introduced would outlaw it, and our bill amends title 18 of the United States Code so that:

> Whoever, in or affecting interstate or foreign commerce, knowingly performs a partial-birth abortion and thereby kills a human fetus should be fined . . .

Not the woman, the doctor—called a doctor—the abortionist.

So, Mr. President, when Dr. Foster speaks of these barriers, he is talking, in effect, about bills like mine, like the bill that would ban partial-birth abortions. He is providing, when he says a woman's right to choose, a woman's right to choose partial-birth abortions. This is what it means. Let us put some meaning to the words, because that is what it means.

Out of all of the controversy surrounding Joycelyn Elders, all of the unbelievable statements and the controversy that we endured during her all-too-long and lengthy tenure, I cannot understand why the President would choose as his successor someone whose past record and policy views on the pressing social questions of our time are so out of tune, so far out of sync, with the rest of the American people.

The Surgeon General should be someone that the American people have confidence in, someone who would put the intense controversy of the Elders years behind us. Yet, President Clinton apparently, without even reviewing carefully Dr. Foster's record, which places him, unfortunately, in this debate, did not do a good job of investigating his past and even recklessly went ahead and made this nomination.

Mr. President, there are over 650,000 physicians in the United States of America—black, white, male, female, Asian, Hispanic, Indian. Surely, surely there is one out of 650,000 that could be brought to the floor of the U.S. Senate that would not have this kind of controversy and this kind of debate following the Elders reign.

My friend and colleague, Senator MIKULSKI, a few moments ago said on the floor that she could not understand why this whole thing was about abortion, why the debate was so focused on abortion. In the Washington Post this morning—I might answer the Senator from Maryland by saying this—here is what President Clinton said:

> Make no mistake about it, this was not a vote about the right of a President to choose a Surgeon General. This was really a vote about every American woman's right to choose.

That is why it is about abortion, because the President is making it about abortion, because he wants this kind of thing to occur.

Mr. President, I am confident that when the votes are counted, it is going to be the same result as yesterday, and Dr. Foster will not be the next Surgeon General.

Several Senators addressed the Chair.

The PRESIDING OFFICER. Who yields time? The Senator from Washington.

Mrs. MURRAY. I yield myself 1 minute, and then I will yield to my colleague.

Mr. President, I am appalled and shocked that there would be this kind of display on the floor of the U.S. Senate. Certainly, Dr. Foster has made it very clear, as Senator MIKULSKI explained to all of us, that he does not support third trimester abortions, that he does not support abortions for sex selection, nor does he support illegal abortions.

I think it is really outrageous that guilt by association occurs on the floor of the Senate. I think the American people deserve a debate with dignity. I think Dr. Foster deserves a debate with dignity, and I hope that all of us can remember that.

Again, I remind you, Dr. Foster's nomination is in front of us because he is a man with a tremendous history of service—community service—delivering more than 10,000 babies, and I think that is what we should be debating today.

I yield my colleague from New Jersey 2 minutes.

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

Mr. LAUTENBERG. Mr. President, I thank the distinguished Senator and urge her to continue her quest to see that fairness is finally delivered on this floor. I am astounded by what we have just seen. I assume that the pictures that we saw reflect a woman's decision, that she chose to have that abortion. You can make it look as ugly as you want. But the fact is that it is a medical procedure, and this woman chose to have it. This same Senator—a distinguished Senator and a friend of mine—from New Hampshire voted the other day and led the fight to take helmets off motorcycle riders. They could be laying all over the road, and they wind up in a hospital as paraplegics and quadriplegics, and we pay for it. That is OK. But to permit a woman who, under the law, has a right to make a choice, no, no.

Here we are watching a small minority deciding how the behavior of the majority ought to perform. This is an outrage. Yes, this is about abortion because the other side made it about abortion, instead of taking this man with superb credentials, who did what he had to under his oath as a physician and under his compassion as a human being. He obeyed the law and delivered excellent service. Over 10,000 babies delivered. The Senator from New Hampshire wants to pick out a procedure that was required and make that the subject of this discussion.

No, it is a narrow minority who says to the women across this country that you have no right to choose, even though the law says so. In his very statement, he said that. He said if we had a Surgeon General who spoke against it, then it would be OK with this Senator and those whom he represents—Senator GRAMM and the others.

This is an outrage. What we are witnessing here is the truth about this issue. This has nothing to do with Dr. Foster. This has to do with politics, raw politics. I appeal to the people across this country, if you think you are being dealt with fairly, just look at what took place: Decrying a law that is on the books and a physician for doing his duty. We ought to get a couple of friends here with enough courage to stand up and say we are not going to take it anymore and we are going to vote on behalf of the women in this country.

Mrs. MURRAY. Mr. President, I yield my colleague from Illinois 4 minutes.

Ms. MOSELEY-BRAUN. Mr. President, everybody is talking about what the issue is here. I think there are a number of American people who think that the only real issue is fairness. It is whether or not a minority of this body will stop this nomination, using the time-honored trick of the filibuster in order to enforce an extreme agenda on the President of the United States through his nominee. It is just that simple.

The extreme agenda, I think, is pretty evident. I have never seen anything as horrific, as horrendous, as awful, as ugly and graphic as the posters and the doll figure I saw on the floor a few minutes ago. It is outrageous to bring something like that on the floor of the U.S. Senate to make whatever point. Whether you are for or against choice, to bring that kind of graphic depiction of ugliness on this floor, I think, only serves the purpose of inflaming people around an issue that really inflames and divides the American people, and that does go to the heart of the opposition's extreme agenda here.

People who say the Supreme Court was wrong in terms of Roe versus Wade are finding 9,000 ways to overturn it in subtle ways. People who do not believe that a woman has a right to choose—by the way, everybody is entitled to their own view on that issue. American people are and will be divided. That is a profoundly divisive issue in our body politic. But the question is: Why would that profoundly divisive issue be applied to Dr. Foster's nomination?

Here is a man who is not an abortionist. He is a women's doctor. He has delivered tens of thousands of babies, and he has made the point that he supports the laws in terms of a woman's right to choose, but that is not his practice and never has been. Dr. Foster has played by the rules, has promoted women's health over the years, and he has a stellar background.

I join my colleague from New Jersey in saying that this really is a nomination now that is wrapped up in games and politics. Indeed, I will go as far as to say that Dr. Foster is a political hostage to extremism. That is the issue here—whether or not we are going to allow that extremism to derail this

nomination through use of the filibuster, or whether we are going to allow this man to have a majority vote of this body. Fifty-seven Members of this body, yesterday, voted to allow the nomination to come to a vote. That is more than half. That is more than a majority. What it is not is enough to overcome the time-honored trick of the filibuster. It is continuing that filibuster that is at the heart of the vote that will take place this afternoon.

I urge my colleagues to strike a blow for fairness and say to the American people that we are prepared to allow a majority to rule in the U.S. Senate, like it does on other matters—the budget, the appropriations, and all the other things we do. Let us say we are going to allow the majority vote to prevail regarding this nomination for the President's administration.

Dr. Foster was nominated by the President over 136 days ago. We have been sitting here in the U.S. Senate with all of the public issues we have before us—violence and crime, the issues in the communities, AIDS, you can go down the list—and they have not been attended to. Why? Because of the politics of abortion and politics of the Presidential campaign. I say let us free Dr. Foster and have his nomination vote take place today.

Mrs. KASSEBAUM. Mr. President, I yield 10 minutes to the Senator from Texas.

Mr. GRAMM. Mr. President, I thank the distinguished chairman for yielding. We are coming down to the final moments of the debate. We will have our final vote here in a few minutes.

I would like simply to review the key issues. First of all, let me address the issue of the cloture vote. To listen to our colleagues, it would sound as if we never vote on cloture in the U.S. Senate. Yet, hardly a week goes by that we do not have a cloture vote. It is part of the fabric of American democracy. It was part of the process making the Senate the deliberative body of Congress that George Washington described to Thomas Jefferson when Jefferson came back from France. Thomas Jefferson had been the American Minister to France while the Constitutional Convention was occurring.

Our colleagues talk about cloture votes and filibuster. Yet, since 1968, 24 times we have had cloture votes on nominations, and nearly every one of them occurring when we had Democratically controlled Congresses.

The way our system works is, if there is a determined minority, that minority has the right to speak in the U.S. Senate. There is, today, a determined minority. And to accommodate the Senate, an agreement was worked out so that the proponents of this nomination had not one vote, but two. That was agreed to by unanimous consent. Any Member of the Senate could have objected. No one objected. So this is a process that we chose and that every Member agreed to. This is a process that we all understand, and it is a process called ''democracy.'' It has served us well in the past. It will serve us well today when we reject this nomination.

I remind my colleagues that there was a Democratic effort to stop the confirmation of Chief Justice Rehnquist of the Supreme Court. That nomination went to a cloture vote. In that case, cloture was invoked. But the point was somebody on the Democratic side of the aisle felt so strongly about that nomination to one of the three most important offices in the land—the head of an entire branch of American Government—that they exercised their right. Many people did not like it, but that is how our system works. In that case, the process worked. We invoked cloture. Judge Rehnquist was confirmed. And in this case it is going to work as well. We are not going to invoke cloture, and Dr. Foster is not going to be confirmed.

Now, let me address the issue of Dr. Foster's credentials, and let me make it very clear that there is absolutely nothing in this debate that has anything to do with anything other than his qualifications to hold this office. There are two principal qualifications that our colleagues go on and on about with Dr. Foster. No. 1, he was the department head at a medical school in America. That is true. It is also true that the department he headed lost its accreditation while he was head of that department. Was it his fault? Were there extenuating circumstances? Were there other factors involved? Certainly there were. There always are. But the bottom line is that he served as the department head of a department that lost its accreditation.

The second argument given is that he established a program with a wonderful name, ''I Have a Future.'' That program's stated goal was to reduce teen pregnancy. Our colleagues make a big point that this program was given a Point of Light Award. It was given that award because of its objective, a noble and great objective, and one that we need to promote all over America. But the bottom line is there were two objective assessments of that program, and both of them were made after it was given this award. Both evaluations concluded exactly the same thing: This program did not in any statistically significant way reduce teen pregnancy among those who participated in the program.

I said it yesterday. I will say it again today. And every Member of the Senate knows it. If we had set up a distinguished panel of physicians to go out and look at qualifications of physicians in America and to come up with a list of 1,000 physicians who were eminently qualified to hold the position as America's first physician, Surgeon General, Dr. Foster's name would not have been on that list. I do not think anybody here believes that Dr. Foster is qualified to be Surgeon General when considering his two major credentials: One being the head of a department that lost its accreditation; the other being the director of wonderful-sounding program with a noble objective which, according to two objective assessments, proved totally ineffective in promoting those objectives.

Because it has been the focal point of the debate, as it should be, I am not going to get into again the problem of Dr. Foster's credibility. Maybe it was his fault, maybe it was the White House's fault, maybe it is failing memory, maybe it is simply a lack of understanding of the political process and how it works. But the bottom line is, on virtually every issue that has been raised, there has been a problem of credibility.

Finally, on the whole issue of abortion. I did not see the presentation that my dear colleague, Senator SMITH, made about partial-birth abortions. Maybe some people were offended by the presentation. But I am offended that this is happening in America. I think people do have different views on abortion, and I respect the opinion of people who disagree with me.

But I think it is an extreme view when you take the view which Dr. Foster takes, in opposition to parental consent in cases involving abortion and minors. Polls show that is an extreme view; 80 percent of the people in America think that parents ought to be notified when abortion is going to be performed on a minor. I think it is an extreme view when a child is in the process of being born, and its life is extinguished. I think it is an extreme view that when a lady is being taken down the hallway toward the delivery room, that it is perfectly acceptable in America to make a left turn to perform an abortion. The American people, by a margin of over 70 percent, think that is an extreme view.

Why filibuster? Why force a 60-percent vote? The answer to that is very, very simple. A lot of us felt very strongly about Joycelyn Elders. When I read the things that she had said about the Roman Catholic Church, when I read the her comments which made her sound more potentially successful as a radio talk show host than a Surgeon General of the United States, when I looked at how extreme her views were, I did not think she ought to have that job.

But this was the President's first nomination for this position, and there was no way of knowing in advance exactly what she would be like. I voted no; I opposed her nomination; I fought it; I wanted to defeat it, but I did not use the power that the minority has in the Senate, and that is the power to debate. Having made that mistake on Joycelyn Elders, I and others were determined that we were not going to make that mistake again.

I believe Dr. Foster is not qualified for this position. I believe that there are real credibility problems concerning the facts that have been presented to the country and the Congress. And

finally, I believe that his views are radical and outside the mainstream of American thinking.

Yesterday, I quoted our President four times from his campaign, talking about the values of our people, talking about family values, talking about traditional values. I do not believe that Dr. Foster's views match the President's 1992 campaign rhetoric.

I think one thing we have a right to expect Presidents to do once they are elected is to put forth nominees whose views are consistent with their campaign rhetoric. We have a right to expect that those campaign views will be reflected in their nominees. Do not get me wrong. When people voted for Bill Clinton, they voted for more spending, more taxes, more regulation, more Government, and for the appointment of liberals. If they did not know it, they should have known it. That is what democracy is about.

But they did not vote for the radicals that this President has appointed. This is an appointment where the views of this candidate are outside the mainstream of American thinking, and I believe we are making the right decision in saying no.

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

Mr. KENNEDY. Mr. President, I yield 2 minutes to the Senator from Arkansas.

The PRESIDING OFFICER. The Senator from Arkansas is recognized.

Mr. PRYOR. Mr. President, I thank the Chair and I thank the distinguished manager.

I do not know whether this debate is more about politics or more about abortion or exactly what it is about. But I do not truly believe this debate is about Dr. Henry Foster. There are two Henry Fosters: The one that is depicted and portrayed by his opposition; and there is the real Henry Foster, a man of deep compassion and certainly a man of great ability.

There have been a lot of articles written, a lot of stories on TV and radio and in newspapers, about who is winning in this Foster fight; whether it is one of the candidates for the Republican nomination for President or the other candidate.

Mr. President, I can say the loser in this fight, if we do not get 60 votes today, will be the American people. It will be the American people who are going to be the great loser if we do not confirm this man.

He has stated time and time and time again his position on abortion is very, very simple: That they should be safe, that they should be legal, and that they should be rare. That is his position on abortion.

I urge my colleagues to vote for this splendid man as our next Surgeon General of the United States.

Mr. President, it gives me great pleasure to support the nomination of Henry W. Foster Jr., M.D. to one of the most important health care posts in our Government, Surgeon General. As you know, the Surgeon General is the national spokesperson to promote good health activities and to alert the nation regarding things that are harmful or potentially harmful. In May, Dr. Foster convinced the Labor and Human Resources Committee that he was the right man for the job.

Today, I am here to explain to my colleagues why I know Dr. Foster is the right person for that job. To reiterate, soon after I set out to learn more about our nominee for Surgeon General, I realized that there are actually two Dr. Henry Fosters. One is the Dr. Foster created by inside-the-beltway groups using diversionary tactics to derail the nomination of a respected physician. The other is the Dr. Foster who grew up in Pine Bluff, AR, attended University of Arkansas as the only African-American in his class, served his country as a medical officer in the Air Force, and set up a practice in Tennessee where he trained hundreds of the nation's finest medical practitioners.

Mr. President, I am here to tell you that I am convinced that this second Dr. Foster is the real Dr. Foster. For those who doubt this and want to see something tangible, I urge you to visit Nashville to see his accomplishments, such as the doctors he trained, the day care centers he created, and the individuals, young and old, he has delivered into this world over his many years of practice.

I would be remiss if I did not mention one of Dr. Foster's greatest accomplishments, his I Have a Future Program, a pioneering effort to reduce the number of teen pregnancies by improving teens' self-esteem. As you may know, President George Bush named Dr. Foster's program as one of American's Thousand Points of Light in 1991. President Bush's own Secretary of HHS, Dr. Louis Sullivan, has lauded Dr. Foster's nomination.

Let me also talk about what Dr. Foster's peers say about him. The American Medical Association, the American College of Obstetricians and Gynecologists, the National Medical Association, the American College of Preventive Medicine, are just some of the professional organizations that have come out in support of Dr. Foster.

Mr. President, in addition to letters from his peers, I have also gotten letters from other groups. One organization, the Council for Health and Human Service Ministries of the United Church of Christ wrote:

> We are people of faith, committed to promoting and maintaining optimum health of all people. We believe that the professional credentials and experiences of Dr. Foster are impressive and provide sufficient evidence of his ability to be the nation's spokesperson on matter of public health policies and practices.

In sum, Mr. President, let me make these points about Dr. Foster:

He is a practicing physician, a scholar and academic administrator of national stature, and a community leader.

Dr. Foster is a skilled communicator who emphasizes consensus-building over confrontation.

Dr. Foster has bipartisan support.

Dr. Foster is one of the nation's leading experts on, and advocates for, maternal and child health, and has developed and directed teen pregnancy and drug-abuse prevention programs that bolster self-esteem and encourage personal responsibility.

Mr. President, let us look at the Dr. Foster from Tennessee, the man who has done so much for people who others have ignored. Let us follow the Labor and Human Resource Committee's lead and confirm Dr. Foster's nomination.

Mr. KENNEDY. Mr. President, I yield 2 minutes to the Senator from California.

The PRESIDING OFFICER. The Senator from California is recognized for 2 minutes.

Mrs. BOXER. Mr. President, I was not going to take the floor back, but I have to respond to some of the things done and said on this floor. I feel very strongly that it is my responsibility as a U.S. Senator from the largest State in the Union to the say a couple of things here.

No. 1, to my colleague from Texas, people in America want a fair President. This is not fair. To deny this man a vote is not fair—period. And then to keep bringing up Joycelyn Elders. I do not say about my colleague that he is like Richard Nixon or he is like Herbert Hoover. If I agree with him, I agree with him because it is him. I do not say he is like someone else. So let us cut it out. If you want to fight a guy, fight it on fair terms.

My colleague from New Hampshire shows us pictures meant to divide this country. He shows us pictures that should never be shown in front of the Senate pages who sit here. They should have been spared that. You want to outlaw abortion? You want to make it a crime? You want to put women in jail for having them? You want to put doctors in jail? Bring the legislation to the floor. I will debate with you toe to toe—toe to toe. And I will win that battle because, thank you very much, the women of America do not want Senators telling them how to handle their private lives.

I am always amazed that the very people who say get Government out of our lives want to put Government in the bedrooms of the women and men of this country.

You are out of the mainstream, and you are stopping this nomination with a minority vote here. It is wrong to do that.

I want to end my remarks with a positive picture—and I wish I had it—of 10,000 little babies.

The PRESIDING OFFICER. The Senator's time has expired.

Mrs. BOXER. May I have 30 additional seconds?

Mrs. KASSEBAUM. Mr. President, I yield the additional time.

Mrs. BOXER. I thank my colleague.

If I had only known we were going to do this picture situation, I would have tried to get the picture of thousands of new babies—10,000 brought into the world by this physician who went into the Deep South, where no one would go, who turned around the infant mortality rate. Did you ever see a picture of a baby who was born without prenatal care? I will tell you about it. I happen to have one. I have two who were born premature with prenatal care. But I want to tell you, it is not a pretty picture. They have tubes up their noses. They suffer. They struggle. They get high bilirubin. They turn yellow. And I will never forget, before my baby was born prematurely, I remembered then President Kennedy had a baby that was born prematurely. It is not a pretty sight.

He turned it around. He showed those pictures. Dr. Foster never performed a late-term abortion that was not to save the life of the mother. That is on the record. It is an unfair thing to do to this man.

I urge my colleagues, in light of those pictures, to change your vote, show that you have a conscience, and stand up for what is right and just.

I yield the floor.

Mrs. KASSEBAUM. Mr. President, I yield 15 minutes to the Senator from Ohio.

Mr. DEWINE addressed the Chair.

The PRESIDING OFFICER. The Senator from Ohio is recognized for up to 15 minutes.

Mr. DEWINE. Mr. President, I rise today to discuss the nomination of Dr. Henry Foster to be Surgeon General of the United States.

The role of the Surgeon General is to be a public advocate—to persuade Americans to change their private behavior and lead healthier lives. That is why the credibility of the Surgeon General—his or her ability to communicate with the American people—is vital to his success in that job. The Surgeon General has to be able to connect with the general public in a truly personal way.

To do this, the Surgeon General has to be sensitive to people's real concerns. He cannot be someone who appears to shrug off important issues.

That is why Dr. Foster's record on the very important issue of sterilizations is so troubling.

What are the facts? The facts are that in the early 1970's, it was becoming increasingly clear, to a broad public, to the medical profession, that mentally retarded individuals needed special protections—to prevent abuses of the practice of sterilization.

In 1970, the American College of Obstetricians and Gynecologists issued the following statement of policy:

> If an operation to accomplish sterilization is recommended by the physician for medical indications, the recorded opinion of a knowledgeable consultant should be obtained.

Four years later, in 1974, Dr. Foster wrote an article in which he said—and I quote: ''Recently, I have begun to use hysterectomy in patients with severe mental retardation.''

The operative words are ''recently'' and ''begun.''

''I have recently begun''.

In a written inquiry, I asked Dr. Foster whether he had obtained the recorded opinion of a consultant prior to performing those hysterectomies. His answer was—and I quote—''I do not believe I obtained the recorded opinion of a consultant.''

But he adds:

> I believed that * * * the manner in which they were performed was fully consistent with prevailing rules governing informed consent.

Dr. Foster is now—and was then—a member of the American College of Obstetricians and Gynecologists. But in response to my question, Dr. Foster said he believes that the policies of the American College of Obstetricians and Gynecologists simply are not binding.

I have a problem with that. I think that the position of the American College of Obstetricians and Gynecologists—their insistence on a recorded opinion from a consultant—should not be dismissed so cavalierly. Indeed, the whole trend of history was moving toward protecting the rights of the mentally retarded, and away from Dr. Foster's position, at the time he wrote that article.

Let me add a few more comments to put it into really historic context.

In 1972, a Federal district court—in the case of Wyatt versus Stickney—had placed Alabama's institutions for the mentally ill and mentally retarded under sweeping and detailed court orders forbidding experimental research and certain kinds of treatment without express and informed consent.

In June 1973, two girls—ages 12 and 14—were surgically sterilized in Montgomery, AL.

Without going into all the details, it was an absolutely shocking set of facts.

When the sterilizations came to light, there was immediate public reaction—and a move toward nationwide reform. By the end of that same month—June 1973—there was already a lawsuit filed. In the following month—July 1973—Senator EDWARD KENNEDY held hearings on this controversy. The Secretary of HEW announced that new regulations on the use of Federal funds for sterilizations would be published within weeks.

And the regulations were published. They sought to protect the rights of all persons—including the mentally retarded—with respect to federally funded sterilizations.

These regulations never took effect, because in 1974 a Federal district court found—in the case of Relf versus Weinberger—that HEW had no authority to perform any nonconsensual—that is what we are talking about, nonconsensual—sterilizations whatsoever.

On January 8, 1974—the very beginning of 1974—Federal District Judge Frank M. Johnson, Jr., issued an order that specified the procedures that would have to be followed in cases of the sterilization of institutionalized mentally handicapped individuals. Judge Johnson required that any sterilization would have to be approved by the director of the institution, a review committee, and the court.

That was January 1974.

That tells us a little bit about what the climate was.

That was the moral and legal climate in which Dr. Foster was justifying and defending the practice of sterilizing mentally handicapped women.

In the summer of that same year—months after the decision by Judge Frank Johnson, and a year after the Kennedy hearings—Dr. Foster made his statement that he had ''recently * * * begun to use hysterectomy in patients with severe mental retardation.''

The physician—even more than the average citizen—owes what our Declaration of Independence calls ''a decent respect to the opinions of mankind.'' That is way Dr. Foster's responses on the issue of sterilization gives cause to me for grave concern. They lead one to believe that Dr. Foster can be tone deaf to some very important issues.

It is one thing to have a controversial position on some issue. It is something else entirely when someone chooses to remain totally indifferent to the moral controversies of his time.

If you are going to be Surgeon General, you have to be able to reach people. You have to be sensitive to them. You have to care about what is going in their hearts and their fundamental moral sensibilities.

Dr. Foster, as I have said on several different occasions, Mr. President, is a good man. He is a caring person. He is a loving human being. That is not the issue. I believe, based upon the hearings, on my own conversations with him, on his responses to my written questions, that Dr. Foster simply cannot adequately perform this job; that he cannot use the job of the Surgeon General of the United States to its fullest capability; that he cannot use it as the bully pulpit that it should be used as; that he cannot maximize the great potential that office has.

That is why I will again today vote no on his nomination.

I yield the floor.

Mr. BRADLEY. Mr. President, I rise reluctantly today to join the debate on Dr. Henry Foster's nomination as Surgeon General. I am reluctant because this has gone on too long; there should not be such fierce opposition to a candidate so clearly qualified as Dr. Foster. However, the debate continues, and I feel it is important to point out his qualifications, and thereby separate the germane issues from distractions, wordplay, and rhetoric.

The facts of Dr. Foster's career speak for themselves. His work at Meharry Medical College, his service for a long list of organizations, including the March of Dimes Foundation and the

American Cancer Society, are evidence of his dedication and professionalism. His I Have a Future Program has helped young men and women leave housing projects and embark on field trips, jobs, and college educations. The program was aptly chosen as No. 404 of the Thousand Points of Light. Who can deny that teaching job skills, self-esteem, communication skills, and counseling for at-risk youths is a light in these troubled times? Who can question the values of a man who builds up a community, provides support for teenagers, and encourages family participation in crucial life decisions?

Dr. Foster was there for the teenagers of Nashville when their decisions were anything but simple. Violence, pregnancy, drugs, and poverty are problems that faced these youths, and which face us here today. We have a chance to provide America with a Surgeon General who has said that as the People's Doctor, he would try to ''replace a culture of hopelessness with one that gives young people a clear pathway to healthy futures.'' We can debate endlessly, lamenting the lack of values in America and condemning violence, but when we prevent Dr. Foster's nomination, we prevent him from continuing and expanding his fight against today's problems.

Dr. Foster has used his position as a medical doctor and an educator to encourage abstinence and to give teenagers hope for the future, so that they will take the responsible path. He has used his knowledge and his expertise to bring adolescent health services to places where they are desperately needed. He has performed a function beyond the call of a traditional physician. In his own words, his work ''involves the entire families and the total social matrix of the surrounding community.''

In holding back this nomination, we hold back possible solutions to problems which face all of us, problems which will not be solved without work like Dr. Foster's, problems which will not go away, and problems which will not wait for political delays.

We must listen to the facts in this case. By now, we are all familiar with Dr. Foster's outstanding achievements as a doctor, an educator, a scholar, and a community leader. We know that Dr. Foster has the support of the American Medical Association, the American College of Obstetricians and Gynecologists, the American College of Physicians, the Association of American Medical Colleges, and hundreds of other respected institutions and individuals. We cannot ignore the letters which pour in from informed organizations like these, all supporting Dr. Foster, and all condemning the politicization of this issue. We should look at Dr. Foster's numerous achievements, instead of creating a smokescreen of accusations. We should confirm Dr. Foster, and allow him to continue his hard work for at-risk teenagers, for families, for each and every one of us in this Chamber, and for this country.

Mr. FRIST. Mr. President, I ask unanimous consent that the following statement of support for Dr. Henry Foster's nomination as Surgeon General be printed in the CONGRESSIONAL RECORD. The statement was presented on May 26, 1995, at the Labor and Human Resources Committee vote on the nomination, and fully explains my reasons for supporting this nominee.

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

STATEMENT BY SENATOR BILL FRIST ON DR. HENRY W. FOSTER, JR.—MAY 26, 1995

Last November, the people of Tennessee elected me to make difficult decisions. And this has been a decision I've struggled with. I know that thoughtful people honestly and fundamentally differ on whether Hank Foster should be Surgeon General.

What makes my statement different from those you have heard today? I know Hank Foster. I know him as a fellow Tennessean. I know him as a fellow physician and colleague, who worked 4 miles from my office. We are both members of the Nashville Academy of Medicine, on whose Ethics Board he has served. And I know him as a fellow Nashvillian, who has done what few physicians do—step out of the clinic into their community to address the really tough problems in our society.

Since February 2, the day the President announced his choice, I've listened carefully to every conceivable argument for and against the nominee. And over the past 3 months, I've done my very best to remain neutral—neither to blindly endorse Hank Foster because he is a fellow Nashvillian, nor to condemn him because of allegations drawn from the attics of his past. I have waited until final testimony was submitted just last Friday so that I could thoughtfully, and carefully, consider every aspect, every ramification, of his nomination. Several days ago, I again met with Hank Foster—one-on-one, face-to-face—to specifically and directly ask him about his plans as Surgeon General.

I asked him the tough questions. Would he be like his predecessor, Dr. Elders? Would he allow himself to be used as a political tool for an out-of-step President, who time and time again has promoted radical agendas? Or would he represent mainstream America and family values?

Dr. Foster told me, without hesitation, that his number one goal was to reduce teen pregnancy—a problem that we as a people have done a miserable job addressing. It's a problem that literally threatens the very fabric of America. His approach? He looked me straight in the eye, and said ''number one, build self-esteem; number two, promote abstinence; and number three, instill family values.''

He told me that the other main issues on his agenda would include screening for breast cancer and prostatic cancer, addressing the AIDS epidemic, and teenage smoking. Dr. Foster stressed to me that he places primary emphasis on family, that he understands the importance of leading by building a consensus, and that he understands that his agenda as Surgeon General must appeal to, and be embraced by, mainstream America.

Madam Chairman, many have told me that this nomination is no longer about Hank Foster, the man. They say it's about the inept way in which the Administration has handled his nomination. They say it's about the tardy and roundabout manner in which information has been provided to this Committee and to the American people. They say it's about a radical social agenda that is beyond the bounds of mainstream America and traditional values.

But, I don't buy it. I guess as a newcomer to this body, I see it all very differently. I believe it is about Hank Foster, the man—the man who had delivered thousands of babies into this world; the man who has committed his life not to making money, not to promoting himself, but to serving others' needs; the man who has cared for and nursed to health thousands of women; the man who in addition to the practice of medicine, has courageously and unselfishly stepped out into his community to give others a chance to step out of a world of poverty; and the man who 4 days ago, looked me in the eye and described a fundamental commitment to the principles of self-esteem, personal responsibility, and family values.

As I stated at the Committee hearings, it should not be our purpose to search for every possible mistake or imperfection in Hank Foster's life. The question before us is a much more narrow one: does this man have the commitment, the intelligence, the training, the honesty, and the integrity to be the chief spokesman for Americans on matters concerning public health? These are the issues that I've considered, and I'm satisfied with what I've seen and heard.

Having known Hank Foster as a fellow Tennessean, having heard his testimony, having had the opportunity to talk to him extensively face-to-face, and having considered every aspect of his nomination very carefully, I believe his nomination should be referred out of Committee favorably and brought before the U.S. Senate. And I also believe we should move forward with this process. We've got a lot of important business to attend to and the American people want this Congress to press on.

Madam Chairman, I think it is also important to mention, as I did in the Committee hearing, my belief that this confirmation process is not the place or the time to revisit our national policy on abortion. Americans of conscience will remain deeply divided over this issue regardless of who is appointed Surgeon General. It's important to remember that the office of Surgeon General does not set social policy, nor convey with it the right to vote on any legislation—whether affecting abortion or otherwise. When this body confirmed Dr. C. Everett Koop as Surgeon General, a staunch opponent of abortion, that confirmation did not outlaw abortion. If this body confirms Hank Foster, that confirmation won't condone abortion.

No doubt, the unfortunate events that immediately followed Hank Foster's nomination cast a shadow on his viability to be Surgeon General. Conflicting information raised questions about his credibility. I, too, was angered that the Clinton Administration had badly mishandled yet another nomination by failing to adequately prepare Dr. Foster—a physician who had never had to face such aggressive public scrutiny.

Questions arose about Dr. Foster's ability as an administrator, his involvement in 4 hysterectomies performed 25 years ago, and his knowledge of a study on black men conducted over a 40 year period in rural Alabama. These issues concerned many, and each and every one concerned me. But I believe that Hank Foster's testimony, evidence submitted to the Committee, and my own one-on-one interviews with him, put to rest those concerns.

Dr. Foster, I feel, came through the hearing process with his credibility and integrity intact, and with is qualifications to be Surgeon General apparent.

In the end, when people ask me why I support Hank Foster's nomination, I'll tell them simply because he's qualified to carry out the duties of Surgeon General. I am confident that he will perform his job well.

Finally, Madame Chairman, I ask my colleagues to consider this nomination, not based on politics, but rather on qualifications and ability. In the past, the Democrats have so often brought politics into the equation—we all remember the nominations of John Tower, Robert Bork and Clarence Thomas. I wasn't here, but as a private citizen, I recall the anger I felt and the disappointment in the process. Let us not make the same mistakes. The American people are tired of politics as usual—that was the message of November 8.

For that reason, I urge all of my colleagues to view this candidate away from the distractions and the hype of political expediency, and without regard to who nominated him. Rather, look at his accomplishments, his qualifications, his statements, his goals, and the testimonials of other who know him.

And then—based on serious reflection—make your decisions.

I've done that, and I choose to support Dr. Henry Foster.

Mr. CRAIG. Mr. President, the concerns that have led me to oppose the nomination of Dr. Henry W. Foster, Jr., to be Surgeon General of the United States are not trivial. They are also not intended as a criticism of the nominee personally. He is a fine individual and deserves our respect.

However, in deciding whether to support a nominee, character cannot be the only consideration. We must also examine the nominee's ability to serve the American people in the office to which he or she was nominated.

It is important to note that my decision to oppose the nomination of Dr. Henry W. Foster was made after a great deal of thought and consideration. I do not take lightly the responsibility of the Senate in confirming Presidential nominees. Nor do I take lightly the right of the President to nominate individuals who share his philosophy. My own philosophy, opinions or views have run contradictory to most of the nominees presented by this administration. However, I have opposed very few of those nominees.

Mr. President, as I have noted, I have concerns about Dr. Foster. I do not agree with him on a number of issues, including abortion. However my opposition on his confirmation is not based on differing opinions. I am opposing Dr. Foster's nomination because the many problems surrounding his nomination are issues that will be divisive.

An individual can have many fine qualities and excellent experience and yet not be qualified to serve as a public official in the position of Surgeon General. That position, sometimes referred to as ''America's Family Doctor,'' requires someone who also has the ability to bring groups together to work toward resolving the health problems of this Nation. To his credit, Dr. Foster has some fine qualities and experience. I do not dispute that fact. However, the controversy surrounding his nomination, the disclosure—or lack of disclosure—of the number of abortions he has performed, as well as the questions surrounding his knowledge of the Tuskegee syphilis study lessen his ability to bring Americans together on the multitude of health issues our Nation faces.

Mr. President, the role of Surgeon General requires the ability to bring people together, not to be divisive. The controversy surrounding Dr. Foster's nomination has diminished his ability to play the unifier.

In addition, I would add that I have received numerous letters from Idahoans expressing concerns and opposition to the confirmation of Dr. Foster.

Therefore, I have decided to vote ''no'' on the confirmation of Dr. Henry Foster for the office of Surgeon General for the United States.

Mr. KOHL. Mr. President, some today have presented Dr. Foster's credentials and discussed his integrity. Others simply do not support the candidate. We have heard the arguments. We should be ready to vote—to go on record, yes or no, whether we approve of this nominee.

Unfortunately, Mr. President, some in this body do not want a vote on the nomination of Dr. Henry Foster. The debate we are now engaged in is not about the qualifications of the candidate for the job of Surgeon General. This is about a political game.

Machiavelli would enjoy how the Nation's business is handled in Washington, D.C. today. Bipartisanship is a word easily tossed around, but seldom practiced. The bottom line is how to prevail in the next election, not how to solve this Nation's problems.

Do we really think the best way to find qualified candidates to serve the United States Government is to pick apart their careers and their characters, groping for something that will justify a political end? Is that what faces all those who wish to serve their country?

Ever since the President announced Dr. Foster as the Surgeon General nominee, the Nation has witnessed a non-stop exercise in abusive politics.

For months Dr. Foster was attacked by those opposed to his profession and who questioned his integrity. Based on allegations by ideological factions and media scrutiny, some called for the nomination to be pulled before allowing Dr. Foster a chance to respond. That is not how this body should consider Presidential nominations. Nominations should proceed in a fair manner, allowing candidates to fully present their story.

We should debate those whose views differ from our own. That is called Democracy. But I do not believe every event in a person's life should be held under a national microscope—especially when the person in question has no chance to respond. That is called persecution.

Fortunately, Dr. Foster finally received a fair hearing in the Labor and Human Resources Committee. He responded well to questions raised about his background and proved to be an honest, caring and dedicated individual.

After all that Dr. Foster and his family has endured in the past several months, does he not deserve a vote?

Dr. Foster has committed his life to helping others and promoting public health. He is well respected by his professional peers and those whose lives he has touched through community service. In short, this candidate is qualified to serve as Surgeon General and deserves a final decision.

The Labor Committee approved of Dr. Foster and passed his nomination. It is now time for the full Senate to exercise its responsibility. I urge my colleagues to end this sad political spectacle and vote on the nomination of Dr. Henry Foster.

Mr. HATFIELD. Mr. President, yesterday I voted against limiting debate on the nomination of Dr. Henry Foster as Surgeon General of the United States. It is my intention to do so again today.

I will vote against cloture today because I am disappointed by the handling of Dr. Foster's nomination and because I do not believe debate should be limited before it begins. This is a misuse of the cloture motion. Cloture should be a tool of last resort rather than a tactic employed as soon as an issue hits the Senate floor.

In addition, I believe it is improper to raise a single issue and use it as the litmus test for the nomination of a Surgeon General. The President did that yesterday by stating that this vote was really a vote about abortion. I am deeply disappointed that the debate has come to this.

The Surgeon General serves an important role as the national spokesperson on matters of public health. Over the years we have seen individuals serving in their capacity as Surgeon General make important statements on the health effects of smoking, the spread of AIDS, and teenage pregnancy. This person often becomes a lightening rod for controversy.

In recent years, a number of individuals who have been nominated as Surgeon General have been controversial figures. Their nominations did not pass the Senate without a full debate. Dr. Foster's nomination is controversial. Much of the initial information provided to the Senate was misleading or inadequate. In addition, there are a number of issues that have been raised relating to Dr. Foster's qualifications to serve as Surgeon General and I believe that both sides should have an opportunity to fully debate these issues.

Mr. BINGAMAN. Mr. President, I rise to express my strong support for the confirmation of Dr. Henry Foster to be Surgeon General of the Public Health Service. In my view, it is time that the Senate put personal agendas and Presidential primary politics aside.

It is time we let Dr. Foster get on with the important job he has been preparing for throughout his professional

career: the job of chief public health advocate for our country.

Based on the public hearings held by the Labor and Human Resources Committee and the very detailed questioning those hearings involved, I have come to the conclusion that Dr. Foster is imminently qualified to serve as Surgeon General.

Just as Presidential politics should not define when and under what conditions the Senate conducts its business, neither should we in the Senate attempt to define, based on ideology alone, the boundaries of a Surgeon General's professional experiences.

We in the Senate need to focus on the real world we live in, not the world we wish we lived in. The reality is that our Nation has deplorably high rates of teen pregnancy, infant mortality, and poverty. Too many of our children are abused, troubled, hungry, and hopeless. Childhood violence and death due to suicide are increasing at alarming rates. Incidence of AIDS and other sexually transmitted diseases are increasing in every population in our country.

Statistics from my home State of New Mexico illustrate these facts in graphic detail:

We have the third worst rate of births to unmarried teens in the nation: From 1985 to 1992, the number of births to unmarried teens grew from 41.6 to 60.1 births per 1,000 females age 15 to 19. That is an increase of 44 percent over 7 years.

In 1991, 18,234 cases of child abuse were reported in New Mexico, an increase of 21.4 percent from 1990.

More than 10 percent of New Mexico's children live in extreme poverty, with family incomes below 50 percent of the poverty level; 27.2 percent of our children live in poverty, compared to the national average of less than 20 percent.

Nearly 40 percent—4 out of 10—of our children live in families with incomes 150 percent of the poverty level or less.

Our teen violent death rate, though declining, was still hovering at more than 70 deaths per 100,000 teens in 1992.

I could go on, but I believe I have made my point.

The real world is tough. The problems we face are tremendous. It will take a person who has faced reality and dealt with the problems he has seen with compassion and commitment to find solutions to the enormous public health challenges confronting our nation.

My impression is that Dr. Foster is such a person. His background as a practicing physician, a scholar, and academic administrator, and an advocate for poor children, combined with his proven ability to lead are evidence of his strength and compassion.

Dr. Foster has proven his commitment to public service and public health. He deserves to be judged by the Senate on his merits as a physician and an educator. And he deserves the opportunity to serve his country as the next Surgeon General.

Mr. FEINGOLD. Mr. President, I would like to express my support for the confirmation of Henry Foster as Surgeon General of the United States.

In making my decision to support Dr. Foster, I reflected upon many of the comments on this nomination that I have received from constituents in my home State of Wisconsin. Most Wisconsinites wish that fewer women had abortions, hope that fewer young women got pregnant unintendedly, and want sufficient access to comprehensive health care services for women and children.

Dr. Foster's capabilities and accomplishments in addressing women's and community health are noteworthy. He is a respected medical educator and president of Meharry Medical School. He is the past president of the Association of Professors of Gynecology and Obstetrics, and has been a leader in addressing teenage pregnancy issues in Nashville, TN. Lastly, by all accounts, he is a sincere, compassionate, and respected gynecologist who has delivered thousands of babies and seeks quality health care for women and their families.

All of us heard numerous opinions on the nomination of Dr. Foster. I have received letters from practitioners, leading medical education departments, and professional associations, and have heard nothing from the medical community which would impeach Dr. Foster's skills, abilities, and integrity. For example, when President Clinton nominated Dr. Foster, Dr. Douglas Laube, chair of obstetrics and gynecology at the University of Wisconsin-Madison wrote the President in support of that decision, and sent me a copy of his letter. Dr. Laube has personally worked with Dr. Foster for 7 years, serving on a number of national committees designed to develop the education of medical students and resident physicians in the United States. Dr. Laube writes ''Dr. Foster's commitment to medical education nationally and his activities in Tennessee underscore the efforts of an altruistic and well-intentioned person.'' He continues, ''In my personal dealings with him, and in my observations of his dealings with others, I can attest to his integrity, consistency, and dogged attention to detail. More importantly, Dr. Foster is a physician who has spent his entire career attempting to better the life of others while serving as a role model for countless medical students and resident physicians in training.''

With his profession behind him, how, then, has all this controversy over Dr. Foster arisen? In his 37 years as an obstetrician and gynecologist, despite his work to reduce teen pregnancy, sexually transmitted disease and drug abuse, and his role in delivering more than 10,000 babies, Dr. Foster has also performed some 39 abortions.

I do not believe that Dr. Foster should be penalized for acting under the law. The legalization of abortion is an issue for Congress and the courts, ultimately to be decided by the American people, and currently abortion is legal in this country. I have been very concerned that individual Members are using this nomination to express their personal views about abortion. The controversy over the number of abortions Dr. Foster performed, and his recollection of that number, is really a smoke screen designed to attack and demean Dr. Foster and other health care providers who are involved in providing comprehensive women's health care. The underlying message is that one can forget holding public office as a physician if you provide health services to women that includes abortion services.

As a practitioner, the decision to perform abortions is already risky enough. In January of this year, I joined my colleague, the Senator from California [Mrs. BOXER], in condemning violence at reproductive health clinics. I explained then that many of the doctors in my home State of Wisconsin have taken to wearing bullet proof vests to go to clinics to do their work. Are we now saying, that in addition to enduring the threats of stalking, bombings, and shootings, physicians like Dr. Foster must also pay the public political price of ostracism and denouncement of professional credibility?

Despite the controversy surrounding his nomination, Dr. Foster conducted himself in the Labor and Human Resources Committee hearings in a manner which convinces me both of his skill as a communicator and his compassion as a practitioner. I believe he was responsive to questions asked of him, and that he clearly explained his practice record including his tenure and involvement at Meharry in Nashville, at Tuskegee in Alabama, and now on sabbatical at the Association of Academic Health Centers in Washington, DC.

In sum, Mr. President, I have evaluated the entire body of Dr. Foster's record, and I believe him to be well qualified for this position. I also generally believe that the President is entitled to select key members of his administration and due deference should be paid to his choice, where the individual is qualified to serve. I will cast my vote to confirm Dr. Foster, and I admire throughout all the controversy his continued commitment and desire to serve our country in this capacity.

Mr. GLENN. Mr. President, I rise today in support of Dr. Henry Foster for the post of Surgeon General of the U.S. Public Health Service.

Since his nomination several months ago, Dr. Foster's public and private history has been subjected to an exceptional level of public scrutiny, and has become a pawn in an unfair political game. I believe it is a compliment to Dr. Foster's character and achievements, that when given the opportunity to answer his critics, a majority of the Labor and Human Resources Committee voted to forward his nomination to the full Senate.

Mr. President, after reviewing the testimony presented at Dr. Foster's hearing and examining his credentials and accomplishments, I strongly believe that Henry Foster possesses the skills and experience necessary to address the many public health challenges that face our Nation.

During his 38 years as a practicing obstetrician-gynecologist, Dr. Foster has received national recognition as a scholar, academic administrator, and advocate for maternal and child health. He has devoted much of his career to educating medical practitioners at Meharry Medical College—serving as a professor, department chairman, dean of medicine, and president. As a practicing physician and educator, Dr. Foster chose to work with low-income families and children who might not otherwise have access to health care.

Dr. Foster was a pioneer in the movement to introduce the concept of responsibility to at-risk youth. This concept has received a lot of attention in Congress lately. In 1988, Dr. Foster founded the highly successful I Have a Future Program devoted to preventing teen pregnancy and drug abuse. Unlike teen pregnancy prevention efforts which focus on contraception, the I Have a Future Program concentrates on improving self-esteem, cultivating a sense of optimism in the lives of disadvantaged young people, and providing incentives to delay sexual activity and childbearing. ''I Have a Future'' has won wide recognition from many sources, including the American Medical Association, and was designated as one of America's Thousand Points of Light by President Bush in 1991.

Mr. President, I regret that the vote on Dr. Foster's nomination has really come down to a vote on abortion. An individual's beliefs about reproductive choice, or the number of abortions performed during the course of a medical career, should not be a litmus-test for a nominee to the Surgeon General post. Through his delivery and care of over 10,000 children, commitment to research and education, promotion of healthy lifestyles, and efforts to prevent unwanted pregnancies, Dr. Foster has proven his dedication to improving the health of all Americans.

Dr. Foster has an outstanding private, public, and professional record. He is uniquely qualified to lead our Nation as an advocate for healthy and responsible lifestyles. Mr. President, this country has been without a Surgeon General for over 6 months and we now have the opportunity to confirm a man who will bring both experience and enthusiasm to our efforts to combat public health crises such as infant mortality, substance abuse, sexually-transmitted diseases, teen pregnancy, HIV infection, and others. Unfortunately, it appears that the will of a small minority will block a fair and democratic upor-down vote on Dr. Foster's nomination.

Mr. President, I believe that Dr. Foster deserves more than a politically motivated procedural vote. I strongly urge my colleagues to vote for cloture and support Dr. Foster's nomination to the post of Surgeon General of the United States.

Mr. FAIRCLOTH. Mr. President, much has already been said on the Senate floor about why Dr. Henry Foster is unfit to serve as Surgeon General. Yesterday, I voted against the petition to invoke cloture on debate concerning Dr. Foster's nomination. As far as I am concerned, nothing has happened since yesterday to cause me to change my opinion about Dr. Foster's qualifications to serve as Surgeon General. He was the wrong man for the job yesterday, and he is the wrong man for the job today.

Many have testified as to their personal knowledge that Dr. Foster is a fine man—a nice man. I have no reason to disagree with that assessment. Despite those testimonials, many—myself included—do not believe that we are conducting a congeniality contest to fill the vacancy created by Dr. Elders' forced resignation. In rushing to fill the position, the Clinton administration failed—once again—to do their homework and thoroughly investigate a nominee's qualifications for the job for which he is nominated. The saga of Dr. Foster is yet another in a long string of failed efforts by the White House to send to the Senate nominees who are prepared to fully disclose important information about their background—information essential for the Senate to exercise its constitutional duty to advise and consent on Presidential nominations.

After 2½ years in office, I would think that the White House staff would take more seriously their responsibility toward the Senate and toward administration nominees. Time after time, we in the Senate are subjected to unqualified nominees from the White House gang that can't shoot straight. How much longer will our Nation continue to tolerate this sort of negligence in office?

Yesterday, 43 Senators sent a clear message to the Clinton administration that we cannot support a nominee whose credibility is in serious doubt as a result of numerous inconsistencies in statements by Dr. Foster and the White House. Beginning on February 2 when the President nominated Dr. Foster, a steady stream of inaccuracies were uncovered concerning crucial details about his professional medical background. Either Dr. Foster has a selective memory disability or the White House early on concluded that the full truth about Dr. Foster would sink his chances in the Senate.

After hastily confirming other Clinton nominees like Ron Brown and Henry Cisneros, both of whom have serious ethical and possibly even criminal misconduct charges outstanding against them, it is incomprehensible that the White House would not more carefully screen its nominees. Mr. President, let us not forget that President Clinton originally promised that his administration would be the most ethical in American history. It is remarkable how far President Clinton has fallen from the mark which he set for his administration.

I will not recount the long list of inconsistencies in Dr. Foster's record. Suffice it to say, that any nominee with such a tainted record before the Senate is de facto unqualified to hold high public office in this Nation. President Clinton should never have nominated Dr. Foster and when learning of the many inaccuracies in information provided to the Senate, President Clinton should have withdrawn the nomination.

Many months have passed while the administration attempted to rehabilitate Dr. Foster's reputation for veracity. However, nothing will change the fact that Dr. Foster and the White House consistently provided the Senate with false information. I cannot in good conscience support such a nominee.

Moreover, I have begun to think that we no longer need a Surgeon General. Many of the responsibilities of this Office could easily be fulfilled by others in the Department of Health and Human Services. Savings from elimination of the Surgeon General's Office could be contributed toward deficit reduction. With the total mishandling of the Foster nomination, President Clinton has demonstrated better than any of his predecessors the irrelevancy of the Office of Surgeon General.

Mr. KEMPTHORNE. Mr. President, I rise today to speak on the nomination of Dr. Henry Foster as surgeon general of the United States.

Let me begin by stating that I am unequivocally opposed to confirming Dr. Foster for this post.

I have been concerned about this nomination from the time it was announced. We are all well aware of the conflicting reports which came out of the White House about Dr. Foster's background. I do not think I need to go into the confusion created by the continually changing reports about the number of abortions which the doctor has performed. But those inconsistencies quickly cast a shadow over the nomination as to whether the administration had done its job of properly investigating a potential nominee.

While I do not believe Dr. Foster should be held responsible for the blunderings of the White House staff, the situation raised doubts about his forthrightness which have, in my mind, never been resolved.

One of the most glaring examples of this lack of candidness involved the Tuskegee Syphilis Study, in which black men with the disease went untreated as part of a study to examine the long-term effects of syphilis. While Dr. Foster claims he had no knowledge of the study prior to 1972, Public Health Service records indicate the Macon County Medical Society, of which Dr. Foster was vice-president,

and later president, knew of the study as early as 1969.

We have received conflicting reports about whether or not Dr. Foster attended the meeting in which the society agreed to cooperate with the PHS in the study. Even if he did not attend, documents from PHS officials indicate further efforts were made to share information on the study with all the members of the Macon County Medical Society. I simply do not see how Dr. Foster, as the vice-president of a 10-member society, could have completely avoided any knowledge of this study while so many efforts were being made to keep the society fully informed on this matter.

But let us not focus entirely on the past. What about the future? What kind of role would Dr. Foster play as surgeon general? He has stressed his concern about the rate of teenage pregnancy in this country. Surely, this is a concern which all of us share. Illegitimacy, especially among teens, is at a crisis level in the United States. Equally important, however, is the manner in which this issue would be addressed if Dr. Foster were confirmed.

The basis of Dr. Foster's efforts to reduce teen pregnancy may be seen in the ''I Have a Future'' program. From my knowledge of the program, it leans toward the attitude that, ''Kids will be kids.'' It assumes that when it comes to sex, we must teach children to be careful rather than responsible. I could not possibly disagree more with this view. Yes, children must be allowed to make some decisions for themselves. But we, as adults and parents, have a responsibility to instill strong values in today's youth.

Dr. Foster's ''I Have a Future'' program failed to provide such guidance. Teaching young people about sex, without stressing the importance of abstinence, at best, gives young people an incomplete message. At worst, it actually encourages the kind of behavior which we should be trying to discourage.

Mr. President, we are all well aware of the controversy which has surrounded the Office of the Surgeon General in recent years. The next surgeon general must be able to repair the damage which has been done to that position. The focus must be shifted from the personality of the office holder to the important health issues which face our Nation.

While I would not question Dr. Foster's level of concern about the issues he embraces, I do not believe he would be able to achieve this goal. For this reason, I will oppose Dr. Foster's nomination.

The PRESIDING OFFICER. Who yields time?

The Senator from Kansas.

Mrs. KASSEBAUM. Mr. President, how much time remains on our side?

The PRESIDING OFFICER. The Senator has 14 minutes and 10 seconds.

Mrs. KASSEBAUM. And how much on the other side?

The PRESIDING OFFICER. The Senator from Massachusetts has 6 minutes 17 seconds.

Mrs. KASSEBAUM. Mr. President, I would like to yield myself 3 minutes.

As we close the debate today on the nomination of Dr. Foster, I would like to make just a few further comments about the process.

I think it has been a good debate the last 2 days. Prior to that time, the Labor and Human Resources Committee spent a considerable amount of time focusing on the substantive issues and raising substantive questions regarding this nomination.

Some, including a majority of the committee, were satisfied with the answers that Dr. Foster gave, and the vote was 9 to 7 to report him favorably from committee. Others, including myself, were not.

With respect to the process in the Chamber, the majority leader had a number of options, including the option of not bringing up the nomination of Dr. Foster at all. I have always believed we should have an up-or-down vote on nominations. Nevertheless, the course that was chosen by the majority leader is one that is a perfectly legitimate option, well within the rules of the Senate. These are rules that have been used frequently in the past by Members on both sides of the aisle—as has been pointed out in the course of this debate.

The majority leader has made this debate and these votes possible in less than 1 month after the nomination was reported from the committee.

There is nothing that would have made this process pleasant for any of us, most of all Dr. Foster. We may regret how we handle confirmation processes and nominations for members of a President's Cabinet and agency heads. It is not an easy process, and it has become, I think, increasingly a grueling one.

In this case, I believe it has been handled in a way which is well within the parameters of appropriate conduct. There are those who have questioned that, but I think there has been an opportunity to air strong feelings on both sides in ways that have fit the rules and the procedures of the Senate. I am not sure, Mr. President, that we can ask for more than that. It has been my own belief that Dr. Foster has answered successfully and well the questions that were put before him in the committee.

The PRESIDING OFFICER. The Senator's time has expired.

Mrs. KASSEBAUM. I will yield myself 1 more minute.

And those were important and substantive questions. For myself, I do not believe he is the person to be a successful Surgeon General of the United States at this time and that is why I have opposed his confirmation. Nevertheless, I feel strongly that the nomination has been debated and handled fairly within the scope of legitimate procedures of the Senate.

I yield the floor, Mr. President.

The PRESIDING OFFICER. Who yields time?

Mr. KENNEDY. Mr. President, I yield 2 minutes to the Senator from Vermont.

The PRESIDING OFFICER. The Senator from Vermont is recognized for 2 minutes.

Mr. JEFFORDS. Mr. President, I rise in strong support of cloture, as I believe it is the right of the President to have an opportunity to have a vote up or down on a very fine man who is willing to dedicate his time to public service, who has an unblemished career of dedication to those people who need help, those who are economically disadvantaged, and those who have not seen the advantages that have been brought to so many others.

It is unfortunate that we find ourselves in this situation because there is no question that this man was picked because he would not ''Raise the specter of abortion,'' because his record, first of all, of being an ob/gyn doctor who only performed 39, 40, if you want to count another, abortions in 38 years is certainly not of one who is out seeking to make a career of abortions, by any stretch of the imagination.

In addition to that, by serving the poor and starting his program I Have a Future, he set an example we must replicate around this country of how we can get the young people in our schools to look towards the future with hope, to understand that teenage pregnancy is a bad situation and that he had all those kinds of rules that he followed in respect to that, teaching abstinence, of teaching parental guidance when possible, things that I do not think anyone disagrees with. It is true that the study was marred by utilization of statistics, but that does not in any way diminish the importance of the message he was giving to those young people.

Mr. President, I want to remind my colleagues what this vote is about. We are here to consider whether or not we will limit debate on this nomination, whether we not allow a minority of this Chamber to take this nominee hostage.

We are going to vote now, not on whether Dr. Henry Foster is qualified for the job of Surgeon General—which I believe he is—but on whether we will allow the President's nominee the courtesy, the due process, of an up or down vote on his nomination.

What reason could we possibly have not to vote? Whose interests are served by allowing a minority of Senators to deny a presidential nominee a confirmation vote?

The charges against Dr. Foster that we heard yesterday and today are just that—charges. They are allegations, not fact. During the committee process I spent hours and hours familiarizing myself with Dr. Foster's record and the specifics of his critics' charges. I became convinced of several facts:

Henry Foster did not learn of the Tuskegee experiments in 1969 at the

briefing given by public health officials. Not only is he documented as attending at a complicated Caesarean section birth shortly after the meeting started, but I believe the doctors who were at that meeting were not given the full story. Foster did not know anything about the denial of treatment for these men.

In fact, no one did, because even the doctors at the meeting were not told about it. According to the FBI, the public health officials were already covering their tracks and when they briefed these six or eight doctors they did not tell them the truth about the experiment. How could they have?

Certainly someone given the facts would have spoken out publicly and halted the 40-year-long project.

Foster did not know because nobody knew. Decades later, we cannot prove the content of the meeting because the minutes, trip report and file have long ago disappeared from the CDC archives as the officials tried to cover their tracks.

Dr. Foster has had a distinguished medical career, treating patients within the medical norms of his time and even advancing new and better treatments in many cases. I hope my colleagues will resist the temptation to judge treatments given decades ago—like the sterilizations of severely mentally impaired women—by the medicine of today.

Then as well as now, Dr. Foster has enjoyed the admiration and acclamation of his peers, and he has been supported in this nomination by every medical group that I can think of, ranging from the AMA, not known for its liberalism, to the American College of OB/GYNs to the American Association of Medical Colleges.

It is undeniably true that the administration did not serve Henry Foster's nomination well in its characterization of his record on abortion. Ever since they misinformed Senator KASSEBAUM's office about the number of procedures he had performed back in January, there has been confusion in the numbers game.

But after he had the opportunity to review his patients' medical records, Dr. Foster gave us a number; he is the physician of record for 39 surgical procedures since 1973. That number has not changed.

I can understand why he did not know off the top of his head, because I would be hard pressed to give an accurate count of the votes I have taken on a particular issue over the past 20 years. I might volunteer an estimate, but I would certainly have to do research to verify the number.

Some have implied that we should not vote on Henry Foster's nomination because he was once—once in a 30-year career—charged with medical malpractice. The charges were dropped. The case was not adjudicated. Yes, the allegation of improper conduct was made, but it was not substantiated.

I would suggest to my colleagues that we have a similar situation here and now with this nomination. There is no substance to the charges against this good man, this talented and hard-working doctor.

Let us not let ideology and politics get in the way of fairness. We have a collective responsibility to vote, even on controversial nominees. I do hope my colleagues will join me in supporting Dr. Foster's nomination, but at the very least I believe he deserves an up or down vote. Let us not deny him that. Please join me in voting for cloture.

The PRESIDING OFFICER. The Senator's time has expired.

Who yields time? The Senator from Massachusetts.

Mr. KENNEDY. I yield 2 minutes to the Senator from Connecticut.

The PRESIDING OFFICER. The Senator from Connecticut is recognized for 2 minutes.

Mr. DODD. Mr. President, I thank the distinguished Senator from Massachusetts.

Mr. President, I spoke yesterday on this nomination, but I wish to emphasize again today my strong support for this nominee and my strong hope that this very fine American will be given a chance to be voted on, yes or no. I think it is regrettable that there are those who cast their votes against this man, who never even bothered to talk to him, never met him, did not participate in the hearings. I would invite my colleagues in the short time that remains to talk to their colleague from Tennessee, Dr. Frist. The rest of us talk about Dr. Foster. Although some of us met him and spent time with him, it has been just since February. Dr. Frist, our new colleague from Tennessee, has not only known him but worked with him. I would invite my colleagues to read his comments in the Senate Labor Committee hearings, just prior to the favorable vote coming out of that committee.

Some of us talk at least from some experience, having spent some time with him, but here is someone who actually worked with him, knows him from his State, knows people he has worked with. You can listen to speeches by those who oppose him, never met him, never sat down with him, in fact in some cases within hours after his name was sent up announced they were against him. That is almost unheard of. I respect those who let the hearing process go forward, gave him a chance to express his views, listened to him, and then said they were against him. But to never meet the man, never give him the benefit of a hearing, even a personal one, and then decide that he did not deserve to be voted on by this body, I think is a sad moment in this Chamber.

The PRESIDING OFFICER. The Senator's time has expired.

Who yields time?

Mr. KENNEDY. I yield 1 minute to the Senator from Washington.

The PRESIDING OFFICER. The Senator from Washington is recognized for 1 minute.

Mrs. MURRAY. I thank the chair. I thank my colleague.

I want to thank Senator KASSEBAUM for having conducted fair hearings and allowing the process to move forward. I hope that today's vote is one again of fairness.

A filibuster on nominations has only occurred 24 times. Twenty-two of those times in this body, the body has said the nomination deserves an up-or-down vote; two of those other times they were nominations made by Democratic Presidents and defeated by Republican filibusters.

I hope that fairness prevails as it has 22 times in the past and that this Senate votes today to allow this nomination to come forward so we can finally vote up or down on the nomination of Dr. Henry Foster. He deserves that vote, and he deserves our confidence.

The PRESIDING OFFICER. The Senator's time has expired.

Mr. KENNEDY. Mr. President, no matter how they have tried to distort and misrepresent the record of Dr. Foster, he is an outstanding physician, selected by the Institute of Medicine, selected to be on the governing board of the most prestigious board in the United States of America for a doctor, outstandingly well qualified.

On the one hand you have the sense of hope, the belief in the young people of this country, someone that really wants to give something back to this country for all that it has done for him. And on the other side you have gross distortions, misrepresentations, and negativism. That is what we have seen during the course of this debate. And the opposition is basically as a result of Presidential politics.

I say again, let us leave Presidential politics in Iowa and in the other primaries, and let us get on and give this outstanding individual the fair vote that he deserves.

The PRESIDING OFFICER. The Senator's time has expired.

The Senator from Kansas controls 10 minutes 20 seconds.

The Democratic leader is recognized.

Mr. DASCHLE. I understand the time allocated to this side has been expired. So, I will use my leader time to accommodate that.

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

Mr. DASCHLE. Mr. President, this is an important moment. The vote we are about to cast will affect more than one man or one position. It will help dictate the way this Senate discharges one of its most important duties. And I ask each of my colleagues to think about that as we cast our vote. Each of us has been afforded the right to make our case to the American public. That is how we got here. We cannot deny this afternoon the same right to a man who is clearly qualified to be the next Surgeon General.

The Surgeon General has been rightly called America's family doctor. And in that capacity he or she is called upon to grapple with some of the most

difficult problems of our day; problems like AIDS, problems like teen pregnancy, problems like substance abuse and breast cancer, problems that are devastating to the American people and to families all over this country.

This Senate has talked too little about these problems during the course of the last 5 hours. Instead of focusing on America's future, many Members of this Senate have chosen to focus on the past and, frankly, distorting it. That is regrettable. The distinguished majority leader said yesterday that this is not such an unusual occurrence. Twenty-six times in the last 27 years, he said, nominees have been denied confirmation by filibuster.

Well, just moments ago I heard the distinguished Senator from Iowa set the record straight on that issue. Senator HARKIN—as others have indicated on several occasions already during this debate—has attempted to correct the record on this and so many other matters that have been misreported or on which only half the facts were presented. The fact is that on every occasion during the 27 years Senator DOLE cited, when it was a Republican nominee, that nominee ultimately was approved with bipartisan support. Two nominees were prevented from being confirmed by a filibuster, and both were Democrats—Abe Fortas, who was nominated by President Johnson to sit on the Supreme Court, and Sam Brown, who was nominated by President Clinton for the rank of Ambassador. So the only filibusters that have prevented nominees from receiving a fair vote were Republican filibusters. Let us be clear about that.

So the question before us today is not whether Henry Foster is qualified to be Surgeon General. That is the question we will face should we take the next step forward. Mr. President, the question we face this afternoon with this vote before us now is one of fairness. And the American people have made themselves abundantly clear on the question of fairness. The majority of people have said in poll after poll, Henry Foster deserves a vote. And the majority of this body agrees with that sentiment.

Are we going to confront the health problems that are devastating America's families and give Dr. Foster the opportunity to combat those problems as Surgeon General? Will we do that? Or are we going to allow partisan Presidential politics to stifle that debate?

The question we face right here, right now, is simply that. It is a question of fairness. What message are we sending to Dr. Foster, to the American people who believed in his right to a fair vote? What message are we sending to the people who look up to Dr. Foster as a role model and to all the Americans who need the services of a qualified Surgeon General today if we refuse to extend to Dr. Foster the opportunity given every one of his predecessors? Mr. President, the issue this afternoon is simply one of fairness.

What is really being judged here, unfortunately, is not Dr. Henry Foster. For 6 months, Dr. Foster has been subjected to intense scrutiny from the Labor Committee, from the media, and from the American people. And he has passed every test. The only test he did not pass was the litmus test of the far right. What is being judged here is the Senate itself and the way the Senate deals with those who come before us to offer their public service.

Henry Foster is an extraordinary physician and leader. If this were not an election cycle, I have no doubt that he would be Surgeon General already, that this Senate would have confirmed him overwhelmingly long ago. Henry Foster is a selfless man who wants to serve his country and is being wasted for the selfish political ambitions of a few. If we prevent him from receiving a fair vote, we will make it even more difficult to attract good, qualified people to public service. And this body, the U.S. Senate, will be judged harshly.

Mr. President, I close with this thought: It is the position of this Senator that the process we have just seen is clearly wrong. It is wrong for the United States and it must be stopped. The business of interest groups fanning out through the country, digging up dirt on a nominee, the business of leaks, of confidential documents put out to members of the press, the idea that absolutely anything goes that is necessary to stop a nominee, this whole process must end. We in the Senate have the power to encourage that process or the power to stop it. We have that power by the vote we are about to cast.

Mr. President, those are not my words. They belong to a former colleague, Senator John Danforth. Senator Danforth issued that eloquent plea nearly 4 years ago in the defense of Clarence Thomas' right to a vote on his nomination to sit on the Supreme Court. Justice Thomas received that vote. He received that vote with the backing of some of the very same people who now would deny that vote to Dr. Foster. And I urge Members, in particular today on this nomination, to put politics aside just for the moment and allow Dr. Foster's nomination to move forward. It is a question of fairness, Mr. President. And the answer—well, the answer is in our hands.

I yield the floor.

The majority controls 10 minutes.

The PRESIDING OFFICER. The majority leader.

Mr. DOLE. As I said yesterday, I would like to begin with just a few facts, facts we sometimes are not using in debate or are not reported by the media. Let me again say, because I did not read it anywhere and did not hear it on television—maybe it was on radio: During these 2½ years in office, President Clinton has submitted 251 names to the Senate for confirmation of civilian positions. Of these 251, 115 have been confirmed, 1 withdrawn and none defeated. The rest are in the confirmation pipeline.

Let us get the record clear right up front. You talk about fairness. That is 251, and not one defeated. And, second, I heard about a filibuster. I do not know of any filibuster going on. If so, I missed it. By unanimous consent we agreed to this procedure. I think it is a good one. We are giving Dr. Foster the same thing we gave Chief Justice Rehnquist back in 1986 when I had to file cloture because the Senator from Massachusetts would not let it come to a vote.

So Dr. Foster's nomination was reported out of the Labor Committee on May 26. We began this debate on June 21, and during that period there has been a 7- or 8-day recess. So Dr. Foster has been treated fairly. The Labor Committee has acted promptly and his nomination has been placed before the full Senate for debate and a vote.

Again, as I said yesterday, I have always felt that the President should have a right to his nominees, but there may be exceptions from time to time, and I have voted against nominees from time to time—not very often. I believe the record will show that we have cooperated in nearly every case; in fact, even helped the President with some of the nominations which might have been in trouble without assistance from this side of the aisle.

There is plenty of precedent for rejecting a nomination on a cloture vote. Again, as I said, I will put in the RECORD for everyone to see that there were 24 nominations, including the nomination of William Rehnquist to be Chief Justice, which had to face cloture vote hurdles.

So overnight, I have done a little research on the Rehnquist nomination, and I learned that 19 of my Democratic colleagues who are still in the Senate today voted against invoking cloture on this nomination: Senators BAUCUS, BIDEN, BRADLEY, BYRD, DODD, EXON, GLENN, HARKIN, INOUYE, JOHNSTON, KENNEDY, KERRY, LAUTENBERG, LEVIN, MOYNIHAN, PRYOR, ROCKEFELLER, SARBANES, and SIMON, and also then Senator ALBERT GORE. Now, certainly, he would not be unfair, but he was, according to all the rhetoric I heard coming from the other side.

In fact, I filed a cloture motion on the Rehnquist nomination because my colleague from Massachusetts, Senator KENNEDY, was apparently unwilling to end debate. Do not take my word for it, just take a look at page 23336 of the Congressional RECORD for September 15, 1986. Senator KENNEDY also urged his colleagues to follow the Abe Fortas example: Defeat cloture so the Rehnquist nomination will be withdrawn. That can be found on page 22805 of the CONGRESSIONAL RECORD of September 11, 1986.

So, Mr. President, we hear a lot of talk about fairness, we hear a lot of talk about the need for an up-or-down vote, but I do not remember all the hand wringing about fairness back in

1986, or many times since that time, when at that time the Chief Justice Rehnquist nomination was on the line.

What does history tell us? History tells us that 31 of my colleagues on the other side of the aisle were prepared to filibuster a nominee to one of the highest positions of our Government, and today many of those who supported this filibuster allege unfairness when Republicans exercise the same right—the same right—only this is a minor office compared to the Chief Justice of the Supreme Court.

We are talking about a nominee to an office with a budget of under $1 million with a staff of six. But he is supposed to make certain everybody is taken care of, all the medical problems are going to be taken care of if we just vote yes on this nomination, according to my distinguished colleague from South Dakota, Senator DASCHLE.

In fact, I remember my colleague from Massachusetts arguing against the Justice Rehnquist confirmation because he ''lacked candor in testifying before the Senate Judiciary Committee'' and because of Justice Rehnquist's ''alleged pattern of explanations * * * that are contradicted by others or are misleading or do not ring true.''

Does that sound familiar? Many of us said this time the same thing about Dr. Foster.

I have talked to him personally, others have talked to him, others who are on the committee. We should not have the right to make that judgment because we are Republicans, but it is all right to make it against the Chief Justice nominee for the U.S. Supreme Court.

So, Mr. President, facts can be stubborn things. They are rarely noted by the media, not often used in this Chamber. But they show that we have a double standard and it is alive and well in Washington, DC. And it goes on and on and on. We hear all the hand wringing over there and all the talk of Presidential politics on this side and nothing about Presidential politics downtown. This is not about Presidential politics. That may be a good sound bite. This is about Dr. Foster and his qualifications for the office, and it is about our right to advise and consent.

I must say, as I look back on it, we could have chosen other options, but it seemed to me this was a fair option, just as fair as it was for Justice Rehnquist who was nominated to be Chief Justice.

Cloture was invoked in that case. Cloture can be invoked in this case. The issue is not whether cloture was invoked on 22 of the 24 nominations that have been subjected to cloture procedure. This is a false distinction. What is important is we have had 24 nominations subjected to a cloture vote. So he can get an up-or-down vote, all he needs to do is get 60 votes on this, as others have done in the past.

I do not question those who say Dr. Foster is probably a fine person. I do not know Dr. Foster that well. I have had one visit with him. I do not snoop around about his past. I think Senator DANFORTH was right when he made that statement: Tell it to the family of John Tower when you talk about allegations and stuff over the transom, under the transom and wrecking somebody's character; tell it to John Tower's family. He is gone.

Tell it to Robert Bork. Tell it to his wife when they were harangued and harassed day after day after day by the Judiciary Committee.

Tell it to Bill Lucas and his family, the fine outstanding sheriff of Wayne County, MI, an outstanding black American who did not even get a vote, any kind of a vote on this floor, because the Judiciary Committee voted, in a 7–7 tie, and would not report him out.

That is the thing the Democrats do not tell us: How many Republicans never had a hearing, were never reported out of the committee, and when they were reported out, they stayed on the calendar; never had the courtesy to even have a cloture vote. They died on the calendar.

I have not heard anybody say anything about that over there, and I put those facts in the RECORD. I thought surely somebody would get up and explain why the Democrats would do that when they talk about fairness and their hearts ache and they cannot sleep at night. Why do they not read the RECORD and go back and call all the families of the people who did not even get a hearing or were on the calendar week after week after week, month after month after month and never even had the courtesy of a vote, not even a cloture vote.

So I know all about it. I have been here a while, and I keep track of these things. What comes around goes around, and none of us are perfect. When we make arguments on the Senate floor, we ought to go back and look at the last argument we made and the one before that to see if it is consistent and how did we vote on Rehnquist before standing up to make a speech.

I can recall in 1980 joining with the Senator from Massachusetts, Senator KENNEDY, when they wanted to block John Breyer's nomination. I said it should not be blocked, and I voted for cloture, and we succeeded. He was a Democrat, so it is not politics.

This nomination was flawed from the start, and the President knows it. But he sought to divide the American people on the issue of abortion. That is all this nomination is about, trying to divide the American people for political purposes, and the President talks about politics and his Chief of Staff Leon Panetta goes on television this morning in some outrageous statement about a vengeance up here—vengeance—which means they must be losing.

So I wish Dr. Foster well. No one likes to see someone who may want to have a job denied that opportunity. I met with a lot of the families who did not even get a vote of any kind because they were Republicans in a Democratic Senate. Well, Dr. Foster is getting a vote. I promised him that, and he is getting it very quickly, in 2 days.

I met with him on Monday, and here it is Thursday, and we are going to have the second vote. I think his initial lack of candor and certainly lack of truthfulness on the part of the White House made this nomination in doubt from the start.

So whether it is his misleading statements concerning his abortion record, or his alleged knowledge of the infamous Tuskegee syphilis study or involvement in sterilizing several mentally retarded women, there are just too many questions. If the Senator from Massachusetts can say that somebody lacks candor, maybe we can say it with the same credibility on this side of the aisle. Maybe we are not entitled to that because we are Republicans, only the liberals are entitled to make those judgments. But we are, too.

As I said yesterday, we need somebody in that position to be America's doctor—not Republicans, not pro-life, not pro-choice, not Democrats, not conservatives, not liberals, but America's doctors. It is not a policy position, it is a public relations job, with a staff of six. The world will not come to an end if we do not ever fill this office or if it is abolished.

So it seems to me we do not want somebody to divide us, as the previous Surgeon General did, about legalization of drugs and all the other statements made by that Surgeon General, but that has nothing to do with this nomination. My point is, if there is somebody out there, there are thousands and thousands of good people out there who can unite America, unite Americans, whatever they can do in that office, and this is not the right nomination.

Again, I agree with Senator DANFORTH. I wonder sometimes why anybody would accept a nomination, but I do not know anybody on this side who has been personal about Dr. Foster. I am proud of the fact he is a veteran. As far as I can see, he is a good person. We had a nice visit. But also we have to have a record, and the record, I think, is the problem: His lack of candor.

So we are proceeding, I think, in a very fair way, as we look at history and look at the record and look at how quickly this nomination has moved.

It seems to me cloture should not be invoked and this nomination would go back on the calendar, as the unanimous-consent agreement indicates.

CLOTURE MOTION

The PRESIDING OFFICER (Mr. THOMPSON). The hour of 2 p.m. having arrived, under the previous order, the clerk will report the motion to invoke cloture.

The legislative clerk read as follows:

CLOTURE MOTION

We, the undersigned Senators, in accordance with the provisions of Rule XXII of the Standing Rules of the Senate, do hereby move to bring to a close debate on Executive Calendar No. 174, the nomination of Dr. Henry W. Foster, to be Surgeon General of the United States:

Senators Christopher Dodd, Carl Levin, Dianne Feinstein, James Exon, Harry Reid, Daniel K. Akaka, Claiborne Pell, Richard Bryan, Patty Murray, Bob Graham, Max Baucus, Frank R. Lautenberg, Russell D. Feingold, Barbara Mikulski, Barbara Boxer, Edward Kennedy, Tom Daschle, and Carol Moseley-Braun.

CALL OF THE ROLL

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

VOTE

The PRESIDING OFFICER. The question is, Is it the sense of the Senate that debate on the nomination of Henry W. Foster, Jr., to be Surgeon General, shall be brought to a close?

The yeas and nays have been required.

The clerk will call the roll.

The legislative clerk called the roll.

The yeas and nays resulted—yeas 57, nays 43, as follows:

[Rollcall Vote No. 280 Ex.]

YEAS—57

Akaka	Feinstein	Levin
Baucus	Ford	Lieberman
Biden	Frist	Mikulski
Bingaman	Glenn	Moseley-Braun
Boxer	Gorton	Moynihan
Bradley	Graham	Murray
Breaux	Harkin	Nunn
Bryan	Heflin	Packwood
Bumpers	Hollings	Pell
Byrd	Inouye	Pryor
Campbell	Jeffords	Reid
Chafee	Johnston	Robb
Cohen	Kassebaum	Rockefeller
Conrad	Kennedy	Sarbanes
Daschle	Kerrey	Simon
Dodd	Kerry	Simpson
Dorgan	Kohl	Snowe
Exon	Lautenberg	Specter
Feingold	Leahy	Wellstone

NAYS—43

Abraham	Gramm	McConnell
Ashcroft	Grams	Murkowski
Bennett	Grassley	Nickles
Bond	Gregg	Pressler
Brown	Hatch	Roth
Burns	Hatfield	Santorum
Coats	Helms	Shelby
Cochran	Hutchison	Smith
Coverdell	Inhofe	Stevens
Craig	Kempthorne	Thomas
D'Amato	Kyl	Thompson
DeWine	Lott	Thurmond
Dole	Lugar	Warner
Domenici	Mack	
Faircloth	McCain	

The PRESIDING OFFICER. On this vote, the yeas are 57, the nays are 43. Three-fifths of the Senators duly chosen and sworn not having voted in the affirmative, the motion is not agreed to.

Under the previous order, the nomination is returned to the calendar.

LEGISLATIVE SESSION

The PRESIDING OFFICER. The Senate will now return to legislative session.

NATIONAL HIGHWAY SYSTEM DESIGNATION ACT

The PRESIDING OFFICER. The clerk will report the pending business.

The assistant legislative clerk read as follows:

A bill (S. 440) to amend title 23, United States Code, to provide for the designation of the National Highway System, and for other purposes.

The Senate continued with the consideration of the bill.

Mr. WARNER addressed the Chair.

The PRESIDING OFFICER. The Senate will be in order. The Senator from Virginia.

Mr. WARNER. Mr. President, the managers wish to report steady progress on this bill. However, we have an amendment now being reviewed by all parties involved in the Stevens-Murkowski amendment. We are awaiting a report back on their negotiations, which I am hopeful will resolve these issues.

Mr. BAUCUS. Mr. President, the Senate is not in order.

The PRESIDING OFFICER. The Senate will come to order.

Mr. WARNER. Mr. President, I believe we can now proceed.

Once again, I wish to inform the Senate on behalf of the managers that we are making progress. The one remaining amendment which is yet to really be fully reconciled is that regarding the issues in Alaska, the amendment proposed, of course, by the senior Senator and junior Senator, Mr. STEVENS and Mr. MURKOWSKI.

Until that matter is further refined, I have nothing further at this time and I yield the floor.

Mr. CHAFEE addressed the Chair.

The PRESIDING OFFICER. The Senator from Rhode Island.

AMENDMENT NO. 1464

Mr. CHAFEE. Mr. President, on behalf of Senator SMITH and Senator GREGG, I send an amendment to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

The Senator from Rhode Island [Mr. CHAFEE], for Mr. SMITH, for himself and Mr. GREGG, proposes an amendment numbered 1464.

Mr. CHAFEE. Mr. President, I ask unanimous consent that reading of the amendment be dispensed with.

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

The amendment is as follows:

At the appropriate place on the bill add the following new section:

SEC. .

The State of New Hampshire shall be deemed as having met the safety belt use law requirements of section 153 of title 23 of the U.S. Code, upon certification by the Secretary of Transportation that the State has achieved—

(a) a safety belt use rate in each of fiscal years ending September 30, 1995 and September 30, 1996, of not less than 50 percent; and

(b) a safety belt use rate in each succeeding fiscal year thereafter of not less than the national average safety belt use rate, as determined by the Secretary of Transportation.

Mr. GREGG. Mr. President, I rise in support of this amendment which allows New Hampshire to meet the safety belt use law requirements under section 153 of ISTEA. Under this amendment, highway safety funds would not be transferred from highway construction projects to highway safety programs if the safety belt use rate in fiscal years ending September 30, 1995, and September 30, 1996, is not less than 50 percent. In fiscal years thereafter safety belt rate shall not fall below the national average as determined by the Secretary of Transportation.

It is my belief that the Federal Government should not mandate seatbelts; those decisions should be left to the States. I believe all individuals should wear seatbelts whenever they ride in a vehicle. Furthermore, I believe that local government, not the Federal Government, should continue to play a role in educating people regarding the need to take every precaution when operating a vehicle.

As a former Governor, I realize firsthand the frustration local government experiences when the Federal Government attempts to micromanage public policy. Americans no longer want big brother looking over their shoulder attempting to force compliance with regard to seatbelt compliance.

I am pleased that this amendment, which allows New Hampshire to be judged on its safety record for safety belt usage, has been adopted. This amendment will remove the current unfair mandatory penalties forced on New Hampshire without regard for its excellent seatbelt compliance record.

Mr. CHAFEE. Mr. President, this is an amendment that takes care of a particular situation that has arisen in New Hampshire and addresses the desires of the Senators there. They are doing extremely well as far as their seatbelt usage goes. This makes them continue in that path and move up to the national average as time goes on.

It is an amendment that has been cleared by both sides, and I think it is a good one.

The PRESIDING OFFICER. The Senator from Montana.

Mr. BAUCUS. May I ask the distinguished chairman of the committee, is this the same version the chairman showed me not too long ago, maybe about an hour or so ago?

Mr. CHAFEE. Yes.

Mr. BAUCUS. Mr. President, we have examined this amendment and we think it is acceptable.

Mr. SMITH. Mr. President, I want to thank the managers of this bill, the Senators from Rhode Island, Virginia,

and Montana, for working with me on a compromise amendment that would provide relief to the State of New Hampshire from certain highway-related penalties. The issue we have been debating for the last 2 days in section 153 of ISTEA, which sanctions States that have not enacted mandatory motorcycle helmet and seatbelt laws.

This section of current law penalized the State of New Hampshire by diverting its scarce highway maintenance and construction funds to its safety program—whether or not this makes any sense. In other words, the penalties are assessed regardless of whether New Hampshire already has an adequately funded safety program directed toward helmet and seatbelt usage, and irrespective of New Hampshire's safety record. States constantly tell us that they are in a better position to address these types of issues than the Federal Government is, and I strongly agree.

Yesterday, the Senate voted to repeal the penalties for noncompliance with motorcycle helmet laws. Today, we have reached an agreement on an amendment that would provide an incentive for the State of New Hampshire, which does not have mandatory seatbelt law, to maintain its 50 + seatbelt use rate and strive to reach the national average within 2 years. If they do not meet these goals, then the sanctions will be imposed as current law dictates.

This is a very reasonable amendment and it does not compromise the Senator from Rhode Island's objective of achieving a higher percentage of individuals wearing seat belts. In fact, it creates a more effective incentive, without being punitive or infringing on States rights.

New Hampshire will continue to education its citizens on the benefits of seatbelt use. Educational programs like those we have in New Hampshire certainly play an important role in increasing highway safety. States do have the expertise and know-how to develop their own programs without Federal intimidation.

In conclusion, I strongly believe that it is through education, not necessarily a mandatory law, that we will achieve higher rates of seatbelt use. New Hampshire is capable of ensuring the safety of its citizens without the paternalistic arm of the Federal Government dictating to us how we should accomplish this goal.

The PRESIDING OFFICER. The Senator from Rhode Island.

Mr. CHAFEE. Mr. President, is there an amendment pending before this, the Exon amendment?

The PRESIDING OFFICER. There are two amendments pending at the present time, the Smith amendment——

Mr. CHAFEE. Is the Smith amendment ready for consideration?

The PRESIDING OFFICER. It is.

Mr. CHAFEE. All right. I urge its adoption.

The PRESIDING OFFICER. If there be no further debate, the question is on agreeing to the amendment.

The amendment (No. 1464) was agreed to.

Mr. CHAFEE. Mr. President, I move to reconsider the vote.

Mr. BAUCUS. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. CHAFEE. Mr. President, if there is no other business to come before us immediately, I suggest the absence of a quorum.

Mr. COCHRAN. Mr. President, I wonder if the Senator will withhold just for a comment or two about the bill?

Mr. CHAFEE. I certainly will.

Mr. COCHRAN. Mr. President, it is my understanding it would be in order for comments to be made about the bill, not necessarily about the amendment that is pending. Is that correct, as a parliamentary inquiry?

Mr. WARNER. Mr. President, the Senator is correct. The managers of the bill are awaiting reconciliation of several amendments. At that point in time, we will move toward final passage, but we welcome the comments of our distinguished colleague from Mississippi beforehand.

I yield the floor.

The PRESIDING OFFICER. The Senator from Mississippi.

Mr. COCHRAN. Mr. President, let me commend the managers of the bill for the good work they have done in bringing this legislation to the floor. It is an important contribution to the infrastructure of this country for the Congress to take action on this bill in a timely fashion so States and localities who depend upon these allocations of funds can make plans to do it in a systematic way and to carry forward some of the important road and bridge projects that would be funded in this legislation.

I know in our State of Mississippi hardly a bill is passed by the Congress that is more important to the continued economic progress and development of our State than this legislation that is before the Senate today.

I know that there is also a continuation of a study called corridor 18. That may very well provide a new major corridor and interstate type highway which could go through Mississippi, and it may very well, I am sure, traverse many States in the central part of the country, from Ohio down to Houston, TX, and maybe beyond. There are many communities along this potential corridor that would benefit substantially in an economic way from the opportunities to grow and develop, providing jobs, producing economic activity and business activity along the way. We hope that study can be successfully completed, and the feasibility of it established so that in a timely way we can see the ultimate construction of that.

There are other parts of the bill in which we are interested as well. It was brought to the attention of the manager that there is some language that we would like to see included in a managers' amendment at the appropriate point to permit our State to have access to a visitors center just south of the Tennessee line. This was something that was provided for in the 1994 appropriations bill but has not yet been finally resolved. We hope that this bill can include some language that would help that situation be resolved in a satisfactory way.

But all in all, this is a good bill. It is an important bill. It is a restrained bill. The Senators have been encouraged not to get involved in new demonstration type projects in the bill. I know we cooperated in that.

We want the managers to know that we appreciate the way that they have maintained discipline in this process and have shown that restraint.

Mr. WARNER. Mr. President, I thank my distinguished colleague.

I wish to bring this to his attention. He said we have asked them not to add projects. We have not added any. I think this bill can meet whatever test as a clean test in terms of demonstration projects. The American public does not want to see these anymore. The various Governors and highway commissions in the several States do not want to see them anymore. I think this bill is a landmark bill in terms of its absence of that type of project. That is owing to the full cooperation of the Senate on both sides of the aisle.

So I thank the Senator for bringing it up. I was fearful when he said add not a lot, some might in turn interpret that as that some had been added.

Mr. COCHRAN. Mr. President, I thank the distinguished Senator from Virginia for his comments. I certainly agree with him. I recall in my early days in the Congress. I served in the other body, and I was assigned to the Public Works and Transportation Committee. I served on the Surface Transportation Subcommittee. I had some good experience in working with Senators, like Senator CHAFEE, and other members of committee over here on this side of the Capitol.

This is important work. I think it is work that has been well done, and I commend all Senators who have had an active role in the development of the bill and the managing of it on the floor of the Senate.

Mr. CHAFEE addressed the Chair.

The PRESIDING OFFICER. The Senator from Rhode Island.

Mr. CHAFEE. Mr. President, I want to thank the Senator from Mississippi for his very generous comments. I appreciate the kind words he had to say about the work we have done.

I discovered that I have come to the conclusion after a while around here that there are a few bills that attract more attention than highway bills. Everybody shows up when there is a highway bill. And I must say the Senators have exhibited tremendous restraint. Maybe the restraint came about because we did not adopt any. I do not

think there is a single demonstration project in this bill. I would not know. Because if there was one, I would have one in there for Rhode Island.

But the distinguished chairman of the subcommittee has resisted any such demonstration grants or specific authorizations for projects within this State or that State. And, so far, we are not through yet. We are not across the finish line. But we have done pretty well so far. If the word should get out that we did any, if we did, I am sure that we would have not four amendments left but 100.

So, Mr. President, I hope we can continue the restraint we have shown. I appreciate the wonderful support of the Senator from Mississippi who has been long interested in these matters.

Mr. WARNER. Mr. President, I say to our distinguished chairman of the committee, I wish to reiterate it has been a bipartisan effort. There has been complete cooperation. Many Senators thinking this was an appropriate piece of legislation, as it has been in the past for such projects, came up and, when we acquainted them with the policy decision, they accepted it; indeed, in many respects endorsed it knowing that history shows that so many projects of that type that were adopted by the Congress have gone back to the States and have proven not to be in terms of priorities what the States really need. Now the States are given greater discretion and the money with which to exercise that discretion.

I thank the distinguished chairman.

Mr. CHAFEE. Mr. President, I want to echo what the Senator from Virginia said about the bipartisan effort, that the senior Senator from Montana has been tremendously helpful in this. It is not easy. We all have friends that come up and want to remind us of what we want from their committee; and, two, what a modest little item it is that they are requesting. So far, so good. I hope we can continue in that regard.

Mr. DOLE. Mr. President, I wonder if the Senator from Rhode Island—I know there are four amendments. Are they going to be offered? Should we move on to another bill and come back to this next week? We do not want to sit here in a quorum call for a couple of hours while Members are floating around the Capitol.

Mr. WARNER. If I could most respectfully address our leader, I would urge that he give us a brief period of time within which to urge the presentation of these amendments.

Mr. DOLE. Which four are they? Maybe we can identify the players and have them get over here.

Mr. WARNER. The principal amendment for which there could be some concern is the amendment of the two Senators from Alaska. Within the hour I have consulted with them on it. Frankly, they are questions in my judgment, and very legitimate ones. It is a problem involving State rights. It goes back many years in Alaska. I left one of the two Senators with the clear impression that he was going to present the amendment, and unless he is able to effect a resolution of the matter—I am prepared to accept the amendment from the Senator from Alaska. I would have to allow the other side to speak for itself on this issue.

Mr. CHAFEE. I wonder if we might have a quorum?

Mr. DOLE. Is it a managers' amendment? I do not know which amendments they are. I am serious.

Mr. WARNER. There is a managers' amendment.

Mr. DOLE. Is that one of the four?

Mr. WARNER. Yes.

Mr. DOLE. An Exon amendment.

Mr. WARNER. Mr. President, that amendment has been resolved, the Exon amendment. At this time, I ask unanimous consent that that amendment be deleted.

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

Mr. DOLE. So that would leave Stevens-Murkowski.

Mr. WARNER. That is correct. That is one amendment.

Mr. DOLE. Chafee-Warner, a managers' amendment. That is the second amendment. Are there two others? Smith?

Mr. CHAFEE. That is resolved. There are only two.

Mr. WARNER. Mr. President, there is a remaining one from the Senator from Maryland [Mr. SARBANES]. I have spoken with him within the hour, and indicating—and I will take responsibility—that I cannot accept the amendment. It relates to the Baltimore-Washington Parkway. I am fearful it would be construed by other Senators as being in the nature of a—even though it is authorized already—project. And I felt that I could not accede to his request, regrettably. So that amendment would not be accepted on this side.

Mr. DOLE. I certainly want to thank the managers. I do not have any quarrel with the managers. But those who have amendments, you know—people are going to be wanting to get out of here for an August recess. They do not want to be here late at night. But they do not want to be here in the afternoon. We cannot have it both ways.

Mr. CHAFEE. We would prefer not to be here in the morning either.

Mr. DOLE. They do not want to be here in the morning either. It is very difficult for the managers who are down to three amendments. They have been on this bill long enough—last week, and 4 days this week. The bill was supposed to take 2 days. It has taken almost 5. Because we want to go to securities litigation next, the only thing I know, without prejudicing the managers, if we cannot conclude it by 3:30, then we would move to another matter and this would come back sometime when we finished the next bill.

Mr. WARNER. I would say to the distinguished leader that the managers' amendment is prepared in the nature of a technical amendment.

Mr. DOLE. Sure.

Mr. WARNER. There really is only one amendment, and that is the one by the two Senators from Alaska. I will go back to them immediately to determine what their desire is.

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

The PRESIDING OFFICER. The clerk will call the roll.

The bill clerk proceeded to call the roll.

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

The PRESIDING OFFICER (Mr. GORTON). Without objection, it is so ordered.

PRIVATE PROPERTY RIGHTS

Mr. GRAMS. Mr. President, I would like to engage in a short colloquy with the Senator from Rhode Island, the distinguished chairman of the Environment and Public Works Committee, the manager of this bill.

Mr. President, I had intended to offer an amendment which would broaden the definition of like-kind property that would allow affected landowners to defer the capital gains tax after the forced sale of property which is taken for use in various infrastructure projects. I simply do not believe it is fair to expect property owners who do not wish to sell their property to be unable to defer their capital gains tax if they are not able to reinvest the amount of the gain in an expanded like-kind property. It is my desire to work with you in your capacity as a member of the Finance Committee to achieve a broader definition of like-kind property.

I have discussed this matter with the Finance Committee staff. However, I would respectfully ask your assistance in ensuring that the Finance Committee will examine this issue when it considers reconciliation this year.

If that is possible, I would be pleased to withdraw my amendment from consideration.

Mr. CHAFEE. I understand the problem the Senator from Minnesota has raised. I will ask the chairman of the Finance Committee to examine this issue when the committee considers reconciliation, and specifically to consider the problem highlighted by the Senator's amendment.

Mr. WARNER. Mr. President, there is on the list of amendments an amendment by the Senator from Maryland [Mr. SARBANES]. That amendment, regrettably, cannot be accepted and, therefore, it will not be considered as a part of this bill.

That leaves on the list the only amendments being that of the Senators from Alaska and the managers' amendment. I understand there is an amendment by the Senator from Oklahoma [Mr. NICKLES] that is still on the list, and I am not prepared to act on that right now.

I ask my comanager if this is a time and moment to go to the managers' amendment.

Mr. BAUCUS. Mr. President, if the Senator will yield, it is, I think, very timely. I might say, I do not know what progress we are going to make, if any, on the Nickles amendment. This side does not know what it is. I see the Senator from Oklahoma on the floor right now. Maybe he is in a position to tell us.

Mr. NICKLES. Mr. President, I will be happy to inform my colleagues. The essence of the amendment is to allow States that do not have Amtrak service to use some of their mass transit moneys to subsidize Amtrak service. Senator D'AMATO indicated some reservations about it. We are trying to work with him. Hopefully, we will have that worked out in a few moments.

Mr. WARNER. So I understand, a few moments could be a few minutes?

Mr. NICKLES. That is correct.

AMENDMENT NO. 1465

(Purpose: To improve the bill)

Mr. WARNER. Mr. President, I send to the desk now the managers' amendment on behalf of myself, Mr. CHAFEE and the Senator from Montana, Mr. BAUCUS.

The PRESIDING OFFICER. The clerk will report.

The bill clerk read as follows:

The Senator from Virginia [Mr. WARNER], for himself, Mr. CHAFEE and Mr. BAUCUS, proposes an amendment numbered 1465.

Mr. WARNER. Mr. President, I ask unanimous consent that the reading of the amendment be dispensed with.

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

The amendment is as follows:

On page 22, between lines 2 and 3, insert the following:

SEC. 1___. APPLICABILITY OF CERTAIN REQUIREMENTS TO THIRD PARTY SELLERS.

Section 133(d) of title 23, United States Code, is amended by adding at the end the following:

''(5) APPLICABILITY OF CERTAIN REQUIREMENTS TO THIRD PARTY SELLERS.—

''(A) IN GENERAL.—Except as provided in subparagraphs (B) and (C), in the case of a transportation enhancement activity funded from the allocation required under paragraph (2), if real property or an interest in real property is to be acquired from a qualified organization exclusively for conservation purposes (as determined under section 170(h) of the Internal Revenue Code of 1986), the organization shall be considered to be the owner of the property for the purpose of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (42 U.S.C. 4601 et seq.).

''(B) FEDERAL APPROVAL PRIOR TO INVOLVEMENT OF QUALIFIED ORGANIZATION.—If Federal approval of the acquisition of the real property or interest predates the involvement of a qualified organization described in subparagraph (A) in the acquisition of the property, the organization shall be considered to be an acquiring agency or person as described in section 24.101(a)(2) of title 49, Code of Federal Regulations, for the purpose of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (42 U.S.C. 4601 et seq.).

''(C) ACQUISITIONS ON BEHALF OF RECIPIENTS OF FEDERAL FUNDS.—If a qualified organization described in subparagraph (A) has contracted with a State highway administration or other recipient of Federal funds to acquire the real property or interest on behalf of the recipient, the organization shall be considered to be an agent of the recipient for the purpose of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (42 U.S.C. 4601 et seq.).''.

On page 26, between lines 8 and 9, insert the following:

(3) ORANGE STREET BRIDGE, MISSOULA, MONTANA.—Notwithstanding section 149 of title 23, United States Code, or any other law, a project to construct new capacity for the Orange Street Bridge in Missoula, Montana, shall be eligible for funding under the congestion mitigation and air quality improvement program established under the section.

On page 26, between lines 13 and 14, insert the following:

(c) TRAFFIC MONITORING, MANAGEMENT, AND CONTROL FACILITIES AND PROGRAMS.—The first sentence of section 149(b) of title 23, United States Code, is amended—

(1) in paragraph (2), by striking ''or'' at the end;

(2) in paragraph (3), by striking the period at the end and inserting ''; or''; and

(3) by adding at the end the following:

''(4) to establish or operate a traffic monitoring, management, and control facility or program if the Secretary, after consultation with the Administrator of the Environmental Protection Agency, determines that the facility or program is likely to contribute to the attainment of a national ambient air quality standard.''.

On page 30, strike line 14 and insert the following:

SEC. 119. INTELLIGENT TRANSPORTATION SYSTEMS.

On page 30, lines 15 and 16, strike ''INTELLIGENT VEHICLE-HIGHWAY SYSTEMS'' and insert ''INTELLIGENT TRANSPORTATION SYSTEMS''.

On page 31, lines 1 and 2, strike ''INTELLIGENT VEHICLE-HIGHWAY SYSTEMS'' and insert ''INTELLIGENT TRANSPORTATION SYSTEMS''.

On page 31, lines 10 and 11, strike ''intelligent vehicle-highway systems'' and insert ''intelligent transportation systems''.

On page 31, between lines 20 and 21, insert the following:

(c) CONFORMING AMENDMENTS.—

(1) The table in section 1107(b) of the Intermodal Surface Transportation Efficiency Act of 1991 (Public Law 102–240; 105 Stat. 2048) is amended—

(A) in item 10, by striking ''(IVHS)'' and inserting ''(ITS)''; and

(B) in item 29, by striking ''intelligent/vehicle highway systems'' and inserting ''intelligent transportation systems''.

(2) Section 6009(a)(6) of the Intermodal Surface Transportation Efficiency Act of 1991 (Public Law 102–240; 105 Stat. 2176) is amended by striking ''intelligent vehicle highway systems'' and inserting ''intelligent transportation systems''.

(3) Part B of title VI of the Intermodal Surface Transportation Efficiency Act of 1991 (Public Law 102–240; 23 U.S.C. 307 note) is amended—

(A) by striking the part heading and inserting the following:

''PART B—INTELLIGENT TRANSPORTATION SYSTEMS'';

(B) in section 6051, by striking ''Intelligent Vehicle-Highway Systems'' and inserting ''Intelligent Transportation Systems'';

(C) by striking ''intelligent vehicle-highway systems'' each place it appears and inserting ''intelligent transportation systems'';

(D) in section 6054—

(i) in subsection (a)(2)(A), by striking ''intelligent vehicle-highway'' and inserting ''intelligent transportation systems''; and

(ii) in the subsection heading of subsection (b), by striking ''INTELLIGENT VEHICLE-HIGHWAY SYSTEMS'' and inserting ''INTELLIGENT TRANSPORTATION SYSTEMS'';

(E) in the subsection heading of section 6056(a), by striking ''IVHS'' and inserting ''ITS'';

(F) in the subsection heading of each of subsections (a) and (b) of section 6058, by striking ''IVHS'' and inserting ''ITS''; and

(G) in the paragraph heading of section 6059(1), by striking ''IVHS'' and inserting ''ITS''.

(4) Section 310(c)(3) of the Department of Transportation and Related Agencies Appropriations Act, 1995 (Public Law 103–331; 23 U.S.C. 104 note), is amended by striking ''intelligent vehicle highway systems'' and inserting ''intelligent transportation systems''.

(5) Section 109(a) of the Hazardous Materials Transportation Authorization Act of 1994 (Public Law 103–311; 23 U.S.C. 307 note) is amended—

(A) by striking ''Intelligent Vehicle-Highway Systems'' each place it appears and inserting ''Intelligent Transportation Systems''; and

(B) by striking ''intelligent vehicle-highway system'' and inserting ''intelligent transportation system''.

(6) Section 5316(d) of title 49, United States Code, is amended—

(A) in the subsection heading, by striking ''INTELLIGENT VEHICLE-HIGHWAY'' and inserting ''INTELLIGENT TRANSPORTATION''; and

(B) by striking ''intelligent vehicle-highway'' each place it appears and inserting ''intelligent transportation''

On page 33, line 19, strike ''intelligent vehicle-highway systems'' and insert ''intelligent transportation systems''.

On page 36, line 12, strike the quotation marks and the following period.

On page 36, between lines 12 and 13, insert the following:

''(24) State Route 168 (South Battlefield Boulevard), Virginia, from the Great Bridge Bypass to the North Carolina State line.''.

On page 38, beginning on line 2, strike ''and shall not'' and all that follows through ''program'' on line 4.

On page 40, strike lines 1 through 3.

On page 43, between lines 14 and 15, insert the following:

SEC. 1___. REPORT ON ACCELERATED VEHICLE RETIREMENT PROGRAMS.

Not later than 180 days after the date of enactment of this Act, the Administrator of the Environmental Protection Agency shall transmit to Congress a report evaluating the effectiveness of all accelerated vehicle retirement programs described in section 108(f)(1)(A)(xvi) of the Clean Air Act (42 U.S.C. 7408(f)(1)(A)(xvi)) in existence on the date of enactment of this Act. The report shall evaluate—

(1) the certainties of emissions reductions gained from each program;

(2) the variability of emissions of retired vehicles;

(3) the reduction in the number of vehicle miles traveled by the vehicles retired as a result of each program;

(4) the subsequent actions of vehicle owners participating in each program concerning the purchase of a new or used vehicle or the use of such a vehicle;

(5) the length of the credit given to a purchaser of a retired vehicle under each program;

(6) equity impacts of the programs on the used car market for buyers and sellers; and

(7) such other factors as the Administrator determines appropriate.

On page 57, line 4, insert ''and'' at the end.

On page 57, line 8, strike ''and'' at the end.

On page 57, strike lines 9 through 11.

Mr. WARNER. Mr. President, this amendment makes technical changes to S. 440 and minor modifications that have been cleared on both sides. Such modifications include, first, streamlining the enhancements program and the traffic monitoring program; second, changing the name of ''intelligent vehicle highway systems'' to ''intelligent transportation systems''; and, third, require a report on effectiveness of accelerated retirement vehicle programs, and other purposes.

The PRESIDING OFFICER. The Senator from Montana.

Mr. BAUCUS. Mr. President, this is basically, as most managers' amendments are, an amendment which contains minor modifications and technical corrections. One I would like to point out to the Senate is the change in reference to the ''intelligence vehicle highway systems'' to ''intelligent transportation systems.''

The theory of the ISTEA legislation that this is the heart of is that we are trying to broaden the definition of ''transportation'' to include intelligent functions; that is, more advanced technologies in highway travel to include not only highways but other transportation modes. It, obviously, includes seaports and also intermodal connectors.

I urge the adoption of the managers' amendment.

The PRESIDING OFFICER. Is there further debate on the managers' amendment?

If not, the question is on agreeing to the amendment.

The amendment (No. 1465) was agreed to.

Mr. WARNER. Mr. President, I move to reconsider the vote by which the amendment was agreed to.

Mr. BAUCUS. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. WARNER. Mr. President, the two remaining amendments are being very actively worked on by their sponsors. The managers hope to be able to report to the Senate in a very brief period of time.

Mr. LAUTENBERG addressed the Chair.

The PRESIDING OFFICER. The Senator from New Jersey.

Mr. LAUTENBERG. Mr. President, I rise to describe what I think is the result of the discussions that we have been having these past few days.

First of all, let me say that I support passage of legislation to designate the National Highway System as directed by ISTEA, the Intermodal Surface Transportation Efficiency Act of 1991. I was, in fact, an original cosponsor of legislation in both the 103d and the 104th Congresses to accomplish this task. This $6.5 billion bill authorizes critically needed funds, and I would like to consider just a few of the facts.

Almost one-fourth of our highways are in poor or mediocre condition, while another 36 percent are rated in the fair category. One in five of the Nation's bridges is structurally deficient—20 percent—meaning that weight restrictions have been set to limit truck traffic.

On urban interstate highways, the percentage of peak hour travel approaching gridlock conditions increased from 55 percent in 1983 to 70 percent in 1991, costing the economy $39 billion.

Experts indicate that an additional annual investment of $32 billion is needed to bring our highway and bridge infrastructures up to date, and failure to make those investments increases the costs, both in the short and long term.

For example, failure to invest a dollar today in needed highway resurfacing can mean up to $4 in highway reconstruction costs 2 years from now.

The ability of our country to sustain higher productivity is the key to economic growth and a higher standard of living.

Higher productivity is, in part, a function of the public and private investment. Recognizing that reality, over 400 of our Nation's leading economists have urged Government to increase public investment. They urged us to remember that public investment in our people and in our infrastructure is essential for economic growth.

Clearly, the National Highway System program was designed to be part of a comprehensive program of public investment.

However, as much as I support moving this legislation forward, I will vote against the NHS bill.

Provisions in this bill are totally inconsistent with, and as a result radically undermine, the goal of increasing investment and productivity.

My concern here is that specific provisions, amendments to this bill, undermine safety and will substantially increase human and economic costs.

While one amendment to the bill was excellent and requires States to institute zero tolerance laws—that means almost no acceptance of any presence of alcohol behind the wheel is accepted. It is .02, very low, and that is the way it ought to be. That is very positive. It is a proposal that I strongly supported, having been the author or father of the 21-age drinking bill and seeing how successful we were over the last 10 years. It was a very positive step. It will save lives and reduce expenditures. But in total, as a result of this bill, more lives will be lost than will be saved.

Opponents of speed limits and motorcycle helmet laws—which passed this body—argue that decisions in these areas should be the responsibility of the State. I could not agree more. I want to give some decisions to the States that would increase their flexibility in using Federal transportation assistance. But I cannot buy into the concept that removing speed limits, increasing speeds across our Nation's highways and roads, is going to help anything except to create mayhem. More people will die and more expenses will be incurred.

The same thing is true with the helmet laws. To remove helmets is, in my view, positively ludicrous. I do not understand what it is that motivated this body to say take off your helmets, let the wind blow in your hair, and God help you if someone runs over you. I supported the concept in ISTEA for flexibility for States and, again, allowing the States to use NHS funding to support intercity rail service. This is human rights, the right of the individual to be safe. It is the right that all of us have not to have to spend money because people do foolish things in our society.

Mr. President, one-third of all traffic accidents are caused by excessive

speed. The National Highway Traffic Safety Administration estimates that total repeal of Federal speed limit requirements will increase the number of Americans killed on our Nation's highways by about 4,750 persons per year.

In addition, there will be substantial financial consequences associated with a repeal. Death and injuries will increase as a result of ending Federal speed limit restrictions. But it is going to cost taxpayers $15 billion more each year in lost productivity, taxes, and increased health care costs.

This loss would be on top of the $24 billion we already lose as a result of motor vehicle accidents which are caused by excessive speed.

So, Mr. President, I want to restate that this bill is a $6.5 billion investment in our Nation's infrastructure, our highways. But, at the same time, we have added an amendment that is going to cost us $15 billion more over the life of this bill than we are presently spending. The total investment for the whole bill is $6.5 billion.

Mr. President, the same argument applies to the helmet provisions in the bill. More than 80 percent of all motorcycle crashes result in injury or death to the motorcyclist. Head injury is the leading cause of death in motorcycle crashes. Now, compared to a helmeted rider, an unhelmeted rider is 40 percent more likely to incur a fatal head injury and 15 percent more likely to incur a head injury when involved in a crash.

The NHTSA estimates that the use of helmets saved $5.9 billion between 1984 and 1982. Now, repeal of mandatory helmet requirements will increase the death rate projected for motorcycle riders by 391 persons per year and will increase the costs to society by $389 million each year. And all of us chip in to pay for those expenses.

The American public supports a strong Federal role in transportation safety initiatives because they understand the benefit of mandatory helmet and safety belt laws, mandatory 21 drinking age laws, and maximum speed limit laws.

Unfortunately, the Senate has chosen to ignore the majority will and the public, and all of the empirical data on the value of transportation safety measures.

As a result, Mr. President, this bill gives with one hand and takes away with the other. It authorizes $6.5 billion worth of spending in infrastructure investment, while adding almost $15.5 billion in additional costs to our society.

My colleagues recognize this fact as evidenced by the rejection of the amendment by the Senator from Texas, Senator HUTCHISON, which would have, in effect, required States to directly absorb medical costs associated with motorcycle riders who were not wearing helmets and were injured in an accident.

She said, very simply—and I agreed with her and we got lots of votes—if a State does not want to take prudent measures to have people protect themselves on our highways, they ought to pay for it when accidents and expenses are incurred.

I want the Congress and the country to understand what is at stake in that debate—4,900 lives, tens of thousands more injuries each year, hundreds of millions of dollars in added health care costs and economic opportunities forgone.

Very simply, this bill takes one step forward but three steps backward.

Mr. President, it pains me to say that I am not going to support this bill, because I believed for all of the years that I have been in the Senate that we do not invest enough in our highways, bridges, and our transportation system, in transit and in intercity rail. So I hate to be one of the people who is going to say no to this bill. But as the underlying legislation dictates, it says that we are going to take more away than we give.

It is painful to witness what has happened to what was a program intended to do our country some good. But when each of the interests raised their heads, we wound up taking care of a few at the expense of the many, and that is, unfortunately, what happened to the NHS bill which so many worked on so diligently for so many years.

Mr. LAUTENBERG. I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The bill clerk proceeded to call the roll.

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

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

Mr. WARNER. Mr. President, I am very optimistic that we will reach within the next few minutes final passage of this bill, and therefore I would like to give some closing remarks.

As we approach the end of our debate on the designation of the National Highway System, I am pleased to have a bill that will keep America moving, moving ahead with progress.

This is a big day. The National Highway System is intact and America will move forward with another very important chapter.

Last year, the Senate, under the able leadership of my colleague, Senator BAUCUS, passed a clean bill, that is, a bill with no demonstration projects. Today, and again this year, the Senate has spoken likewise—no projects. Let our States direct their funding on their own priorities, not those of the Congress.

Throughout these proceedings, my own goal has been simple: To see that this measure moved ahead in a timely manner to meet the deadline of September 30, 1995, to ensure the States would receive the $6.5 billion in National Highway System and interstate maintenance funds that they deserve.

With our actions today, we are well ahead of schedule.

But, Mr. President, I am concerned. While I applaud our inclusion of the zero alcohol tolerance, Mr. President, that noise does not disturb me. It is good noise. It is the noise of settlement. I accept it and tolerate it.

The PRESIDING OFFICER. We will, nonetheless, withhold so it will not interfere with the Senator giving his remarks.

Mr. WARNER. Mr. President, if I may continue, I would like to repeat myself. But I am concerned, Mr. President. I say that in all seriousness. While I applaud the Senate's inclusion of the ''zero alcohol tolerance'' for minors, I am concerned that the safety, which I strongly support, of the public may be placed in jeopardy as a result of the amendments to this bill; namely, the lifting of the Federal law on speed limits and opening the door for dual speed limits on trucks and automobiles.

States rights, a clarion call that I almost invariably support, prevailed throughout the debate on this bill. But the wisdom of experience failed to prevail. Experience has clearly demonstrated that uniform national speed limits reduce the daily tragic losses of life and limb and economic resources on our highways.

Likewise, experience has demonstrated that different speed limits for trucks and cars contribute to highway accidents. Our future, our fate now rests with the State legislators, not the Federal Government. States rights now means States responsibilities, as well as the burdens now on the individual States. Legislators of those States are now on the firing line. I urge them in the name of safety to hold the line. Speed can be as intoxicating as alcohol.

A future Congress, when ISTEA is reauthorized in 1997, will closely examine the results of our actions on this bill. I would hate to see the Congress once again on a roller coaster, enacting and repealing and enacting and then repealing these laws as the constant lobbying between the Congress and the States drives these legislative initiatives.

Mr. President, I would like to commend and thank the chairman of our committee, Senator CHAFEE, as well as the distinguished ranking member, Senator BAUCUS. They are both splendid working partners, and Senator BAUCUS has helped immeasurably as a full partner and as a manager with this Senator in seeing that this bill will be adopted.

With their strong support, this bill moved promptly through the committee to the floor. Their cooperation and skill may soon help me to complete action on this bill.

My colleagues on the Environment and Public Works Committee have also my great respect and appreciation for their commitment and their hard work.

I would also like to thank a very able professional staff for their efforts. From the beginning of our work to designate the National Highway System

there has been a great deal of cooperation on both sides of the aisle. So I thank Jean Lauver, Ann Loomis, Linda Jordan, Larry Dwyer, Ellen Stein, Tom Sliter, Kathy Ruffalo, Alex Washburn, and the one and only Steve Shimberg, staff director.

Mr. President, the National Highway System will, indeed, keep America moving toward our next generation of transportation challenges. For these reasons, I support the bill and urge my colleagues to vote for passage of this important legislation.

Mr. CHAFEE addressed the Chair.

The PRESIDING OFFICER. The Senator from Rhode Island.

Mr. CHAFEE. Mr. President, I am pleased the Senate is nearing completion of S. 440, the National Highway System Destination Act of 1995. And I want to thank all my colleagues for their cooperation on this legislation. The passage of this legislation brings us a big step closer to the deadline we must meet of September 30, if we are to receive a very substantial distribution of some $6.5 billion—that is ''b'' for ''billion''—of needed highway funds.

And I want to commend the manager of the bill, the chairman of the Transportation and Infrastructure Subcommittee, Senator WARNER, for the wonderful job that he has done during the consideration of this legislation. He worked diligently to develop it and to secure the committee's approval by a vote of 15–1.

I also want to thank Senator BAUCUS as a member of the Environment and Public Works Committee, who is also ranking member of this subcommittee, for the excellent work that he has done on this bill. He has been very cooperative in moving it forward. In fact, he provided the leadership in beginning this process, as mentioned by Senator WARNER, in that Senator BAUCUS last year brought this legislation to the floor of the Senate. It passed, but unfortunately we were unable to reach an agreement with the House before Congress adjourned.

So I am pleased the Senate has approved the National Highway System as the Secretary of Transportation and the local and State officials presented it to us. I think this underlines the fact that the process to designate this system has worked well and resulted in a high degree of consensus among Federal and State and local officials.

Under this bill the cooperative process will continue. State and local officials, with the Secretary of Transportation's approval, will have the ability to continue to make changes in the National Highway System as long as the total mileage of 165,000 miles is not exceeded. This is a dynamic entity with which we are involved.

This legislation preserves the important principles that the Intermodal Surface Transportation Efficiency Act of 1991, the so-called ISTEA legislation, put in place, emphasizing flexibility. I regret that we were not able to provide the States more flexibility with respect to the Davis-Bacon provisions. As you know, it emerged from the committee with a revocation of the Davis-Bacon language as it pertained to highway construction. That was removed on the floor of the Senate due to the presence of a filibuster on that item. I hope we will be able to deal with this Davis-Bacon situation in the future.

I deeply regret that this legislation, in my judgment, represents a giant step backward in a particular area; that is, highway safety. I am extremely disappointed that the Senate made the decision to repeal the Federal speed limit as it pertains to automobiles. It was maintained as to trucks. That was a half a victory. As to automobiles, it was not maintained. And as for the motorcycle helmet requirements, they were repealed. Again, it was half a victory, if you would, or half a loss, in that of the two items, seatbelts and motorcycle helmets, the seatbelts were retained and the motorcycle helmet provision was repealed.

I think that is a bad decision and will result in extremely unfortunate consequences. I believe lives will be lost that could have been preserved otherwise. I believe there will be more serious injuries that could have been avoided. And I believe the cost to Federal and State governments will go up. But that is life. We had a long debate on it. There is no question that the will of the Senate was expressed. Nothing went through in the dark of night on that one. Everybody knew the issues and a vote was held. The vote was very, very clear to repeal the helmet provision.

I want to take this opportunity to thank the Secretary of Transportation, Mr. Peña, and Mr. Rodney Slater, the Administrator of the Federal Highway System. They did a splendid job in working with the States to develop this whole system. The system was adopted by the Senate as was proposed, as it came up to us. That is a testimony to the effective job that was done by the States and the Federal officials, particularly Mr. Slater, who has been very helpful to us not only during the designation of the National Highway System, but in the consideration of this measure on the floor, and his Deputy Administrator, Jane Garvey, and their staff. The staff they have was working with us over the past several days.

Finally, I want to join in thanks to the staff who worked on this legislation. On our side, Steve Shimberg, Jean Lauver, Ann Loomis, Linda Jordan, and Larry Dwyer. And for the Democratic side, Tom Sliter, Kathy Ruffalo, and Alice Washburn. All have been absolutely splendid. There is no question we rely to a great degree on them, because we have confidence in them built up over the years.

So I want to thank the Chair and thank all my colleagues for their assistance in this measure.

Mr. BAUCUS addressed the Chair.

The PRESIDING OFFICER. The Senator from Montana.

Mr. BAUCUS. Mr. President, I am pleased today the Senate is finally about to pass S. 440, the National Highway System Designation Act of 1995. I want to thank particularly the chairman, Senator CHAFEE, for his outstanding leadership, and also Senator WARNER, the chairman of the subcommittee, who has done an excellent job shepherding this bill to this point.

This is a critical bill for our States. Billions of dollars in highway funds are at stake. We need to enact this bill, and I remind my colleagues, by September 30; that is, passed by both Houses and signed into law. Otherwise, the State highway programs will be seriously disrupted.

I hope the House will take this bill up soon so we can resolve our differences and get a bill to the President by that deadline.

The National Highway System is the backbone of our transportation system today and the framework for its growth in the 21st century. The NHS is designed to have a seamless transportation network of roads that link all modes of transportation between airports, seaports, and rail yards with our population and economic centers. It will make our businesses more competitive in our global economy. And by choosing the most important roads, it will help States to determine the most appropriate transportation investments.

That is particularly true in the rural West, like Montana, where highways are often the only mode of transportation. Whether it is in the transporting of goods and services, traveling for family vacations, business, or taking our kids to college, our highways always play a vital role in our lives and our jobs. We do not have the mass transit or water transportation systems like other States have. So highways are critical to the lifeblood of our State's economy, which increasingly depends on travel and tourism, and it is our way of life.

The bill includes nearly 4,000 miles of roads in Montana. That is 23 percent or about 800 miles more than the Bush administration's original proposal. The additional routes include Highway 200 between Great Falls and Missoula, and from Lewistown going west to Winnett, Jordan, Circle, Sidney, and Fairview. Highway 12 from Helena to Garrison Junction; Highway 59 from Miles City to Broadus; Highway 87 between Billings, Roundup, and Grassrange; and Highway 212 from Crow Agency to Lame Deer and Alzada.

That is good news for Montana. And the other roads in the bill mean just as much for the entire region across the Great Plains and down the Rocky Mountains. All these roads are included in the bill the Senate is considering today.

Mr. President, this bill also makes major reforms by lessening the regulatory burdens on our States, giving

them more flexibility. It allows States to set their own speed limits for passenger cars and also repeals Federal mandates on motorcycle helmets, management systems, use of the metrics on highway signs, and crumb rubber. These are all good changes.

As I said before, this bill is not only in our State's interest, but in our national interest. It means jobs; it means growth. So I congratulate the chairmen of our committee and subcommittee for their leadership, for their diligence, and for their extreme patience in managing this bill. And I particularly want to thank the staffs on both sides, particularly on the minority side, Tom Sliter and Kathy Ruffalo, who have done a wonderful job; and on the majority side, Jean Lauver and Ann Loomis, who have done an equally good job.

Particularly at this point, Mr. President, I want to thank the Federal Highway Administrator, Rodney Slater. He has been here. He has been in the wings helping advise us. There were technical problems we had as amendments came up. Jane Garvey, who is the Deputy Administrator, has been just very valuable, along with other FHA staff, and I must say that were it not for their expertise, this legislation would be in pretty rough shape. Again, I thank all concerned, and again particularly the chairman, and the subcommittee chairman, Senator WARNER. They have done a great job.

Mr. WARNER. Mr. President, I thank my colleague for his kind remarks. I join him in acknowledging the positive, constructive contribution of the Administrator of the Federal Highway Administration. Indeed, he has been here keeping watch, and any Senator could speak with him at any time. He has done an excellent job, a very, very commendable job for this Nation.

I see the distinguished Senator from Oklahoma. I yield the floor.

Mr. NICKLES addressed the Chair.

The PRESIDING OFFICER. The Senator from Oklahoma.

AMENDMENT NO. 1466

(Purpose: To permit States to use assistance provided under the mass transit account of the highway trust fund for capital improvements to, and operating support for, intercity passenger rail service)

Mr. NICKLES. Mr. President, I send an amendment to the desk and ask for its immediate consideration.

The PRESIDING OFFICER (Mr. ABRAHAM). The clerk will report.

The legislative clerk read as follows:

The Senator from Oklahoma [Mr. NICKLES] proposes an amendment numbered 1466.

Mr. NICKLES. Mr. President, I ask unanimous consent that the reading of the amendment be dispensed with.

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

The amendment is as follows:

At the appropriate place in title I, insert the following:

SEC. 1 . INTERCITY RAIL INFRASTRUCTURE INVESTMENT FROM MASS TRANSIT ACCOUNT OF HIGHWAY TRUST FUND.

Section 5323 of title 49, United States Code, is amended by adding at the end the following new subsection:

''(m) INTERCITY RAIL INFRASTRUCTURE INVESTMENT.—Any assistance provided to a State that does not have Amtrak service as of date of enactment of this Act from the Mass Transit Account of the Highway Trust Fund may be used for capital improvements to, and operating support for, intercity passenger rail service.''.

Mr. NICKLES. Mr. President, one, I wish to thank my colleagues, Senator WARNER and Senator BAUCUS, as well as Senator D'AMATO and Senator SARBANES, for their supporting this amendment and cooperating with us in the drafting of this amendment.

This amendment, basically, would allow States to use their mass transit funds to subsidize Amtrak. Many States, as you know, have had reductions in Amtrak. There happen to be 3 States in the lower 48 that do not have Amtrak. We have narrowed this amendment to apply to those three States that do not have Amtrak where they could use mass transit funds to subsidize Amtrak acquisition.

I am pleased this amendment is supported. This will help us in our State to regain Amtrak. We are the only State in the Nation that has had Amtrak and lost it. It will allow us to use mass transit—we only receive $3 million now, we contribute $30 million but only get $3 million back—this will allow us to use part of that money to subsidize Amtrak and bring about the day when we have restoration of Amtrak in my State.

I wish to compliment my colleagues for management of this bill. They have shown great patience and forbearance. A lot had different ideas.

I introduced legislation some time ago to allow the States to set speed limits, thereby repealing the Federal national speed limit. That was adopted by this body. I think it is a giant step in the right direction. I am pleased it is part of this package. I look forward to the final action and completion of this bill.

Mr. BAUCUS. Mr. President, the substance of this amendment is, frankly, not within the jurisdiction of this committee. Rather, it is in the jurisdiction of the Banking Committee. I have been in contact with Senator SARBANES, who is the ranking member of the Banking Committee. I have been assured he agrees with this amendment and has no problem with it.

Mr. WARNER. Mr. President, I urge the adoption of the amendment.

The PRESIDING OFFICER. Without objection, the amendment is agreed to.

So the amendment (No. 1466) was agreed to.

Mr. NICKLES. Mr. President, I move to reconsider the vote by which the amendment was agreed to.

Mr. WARNER. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. WARNER. Mr. President, many commendations have been paid to the managers of the bill. I also would like to pay a commendation to the distinguished majority leader and the Democratic leader who have given us full, complete support and, indeed, has shown great patience and indulgence in the last hour and a half as we bring this matter to a close.

Mr. President, there is one remaining matter.

I yield the floor.

Mr. STEVENS addressed the Chair.

The PRESIDING OFFICER. The Senator from Alaska.

Mr. STEVENS. Mr. President, I join in saying we are happy the highway bill is being passed. As one who has a very pressing problem, I know this bill presents an opportunity to raise an issue and have it decided by the Congress and have it to the President next week. I see nothing wrong with that. That is part of the history of the Senate. In a few minutes, we may work out a situation—or we will postpone the decision—but we cannot work it out now and, as far as I am concerned, we will stay on this bill until we can get a decision from the Senate as to whether we are right about this issue.

So let me respond to my friend from Rhode Island—and he is my friend—Senator CHAFEE and I stood behind one another in the line going into law school more than 50 years ago, Mr. President, so we know each other very well.

We do have some differences. I have heard my friend talk about the fact that there is a limit of 165,000 miles in the Interstate Highway System. How would you like to be from a State one-fifth the size of the United States and have a thousand of those miles, Mr. President, and have the post office keep telling you, ''You have to find some way to deliver the mail up here, we can't pay the subsidy for flying mail?'' Then you find that Federal agencies are denying you the right to use rights-of-way across Federal lands that were developed by the miners in 1866 and have been used since that time.

What happened? In 1976, we decided that we would repeal revised statute 2477, which provided every State in the West the right to use established, public rights-of-way across Federal lands as continued rights-of-way for use by the public. They became the basis for the State highways, the Federal highways and the interstate highways in what we call the south 48.

Has that happened in Alaska? No. Why? Because of arrogant bureaucrats.

In 1976, we passed a law which absolutely stated, without any question, that the action of Congress in repealing the revised statute 2477 would not affect our rights-of-way that had been established prior to 1976. That law said in section 701(a), which was signed on October 21, 1976:

Nothing in this act or in any amendment made by this act shall be construed as terminating any valid lease, permit, patent, right-

of-way or other land use right or authorization existing on the date of approval of this act.

We interpreted that in past Congresses and past administrations have interpreted that to mean that the rights-of-way that were established pursuant to State law before 1976 were valid, if the State determined they were valid.

As a matter of fact, there have been specific holdings by the Federal courts of appeals, particularly the Ninth Circuit Court of Appeals, that those rights-of-way were to be established and determined on the basis of State law.

Now the Department of the Interior says, ''Oh, wait a minute now, we have established since 1976 a whole series of wilderness areas, and in those wilderness areas are some of these rights-of-way which, in fact, access privately held lands, Native-held lands, and State-held lands in our State. Other States have similar problems.

I want to point out, Utah has the greatest problem of all the Western States as far as the Bureau of Land Management is concerned. The last schedule I saw showed they had 3,815 claims pending to be validated. Validated by whom? There is no administrative process required to validate these claims. Now the Department of the Interior says they are going to determine whether these rights-of-way are valid. This is not what we said in 1976. If they were valid in 1976 under State law, they were to be valid forever.

The language was very simple—very simple. Congress said in 1866:

The right-of-way for the construction of highways over public lands not reserved for public uses is hereby granted.

That became revised statute 2477. It was part of the original highway act of the United States. The managers of the bill are saying, ''What are you doing out on the floor raising this now?'' This is part of the highway system. The highway system in the western United States came into being because of revised statute 2477. And now in my State, unfortunately in other States now, the Department of the Interior has decided it is going to determine what is valid, and why? Because it has made reservations of lands since 1976 that it says have validity and have prior rights over the rights established by the people of those States over Federal lands before that date.

This to me is not a simple issue. My distinguished friend, Senator MURKOWSKI, the other Senator from Alaska, is here and he knows just how important this is. It is a matter that we both have tried to figure out what to do with.

We have no way to have construction of the highways proceed that we get money for under this bill if the Department of the Interior is to tell us that the rights-of-way we are going to use now are subject to their interpretation of whether they are valid or not.

To me it is a simple matter of States rights. But it goes beyond States rights. It is the incessant determination of people downtown to try to reverse a decision that the Congress made in 1958 when it allowed Alaska to become a State. If we are a State, we should have the same rights as the other States did under this statute, and in 1976 we preserved that. I helped work on that section. We wanted to make sure we had the rights that were there. We knew we were not going to establish any new rights across Federal lands after that time, but certainly the rights we had established prior to that time were valid pursuant to State law, and there is no question that they continue to be the basic right for the expansion of the highway system in Alaska and other western States.

Someone said to me once, ''Why do you worry about that? Is there that much Federal land out there?'' I just wish more people would come up and see the amount of Federal land we have in Alaska. You cannot get anywhere in Alaska without crossing Federal land. The Federal Government controls access to almost every piece of land that is in private, State, or Native ownership in Alaska.

Now, I do believe that there is no question about it that there are a lot of forces out there which, if they had their way now, would reverse statehood. They would take away from us the right to be a State. Not having that ability, what they do is take away from us the right to have the same access to our land mass that other States in the lower 48 have had.

The Interior Department has now come up with some very narrow terms to define ''highways'' for the purpose of revised statute 2477. That is none of their business. Our rights existed in 1976 or they do not exist at all today. But if they existed in 1976, no Secretary of the Interior is going to tell me what those rights were or what they are going to allow us to claim today. We had the right in 1976 and he has no business being involved in this.

I know that there are very powerful groups in this country that would like to find ways to invalidate those claims. And in the past these groups have taken the claims to court. These groups have lost, because a right established prior to 1976 for public access across Federal lands continues to be our right.

Alaska law defines highways in terms of roads, streets, trails, walkways, bridges, tunnels, drainage structures, ferry systems, and other related facilities. Obviously, nobody is going to get in our way on ferry systems. We have the right to navigable waters.

Protection of the RS 2477 grant of right-of-way is essential to the preservation of statehood for my State. And it is one of the reasons that I come to this floor at times just a little bit excited, because I do not believe many people take much time to learn much about our State. You crisscross the continental United States, but not many of you even come to our State. When you do, we welcome you, we are pleased to have you. But you do not take much time to learn some of the problems that exist there. Our problem is transportation, transportation, transportation. We have to have access to our lands.

There is one other item I will mention to the Senate. When we were seeking statehood, we first sought 30, 40 million acres of land. Congress at that time kept saying: But you cannot survive as a State unless you have more land. You have to have a land base in order to survive. So we ended up by getting the right to use 103.5 million acres of Federal lands as State lands.

Mr. President, having received the right to select 103.5 million acres of the Federal domain in Alaska, we proceeded to do that. Our rights pertain to Federal lands that were vacant, unreserved, and unappropriated as of 1959. A subsequent Congress decided that there ought to be a limitation on our rights. So we had a process which lasted about 7 years and led to the enactment of a law in 1980, the Alaska National Interest Land Claims Act, which withdrew a substantial amount of lands that were vacant, unappropriated, and unreserved in 1959. In effect, they took away from us the right to select a portion of the lands that we originally had the right to consider in exercising rights under the Statehood Act. Similarly, the Alaska Natives received some 40-plus million acres in settlement of their historic claims against the United States, and some of those lands were to be taken from vacant unappropriated, unreserved lands. And they also were faced with the prospect of having to select lands that were not reserved, because the Congress had reserved lands.

We ended up by selecting lands that were less valuable, did not contain minerals, and were not timbered. Most of the valuable lands of Alaska was set aside and not available to either the State or the Natives, as originally intended. That is going to lead, in my opinion, to a historic lawsuit by my State against the Federal Government. I am informed we must complete our land selections before we can bring that case. But I do think it is a valid case against the United States. And the perpetrators of the wrong were right here on the floor of the Senate. Some of them continue to be here, Mr. President. Some Members of the Senate continue to try to deny Alaska access to the lands that Congress gave us a right to when we became a State, in order to try and support the new State.

Now, we come down to 1976 when we decided to repeal revised statute 2477. Mr. President, without that law, the West would never have been settled. Without that law, we would not have the Interstate Highway System. Without that law, we would not really have the unity we have as a nation.

Now, it is sad, in my opinion, to see this penchant of some members of our society to deny our new State the same rights, to say that we have no right to

establish a network of highways in our State. As I said, we have one major highway in our State. It is the system that connects Alaska to Canada. It goes from Seward, AK, up to Fairbanks, and out to the border.

I see the leader here. I will yield.

Mr. DOLE. I wonder if we can move on to the next bill and not, in any way, undercut any of the rights of any of the Senators. As soon as you get the language and agreement, we can come back to this bill. In the meantime, let us go ahead and start the other bill, the securities litigation bill. And then, hopefully, you will have the language. The first vote would be on this, back-to-back with final passage of this bill, plus the amendment on litigation.

Mr. STEVENS. I might say to my friend, we had an agreement last night that I would have the opportunity to offer an amendment to this bill. Now there has been a suggestion that we have an amendment that is being reviewed by the Senator from Arkansas, as I understand it. That would delay the urgency of this amendment of mine. I am happy to agree to cooperate with our leader at any time. I would not want to see us be put in the position that we are limited as to what we might do when we get back on this bill.

Mr. DOLE. I assume, in talking with Senator BUMPERS, it is something everybody can agree on. You can offer the amendment when we bring the bill up. If it is not satisfactory, you can do what you want. In the meantime, we can go ahead with the litigation bill. When you have it worked out——

Mr. STEVENS. There may be more amendments before we are through.

Mr. DOLE. Well, amendment or amendments.

Mr. STEVENS. Under the circumstances, I am happy to continue my comments at a later time, if the leader wishes to go on the other bill at this time.

Mr. BAUCUS. Mr. President, if the majority leader will yield, it is my understanding that the amendment has been agreed to.

Mr. STEVENS. That was this Senator's understanding, too, but that is not the case.

Mr. MURKOWSKI. Mr. President, we are currently waiting to hear from Senator BUMPERS with regard to the pending agreement. I assume that he will be forthcoming.

Mr. STEVENS. If my colleague will yield, we have not been able to check that out with the Senator from Utah because we have not seen the final version that is agreeable to Senator BUMPERS yet.

The leader is right. There is nothing we can move ahead on now. That is why this Senator is venting a little air, to try to make people understand why we feel so strongly about this amendment.

Mr. BAUCUS. I wonder, Mr. President, if the majority leader will yield, if we can wait maybe 1 minute here. There is a possibility we can get this cleared right now.

Mr. DOLE. Then it has to be reviewed by the Senator from Utah.

Mr. BAUCUS. If we could just withhold for a few more minutes? Maybe the other Senator from Alaska could speak for just a few more minutes. We are just that close to getting this thing wrapped up. I would want to do it now rather than later.

Mr. DOLE. We were going to move on to something else at 3:30. Now it is 4:30. I would like to finish the bill. I know the managers would. They have done an excellent job. I certainly want to accommodate the Senators from Alaska. I understood the Senator from Arkansas, Senator BUMPERS, thought he had a satisfactory resolution.

Mr. BAUCUS. Mr. President, if the Senator will again yield, it is my understanding Senator BUMPERS has not yet personally seen the language and he does want to see it.

Mr. DOLE. That could take a while and we could be halfway down the trail on the litigation bill. As soon as it is worked out, we will come right back and finish it. I am not going to lay it aside for a day or even an hour. We will come back, finish it, get the yeas and nays on final passage and have that vote occur along with the first vote on any amendment on the litigation bill. Is that right?

Mr. BAUCUS. Fine.

Mr. MURKOWSKI. Mr. President, I wonder if I could inquire of the manager and the leader, if, indeed, it is set aside and not taken up for a time, if Senator STEVENS and I may have a time to be recognized at that time certain, right after the leader calls up the bill? I wonder if the leader could indicate when he intends to do that?

Mr. DOLE. I think what we would do is make certain you have agreed or disagreed on whatever has been offered. Both Alaska Senators are on the floor, obviously, and the Senator from Utah——

Mr. STEVENS. If I may interrupt, the Senator from Utah has as great a stake or greater in the immediate outcome. We have been willing to clear this with them, but we have not been able to get an agreed version yet on this tentative moratorium.

Will the leader yield to the Senator from Utah so he might get involved in this, Mr. Leader?

Mr. DOLE. Yes.

Mr. BENNETT. I have just had a quick opportunity to review this. Clearly I will want to talk to my senior colleague, Senator HATCH. But my first reaction to this is that this would be agreeable. It would delay the implementation, as I understand it, of the present rules until December and give us that much more time to try to work things out with the Department of the Interior.

Our Governor made it clear to Secretary Babbitt that the proposals, as they currently stand, are not acceptable and cannot be fixed. We have to start completely from scratch. So that is the position we have taken and I take on behalf of the Governor.

But I obviously want to check with Senator HATCH before I give a final signoff on this issue.

Mr. STEVENS. Mr. President, does the leader still have the floor?

The PRESIDING OFFICER. The leader has the floor.

Mr. DOLE. I think from what I see developing here, it is just going to take a little time. I think it can be worked out. But if we need to contact the senior Senator from Utah, Senator HATCH, and the Senator from Arkansas, Senator BUMPERS, I know that is not going to happen in 2 minutes or 5 minutes or 30 minutes. In the meantime, we could be started on the litigation bill. Then, as soon as you get the agreement, we can come back to this bill, wrap it up, and have a vote on final passage.

Mr. STEVENS. The question is, if we do not get the agreement, do we have the understanding this will come back and be the regular order after we finish the securities bill?

Mr. DOLE. That is right.

Mr. STEVENS. I would have no objection to that proceeding.

Mr. MURKOWSKI. Then, if I could ask the leader again, roughly, he anticipates being back on the securities bill on Monday?

Mr. DOLE. Yes. We hope to finish the bill tomorrow night. If not, we will be on it Monday. But we could finish this bill, the present bill, before then, in particular if we get an agreement.

Mr. MURKOWSKI. Mr. President, if the leader gets an agreement, then it is my understanding that he will potentially come back to this bill, the highway bill, at which time we would be recognized and pursue our amendments with no time limitation and try to resolve the differences that we currently have been unable to clear. Then there would be final passage. Is that correct?

Mr. DOLE. But if you can reach agreement with all parties and it can be done very quickly, we will do it at any time you get the agreement, like 30 minutes from now or an hour from now or 2 hours from now.

Mr. MURKOWSKI. Mr. President, we should know very soon.

Mr. DOLE. Right. That is what they told me at 3:30. Let me get the consent. There will be one additional amendment here and then we will go on.

Let me ask unanimous consent that the Senate, after adoption of the managers' amendment, turn to the consideration of Calendar 128, S. 240, the securities litigation bill, and that no call for the regular order bring back S. 440 except one call by the majority leader after consultation with the Democratic leader.

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

Mr. DOLE. I further ask, when the Senate resumes S. 440, the only amendments remaining in order to the committee substitute be the following: They are going to offer the managers' amendment, and then the only following amendment would be the Stevens-Murkowski amendment or amendments. And that would also include the

Senators from Utah, Senator BENNETT and Senator HATCH.

Mr. WARNER. Mr. President, reserving the right to object, I shall not. We also have an understanding that the closing statements of the managers appear in the RECORD as the last.

Mr. DOLE. I did get consent you could offer the managers' amendment right now.

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

AMENDMENT NO. 1464, AS MODIFIED

Mr. WARNER. Mr. President, I send to the desk a technical amendment to be added to the managers' amendment.

Mr. STEVENS. Has the agreement been entered into?

The PRESIDING OFFICER. Yes, it has. Without objection, the agreement is entered into.

Mr. WARNER. Mr. President, this is a technical amendment which includes the State of Maine as covered by the amendment of the Senator from New Hampshire.

I ask that it be accepted. It is to a previously agreed to amendment.

The PRESIDING OFFICER. Without objection, amendment No. 1464 is modified and is agreed to in that form.

The amendment (No. 1464), as modified, was agreed to, as follows:

At the appropriate place in the bill add the following new section:

SEC. .

The State of New Hampshire and the State of Maine shall be deemed as having met the safety belt use law requirements of section 153 of title 23 of the U.S. Code, upon certification by the Secretary of Transportation that the State has achieved—

(a) a safety belt use rate in each of fiscal years ending September 30, 1995 and September 30, 1996, of not less than 50 percent; and

(b) a safety belt use rate in each succeeding fiscal year thereafter of not less than the national average safety belt use rate, as determined by the Secretary of Transportation.

Mr. WARNER. Mr. President, I move to reconsider the vote.

Mr. CHAFEE. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

VISIT TO THE SENATE BY MEMBERS OF THE CHILEAN SENATE

Mr. DODD. Mr. President, I wanted to take a moment, if I could, to say that we just had a very wonderful opportunity in the Senate Foreign Relations Committee room to have a very healthy and productive discussion with a group of our colleagues, Senators from Chile, who are here in the United States, to meet with their counterparts in the Senate and some Members of the House and the administration on a variety of subject matters, not the least of which—and it will not come as a great surprise—is NAFTA.

I know many colleagues share the view that Chile would be a welcome partner in the NAFTA agreements. That is a matter we will address in the future.

I would like to take this opportunity to introduce to my distinguished colleagues four Members of the Chilean Senate. With us today are Senator Arturo Allessandri, Senator Sebastian Pinera, Senator Hernan Larrain, and Senator Jaime Gazmuri.

We are pleased to welcome four of our colleagues from Chile to the U.S. Senate. We are delighted you are here on an important visit to our country.

[Applause]

PRIVATE SECURITIES LITIGATION REFORM ACT

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

A bill (S. 240) to amend the Securities Exchange Act of 1934 to establish a filing deadline and to provide certain safeguards to ensure that the interests of investors are well protected under the implied private action provisions of the Act.

The PRESIDING OFFICER. Is there objection to the immediate consideration of the bill?

There being no objection, the Senate proceeded to consider the bill, which had been reported from the Committee on Banking, Housing, and Urban Affairs, with an amendment to strike out all after the enacting clause and inserting in lieu thereof the following:

SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

(a) SHORT TITLE.—This Act may be cited as the ''Private Securities Litigation Reform Act of 1995''.

(b) TABLE OF CONTENTS.—The table of contents for this Act is as follows:

TITLE I—REDUCTION OF ABUSIVE LITIGATION

SEC. 101. ELIMINATION OF CERTAIN ABUSIVE PRACTICES.

(a) PROHIBITION OF REFERRAL FEES.—Section 15(c) of the Securities Exchange Act of 1934 (15 U.S.C. 78o(c)) is amended by adding at the end the following new paragraph:

''(8) PROHIBITION OF REFERRAL FEES.—No broker or dealer, or person associated with a broker or dealer, may solicit or accept, directly or indirectly, remuneration for assisting an attorney in obtaining the representation of any person in any private action arising under this title or under the Securities Act of 1933.''.

(b) ATTORNEY CONFLICT OF INTEREST.—

(1) SECURITIES ACT OF 1933.—Section 20 of the Securities Act of 1933 (15 U.S.C. 77t) is amended by adding at the end the following new subsection:

''(f) ATTORNEY CONFLICT OF INTEREST.—In any private action arising under this title, if a plaintiff is represented by an attorney who directly owns or otherwise has a beneficial interest in the securities that are the subject of the litigation, the court shall make a determination of whether such ownership or other interest constitutes a conflict of interest sufficient to disqualify the attorney from representing the party.''.

(2) SECURITIES EXCHANGE ACT OF 1934.—Section 21 of the Securities Exchange Act of 1934 (15 U.S.C. 78u) is amended by adding at the end the following new subsection:

''(i) ATTORNEY CONFLICT OF INTEREST.—In any private action arising under this title, if a plaintiff is represented by an attorney who directly owns or otherwise has a beneficial interest in the securities that are the subject of the litigation, the court shall make a determination of whether such ownership or other interest constitutes a conflict of interest sufficient to disqualify the attorney from representing the party.''.

(c) PROHIBITION OF ATTORNEYS' FEES PAID FROM COMMISSION DISGORGEMENT FUNDS.—

(1) SECURITIES ACT OF 1933.—Section 20 of the Securities Act of 1933 (15 U.S.C. 77t) is amended by adding at the end the following new subsection:

''(g) PROHIBITION OF ATTORNEYS' FEES PAID FROM COMMISSION DISGORGEMENT FUNDS.—Except as otherwise ordered by the court upon motion by the Commission, or, in the case of an administrative action, as otherwise ordered by the Commission, funds disgorged as the result of an action brought by the Commission in Federal court, or as a result of any Commission administrative action, shall not be distributed as payment for attorneys' fees or expenses incurred by private parties seeking distribution of the disgorged funds.''.

(2) SECURITIES EXCHANGE ACT OF 1934.—Section 21(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78u(d)) is amended by adding at the end the following new paragraph:

''(4) PROHIBITION OF ATTORNEYS' FEES PAID FROM COMMISSION DISGORGEMENT FUNDS.—Except as otherwise ordered by the court upon motion by the Commission, or, in the case of an administrative action, as otherwise ordered by the Commission, funds disgorged as the result of an action brought by the Commission in Federal court, or as a result of any Commission administrative action, shall not be distributed as payment for attorneys' fees or expenses incurred by private parties seeking distribution of the disgorged funds.''.

SEC. 102. SECURITIES CLASS ACTION REFORM.

(a) RECOVERY RULES.—

(1) SECURITIES ACT OF 1933.—Section 20 of the Securities Act of 1933 (15 U.S.C. 77t) is amended by adding at the end the following new subsection:

''(h) RECOVERY RULES FOR PRIVATE CLASS ACTIONS.—

''(1) IN GENERAL.—The rules contained in this subsection shall apply in each private action arising under this title that is brought as a plaintiff class action pursuant to the Federal Rules of Civil Procedure.

''(2) CERTIFICATION FILED WITH COMPLAINTS.—

''(A) IN GENERAL.—Each plaintiff seeking to serve as a representative party on behalf of a class shall provide a sworn certification, which shall be personally signed by such plaintiff and filed with the complaint, that—

''(i) states that the plaintiff has reviewed the complaint and authorized its filing;

''(ii) states that the plaintiff did not purchase the security that is the subject of the complaint at the direction of plaintiff's counsel or in order

to participate in any private action arising under this title;

''(iii) states that the plaintiff is willing to serve as a representative party on behalf of a class, including providing testimony at deposition and trial, if necessary;

''(iv) sets forth all of the transactions of the plaintiff in the security that is the subject of the complaint during the class period specified in the complaint;

''(v) identifies any action under this title, filed during the 3-year period preceding the date on which the certification is signed by the plaintiff, in which the plaintiff has sought to serve as a representative party on behalf of a class; and

''(vi) states that the plaintiff will not accept any payment for serving as a representative party on behalf of a class beyond the plaintiff's pro rata share of any recovery, except as ordered or approved by the court in accordance with paragraph (3).

''(B) NONWAIVER OF ATTORNEY-CLIENT PRIVILEGE.—The certification filed pursuant to subparagraph (A) shall not be construed to be a waiver of the attorney-client privilege.

''(3) RECOVERY BY PLAINTIFFS.—The share of any final judgment or of any settlement that is awarded to a representative party serving on behalf of a class shall be calculated in the same manner as the shares of the final judgment or settlement awarded to all other members of the class. Nothing in this paragraph shall be construed to limit the award of reasonable costs and expenses (including lost wages) directly relating to the representation of the class to any representative party serving on behalf of the class.

''(4) RESTRICTIONS ON SETTLEMENTS UNDER SEAL.—The terms and provisions of any settlement agreement of a class action shall not be filed under seal, except that on motion of any party to the settlement, the court may order filing under seal for those portions of a settlement agreement as to which good cause is shown for such filing under seal. For purposes of this paragraph, good cause shall exist only if publication of a term or provision of a settlement agreement would cause direct and substantial harm to any party.

''(5) RESTRICTIONS ON PAYMENT OF ATTORNEYS' FEES AND EXPENSES.—Total attorneys' fees and expenses awarded by the court to counsel for the plaintiff class shall not exceed a reasonable percentage of the amount of damages and prejudgment interest awarded to the class.

''(6) DISCLOSURE OF SETTLEMENT TERMS TO CLASS MEMBERS.—Any proposed or final settlement agreement that is published or otherwise disseminated to the class shall include each of the following statements, along with a cover page summarizing the information contained in such statements:

''(A) STATEMENT OF PLAINTIFF RECOVERY.—The amount of the settlement proposed to be distributed to the parties to the action, determined in the aggregate and on an average per share basis.

''(B) STATEMENT OF POTENTIAL OUTCOME OF CASE.—

''(i) AGREEMENT ON AMOUNT OF DAMAGES.—If the settling parties agree on the average amount of damages per share that would be recoverable if the plaintiff prevailed on each claim alleged under this title, a statement concerning the average amount of such potential damages per share.

''(ii) DISAGREEMENT ON AMOUNT OF DAMAGES.—If the parties do not agree on the average amount of damages per share that would be recoverable if the plaintiff prevailed on each claim alleged under this title, a statement from each settling party concerning the issue or issues on which the parties disagree.

''(iii) INADMISSIBILITY FOR CERTAIN PURPOSES.—A statement made in accordance with clause (i) or (ii) concerning the amount of damages shall not be admissible in any Federal or State judicial action or administrative proceeding, other than an action or proceeding arising out of such statement.

''(C) STATEMENT OF ATTORNEYS' FEES OR COSTS SOUGHT.—If any of the settling parties or their counsel intend to apply to the court for an award of attorneys' fees or costs from any fund established as part of the settlement, a statement indicating which parties or counsel intend to make such an application, the amount of fees and costs that will be sought (including the amount of such fees and costs determined on an average per share basis), and a brief explanation supporting the fees and costs sought.

''(D) IDENTIFICATION OF LAWYERS' REPRESENTATIVES.—The name, telephone number, and address of one or more representatives of counsel for the plaintiff class who will be reasonably available to answer questions from class members concerning any matter contained in any notice of settlement published or otherwise disseminated to the class.

''(E) REASONS FOR SETTLEMENT.—A brief statement explaining the reasons why the parties are proposing the settlement.

''(F) OTHER INFORMATION.—Such other information as may be required by the court.''.

(2) SECURITIES EXCHANGE ACT OF 1934.—Section 21 of the Securities Exchange Act of 1934 (15 U.S.C. 78u) is amended by adding at the end the following new subsection:

''(j) RECOVERY RULES FOR PRIVATE CLASS ACTIONS.—

''(1) IN GENERAL.—The rules contained in this subsection shall apply in each private action arising under this title that is brought as a plaintiff class action pursuant to the Federal Rules of Civil Procedure.

''(2) CERTIFICATION FILED WITH COMPLAINTS.—

''(A) IN GENERAL.—Each plaintiff seeking to serve as a representative party on behalf of a class shall provide a sworn certification, which shall be personally signed by such plaintiff and filed with the complaint, that—

''(i) states that the plaintiff has reviewed the complaint and authorized its filing;

''(ii) states that the plaintiff did not purchase the security that is the subject of the complaint at the direction of plaintiff's counsel or in order to participate in any private action arising under this title;

''(iii) states that the plaintiff is willing to serve as a representative party on behalf of a class, including providing testimony at deposition and trial, if necessary;

''(iv) sets forth all of the transactions of the plaintiff in the security that is the subject of the complaint during the class period specified in the complaint;

''(v) identifies any action under this title, filed during the 3-year period preceding the date on which the certification is signed by the plaintiff, in which the plaintiff has sought to serve as a representative party on behalf of a class; and

''(vi) states that the plaintiff will not accept any payment for serving as a representative party on behalf of a class beyond the plaintiff's pro rata share of any recovery, except as ordered or approved by the court in accordance with paragraph (3).

''(B) NONWAIVER OF ATTORNEY-CLIENT PRIVILEGE.—The certification filed pursuant to subparagraph (A) shall not be construed to be a waiver of the attorney-client privilege.

''(3) RECOVERY BY PLAINTIFFS.—The share of any final judgment or of any settlement that is awarded to a representative party serving on behalf of a class shall be calculated in the same manner as the shares of the final judgment or settlement awarded to all other members of the class. Nothing in this paragraph shall be construed to limit the award to any representative party serving on behalf of a class of reasonable costs and expenses (including lost wages) directly relating to the representation of the class.

''(4) RESTRICTIONS ON SETTLEMENTS UNDER SEAL.—The terms and provisions of any settlement agreement of a class action shall not be filed under seal, except that on motion of any party to the settlement, the court may order filing under seal for those portions of a settlement agreement as to which good cause is shown for such filing under seal. For purposes of this paragraph, good cause shall exist only if publication of a term or provision of a settlement agreement would cause direct and substantial harm to any party.

''(5) RESTRICTIONS ON PAYMENT OF ATTORNEYS' FEES AND EXPENSES.—Total attorneys' fees and expenses awarded by the court to counsel for the plaintiff class shall not exceed a reasonable percentage of the amount of damages and prejudgment interest awarded to the class.

''(6) DISCLOSURE OF SETTLEMENT TERMS TO CLASS MEMBERS.—Any proposed or final settlement agreement that is published or otherwise disseminated to the class shall include each of the following statements, along with a cover page summarizing the information contained in such statements:

''(A) STATEMENT OF PLAINTIFF RECOVERY.—The amount of the settlement proposed to be distributed to the parties to the action, determined in the aggregate and on an average per share basis.

''(B) STATEMENT OF POTENTIAL OUTCOME OF CASE.—

''(i) AGREEMENT ON AMOUNT OF DAMAGES.—If the settling parties agree on the average amount of damages per share that would be recoverable if the plaintiff prevailed on each claim alleged under this title, a statement concerning the average amount of such potential damages per share.

''(ii) DISAGREEMENT ON AMOUNT OF DAMAGES.—If the parties do not agree on the average amount of damages per share that would be recoverable if the plaintiff prevailed on each claim alleged under this title, a statement from each settling party concerning the issue or issues on which the parties disagree.

''(iii) INADMISSIBILITY FOR CERTAIN PURPOSES.—A statement made in accordance with clause (i) or (ii) concerning the amount of damages shall not be admissible in any Federal or State judicial action or administrative proceeding, other than an action or proceeding arising out of such statement.

''(C) STATEMENT OF ATTORNEYS' FEES OR COSTS SOUGHT.—If any of the settling parties or their counsel intend to apply to the court for an award of attorneys' fees or costs from any fund established as part of the settlement, a statement indicating which parties or counsel intend to make such an application, the amount of fees and costs that will be sought (including the amount of such fees and costs determined on an average per share basis), and a brief explanation supporting the fees and costs sought.

''(D) IDENTIFICATION OF LAWYERS' REPRESENTATIVES.—The name, telephone number, and address of one or more representatives of counsel for the plaintiff class who will be reasonably available to answer questions from class members concerning any matter contained in any notice of settlement published or otherwise disseminated to the class.

''(E) REASONS FOR SETTLEMENT.—A brief statement explaining the reasons why the parties are proposing the settlement.

''(F) OTHER INFORMATION.—Such other information as may be required by the court.''.

(b) APPOINTMENT OF LEAD PLAINTIFF.—

(1) SECURITIES ACT OF 1933.—Section 20 of the Securities Act of 1933 (15 U.S.C. 77t) is amended by adding at the end the following new subsection:

''(i) PROCEDURES GOVERNING APPOINTMENT OF LEAD PLAINTIFF IN CLASS ACTIONS.—

''(1) EARLY NOTICE TO CLASS MEMBERS.—

''(A) IN GENERAL.—In any private action arising under this title that is brought on behalf of a class, not later than 20 days after the date on which the complaint is filed, the plaintiff or

plaintiffs shall cause to be published, in a widely circulated national business-oriented publication or wire service, a notice advising members of the purported plaintiff class—

''(i) of the pendency of the action, the claims asserted therein, and the purported class period; and

''(ii) that, not later than 60 days after the date on which the notice is published, any member of the purported class may move the court to serve as lead plaintiff of the purported class.

''(B) ADDITIONAL NOTICES MAY BE REQUIRED UNDER FEDERAL RULES.—Notice required under subparagraph (A) shall be in addition to any notice required pursuant to the Federal Rules of Civil Procedure.

''(2) APPOINTMENT OF LEAD PLAINTIFF.—

''(A) IN GENERAL.—Not later than 90 days after the date on which a notice is published under paragraph (1)(A), the court shall consider any motion made by a purported class member in response to the notice, and shall appoint as lead plaintiff the member or members of the purported plaintiff class that the court determines to be most capable of adequately representing the interests of class members (hereafter in this subsection referred to as the 'most adequate plaintiff') in accordance with this paragraph.

''(B) CONSOLIDATED ACTIONS.—If more than one action on behalf of a class asserting substantially the same claim or claims arising under this title has been filed, and any party has sought to consolidate those actions for pretrial purposes or for trial, the court shall not make the determination required by subparagraph (A) until after the decision on the motion to consolidate is rendered. As soon as practicable after such decision is rendered, the court shall appoint the most adequate plaintiff as lead plaintiff for the consolidated actions in accordance with this paragraph.

''(C) REBUTTABLE PRESUMPTION.—

''(i) IN GENERAL.—Subject to clause (ii), for purposes of subparagraph (A), the court shall adopt a presumption that the most adequate plaintiff in any private action arising under this title is the person or group of persons that—

''(I) has either filed the complaint or made a motion in response to a notice under paragraph (1)(A);

''(II) in the determination of the court, has the largest financial interest in the relief sought by the class; and

''(III) otherwise satisfies the requirements of Rule 23 of the Federal Rules of Civil Procedure.

''(ii) REBUTTAL EVIDENCE.—The presumption described in clause (i) may be rebutted only upon proof by a member of the purported plaintiff class that the presumptively most adequate plaintiff—

''(I) will not fairly and adequately protect the interests of the class; or

''(II) is subject to unique defenses that render such plaintiff incapable of adequately representing the class.

''(iii) DISCOVERY.—For purposes of clause (ii), discovery relating to whether a member or members of the purported plaintiff class is the most adequate plaintiff—

''(I) may not be conducted by any defendant; and

''(II) may be conducted by a plaintiff only if the plaintiff first demonstrates a reasonable basis for a finding that the presumptively most adequate plaintiff is incapable of adequately representing the class.

''(D) SELECTION OF LEAD COUNSEL.—The most adequate plaintiff shall, subject to the approval of the court, select and retain counsel to represent the class.''.

(2) SECURITIES EXCHANGE ACT OF 1934.—Section 21 of the Securities Exchange Act of 1934 (15 U.S.C. 78a et seq.) is amended by adding at the end the following new subsection:

''(k) PROCEDURES GOVERNING APPOINTMENT OF LEAD PLAINTIFF IN CLASS ACTIONS.—

''(1) EARLY NOTICE TO CLASS MEMBERS.—

''(A) IN GENERAL.—In any private action arising under this title that is brought on behalf of a class, not later than 20 days after the date on which the complaint is filed, the plaintiff or plaintiffs shall cause to be published, in a widely circulated national business-oriented publication or wire service, a notice advising members of the purported plaintiff class—

''(i) of the pendency of the action, the claims asserted therein, and the purported class period; and

''(ii) that, not later than 60 days after the date on which the notice is published, any member of the purported class may move the court to serve as lead plaintiff of the purported class.

''(B) ADDITIONAL NOTICES MAY BE REQUIRED UNDER FEDERAL RULES.—Notice required under subparagraph (A) shall be in addition to any notice required pursuant to the Federal Rules of Civil Procedure.

''(2) APPOINTMENT OF LEAD PLAINTIFF.—

''(A) IN GENERAL.—Not later than 90 days after the date on which a notice is published under paragraph (1)(A), the court shall consider any motion made by a purported class member in response to the notice, and shall appoint as lead plaintiff the member or members of the purported plaintiff class that the court determines to be most capable of adequately representing the interests of class members (hereafter in this subsection referred to as the 'most adequate plaintiff') in accordance with this paragraph.

''(B) CONSOLIDATED ACTIONS.—If more than one action on behalf of a class asserting substantially the same claim or claims arising under this title has been filed, and any party has sought to consolidate those actions for pretrial purposes or for trial, the court shall not make the determination required by subparagraph (A) until after the decision on the motion to consolidate is rendered. As soon as practicable after such decision is rendered, the court shall appoint the most adequate plaintiff as lead plaintiff for the consolidated actions in accordance with this paragraph.

''(C) REBUTTABLE PRESUMPTION.—

''(i) IN GENERAL.—Subject to clause (ii), for purposes of subparagraph (A), the court shall adopt a presumption that the most adequate plaintiff in any private action arising under this title is the person or group of persons that—

''(I) has either filed the complaint or made a motion in response to a notice under paragraph (1)(A);

''(II) in the determination of the court, has the largest financial interest in the relief sought by the class; and

''(III) otherwise satisfies the requirements of Rule 23 of the Federal Rules of Civil Procedure.

''(ii) REBUTTAL EVIDENCE.—The presumption described in clause (i) may be rebutted only upon proof by a member of the purported plaintiff class that the presumptively most adequate plaintiff—

''(I) will not fairly and adequately protect the interests of the class; or

''(II) is subject to unique defenses that render such plaintiff incapable of adequately representing the class.

''(iii) DISCOVERY.—For purposes of clause (ii), discovery relating to whether a member or members of the purported plaintiff class is the most adequate plaintiff—

''(I) may not be conducted by any defendant; and

''(II) may be conducted by a plaintiff only if the plaintiff first demonstrates a reasonable basis for a finding that the presumptively most adequate plaintiff is incapable of adequately representing the class.

''(D) SELECTION OF LEAD COUNSEL.—The most adequate plaintiff shall, subject to the approval of the court, select and retain counsel to represent the class.''.

SEC. 103. SANCTIONS FOR ABUSIVE LITIGATION.

(a) SECURITIES ACT OF 1933.—Section 20 of the Securities Act of 1933 (15 U.S.C. 77t) is amended by adding at the end the following new subsection:

''(j) SANCTIONS FOR ABUSIVE LITIGATION.—

''(1) MANDATORY REVIEW BY COURT.—In any private action arising under this title, upon final adjudication of the action, the court shall include in the record specific findings regarding compliance by each party and each attorney representing any party with each requirement of Rule 11(b) of the Federal Rules of Civil Procedure.

''(2) MANDATORY SANCTIONS.—If the court makes a finding under paragraph (1) that a party or attorney violated any requirement of Rule 11(b) of the Federal Rules of Civil Procedure, the court shall impose sanctions on such party or attorney in accordance with Rule 11 of the Federal Rules of Civil Procedure.

''(3) PRESUMPTION IN FAVOR OF ATTORNEYS' FEES AND COSTS.—

''(A) IN GENERAL.—Subject to subparagraphs (B) and (C), for purposes of paragraph (2), the court shall adopt a presumption that the appropriate sanction for failure of the complaint to comply with any requirement of Rule 11(b) of the Federal Rules of Civil Procedure is an award to the opposing party of all of the reasonable attorneys' fees and other expenses incurred as a direct result of the violation.

''(B) REBUTTAL EVIDENCE.—The presumption described in subparagraph (A) may be rebutted only upon proof by the party or attorney against whom sanctions are to be imposed that—

''(i) the award of attorneys' fees and other expenses will impose an undue burden on that party or attorney; or

''(ii) the violation of Rule 11(b) of the Federal Rules of Civil Procedure was de minimis.

''(C) SANCTIONS.—If the party or attorney against whom sanctions are to be imposed meets its burden under subparagraph (B), the court shall award the sanctions that the court deems appropriate pursuant to Rule 11 of the Federal Rules of Civil Procedure.''.

(b) SECURITIES EXCHANGE ACT OF 1934.—Section 21 of the Securities Exchange Act of 1934 (15 U.S.C. 78u) is amended by adding at the end the following new subsection:

''(l) SANCTIONS FOR ABUSIVE LITIGATION.—

''(1) MANDATORY REVIEW BY COURT.—In any private action arising under this title, upon final adjudication of the action, the court shall include in the record specific findings regarding compliance by each party and each attorney representing any party with each requirement of Rule 11(b) of the Federal Rules of Civil Procedure.

''(2) MANDATORY SANCTIONS.—If the court makes a finding under paragraph (1) that a party or attorney violated any requirement of Rule 11(b) of the Federal Rules of Civil Procedure, the court shall impose sanctions in accordance with Rule 11 of the Federal Rules of Civil Procedure on such party or attorney.

''(3) PRESUMPTION IN FAVOR OF ATTORNEYS' FEES AND COSTS.—

''(A) IN GENERAL.—Subject to subparagraphs (B) and (C), for purposes of paragraph (2), the court shall adopt a presumption that the appropriate sanction for failure of the complaint to comply with any requirement of Rule 11(b) of the Federal Rules of Civil Procedure is an award to the opposing party of all of the reasonable attorneys' fees and other expenses incurred as a direct result of the violation.

''(B) REBUTTAL EVIDENCE.—The presumption described in subparagraph (A) may be rebutted only upon proof by the party or attorney against whom sanctions are to be imposed that—

''(i) the award of attorneys' fees and other expenses will impose an undue burden on that party or attorney; or

''(ii) the violation of Rule 11(b) of the Federal Rules of Civil Procedure was de minimis.

''(C) SANCTIONS.—If the party or attorney against whom sanctions are to be imposed meets its burden under subparagraph (B), the court shall award the sanctions that the court deems

appropriate pursuant to Rule 11 of the Federal Rules of Civil Procedure.''.

SEC. 104. REQUIREMENTS FOR SECURITIES FRAUD ACTIONS.

(a) SECURITIES ACT OF 1933.—

(1) STAY OF DISCOVERY.—Section 20 of the Securities Act of 1933 (15 U.S.C. 77t) is amended by adding at the end the following new subsection:

''(k) STAY OF DISCOVERY.—In any private action arising under this title, during the pendency of any motion to dismiss, all discovery and other proceedings shall be stayed unless the court finds, upon the motion of any party, that particularized discovery is necessary to preserve evidence or to prevent undue prejudice to that party.''.

(2) PRESERVATION OF EVIDENCE.—Section 20 of the Securities Act of 1933 (15 U.S.C. 77t) is amended by adding at the end the following new subsection:

''(l) PRESERVATION OF EVIDENCE.—It shall be unlawful for any person, upon receiving actual notice that a complaint has been filed in a private action arising under this title naming that person as a defendant and that describes the allegations contained in the complaint, to willfully destroy or otherwise alter any document, data compilation (including any electronically recorded or stored data), or tangible object that is in the custody or control of that person and that is relevant to the allegations.''.

(b) SECURITIES EXCHANGE ACT OF 1934.—Title I of the Securities Exchange Act of 1934 (15 U.S.C. 78a et seq.) is amended by adding at the end the following new section:

''SEC. 36. REQUIREMENTS FOR SECURITIES FRAUD ACTIONS.

''(a) MISLEADING STATEMENTS AND OMISSIONS.—In any private action arising under this title in which the plaintiff alleges that the defendant—

''(1) made an untrue statement of a material fact; or

''(2) omitted to state a material fact necessary in order to make the statements made, in the light of the circumstances in which they were made, not misleading;

the complaint shall specify each statement alleged to have been misleading, the reason or reasons why the statement is misleading, and, if an allegation regarding the statement or omission is made on information and belief, the plaintiff shall set forth all information on which that belief is formed.

''(b) REQUIRED STATE OF MIND.—In any private action arising under this title in which the plaintiff may recover money damages only on proof that the defendant acted with a particular state of mind, the plaintiff's complaint shall, with respect to each act or omission alleged to violate this title, specifically allege facts giving rise to a strong inference that the defendant acted with the required state of mind.

''(c) MOTION TO DISMISS; STAY OF DISCOVERY.—

''(1) DISMISSAL FOR FAILURE TO MEET PLEADING REQUIREMENTS.—In any private action arising under this title, the court shall, on the motion of any defendant, dismiss the complaint if the requirements of subsections (a) and (b) are not met.

''(2) STAY OF DISCOVERY.—In any private action arising under this title, during the pendency of any motion to dismiss, all discovery and other proceedings shall be stayed unless the court finds upon the motion of any party that particularized discovery is necessary to preserve evidence or to prevent undue prejudice to that party.

''(3) PRESERVATION OF EVIDENCE.—It shall be unlawful for any person, upon receiving actual notice that a complaint has been filed in a private action arising under this title naming that person as a defendant and that describes the allegations contained in the complaint, to willfully destroy or otherwise alter any document, data compilation (including any electronically recorded or stored data), or tangible object that is in the custody or control of that person and that is relevant to the allegations.

''(d) LOSS CAUSATION.—In any private action arising under this title, the plaintiff shall have the burden of proving that the act or omission alleged to violate this title caused any loss incurred by the plaintiff. Damages arising from such loss may be mitigated upon a showing by the defendant that factors unrelated to such act or omission contributed to the loss.''.

SEC. 105. SAFE HARBOR FOR FORWARD-LOOKING STATEMENTS.

(a) SECURITIES ACT OF 1933.—Title I of the Securities Act of 1933 (15 U.S.C. 77a et seq.) is amended by inserting after section 13 the following new section:

''SEC. 13A. APPLICATION OF SAFE HARBOR FOR FORWARD-LOOKING STATEMENTS.

''(a) SAFE HARBOR.—

''(1) IN GENERAL.—In any private action arising under this title that is based on a fraudulent statement, an issuer that is subject to the reporting requirements of section 13(a) or section 15(d) of the Securities Exchange Act of 1934, a person acting on behalf of such issuer, or an outside reviewer retained by such issuer, shall not be liable with respect to any forward-looking statement, whether written or oral, if and to the extent that the statement—

''(A) projects, estimates, or describes future events; and

''(B) refers clearly (and, except as otherwise provided by rule or regulation, proximately) to—

''(i) such projections, estimates, or descriptions as forward-looking statements; and

''(ii) the risk that actual results may differ materially from such projections, estimates, or descriptions.

''(2) EFFECT ON OTHER SAFE HARBORS.—The exemption from liability provided for in paragraph (1) shall be in addition to any exemption that the Commission may establish by rule or regulation under subsection (e).

''(b) DEFINITION OF FORWARD-LOOKING STATEMENT.—For purposes of this section, the term 'forward-looking statement' means—

''(1) a statement containing a projection of revenues, income (including income loss), earnings (including earnings loss) per share, capital expenditures, dividends, capital structure, or other financial items;

''(2) a statement of the plans and objectives of management for future operations;

''(3) a statement of future economic performance contained in a discussion and analysis of financial condition by the management or in the results of operations included pursuant to the rules and regulations of the Commission;

''(4) any disclosed statement of the assumptions underlying or relating to any statement described in paragraph (1), (2), or (3); or

''(5) a statement containing a projection or estimate of such other items as may be specified by rule or regulation of the Commission.

''(c) EXCLUSIONS.—The exemption from liability provided for in subsection (a) does not apply to a forward-looking statement that is—

''(1) knowingly made with the expectation, purpose, and actual intent of misleading investors;

''(2) except to the extent otherwise specifically provided by rule, regulation, or order of the Commission, made with respect to the business or operations of the issuer, if the issuer—

''(A) has been, during the 3-year period preceding the date on which the statement was first made, convicted of any felony or misdemeanor described in clauses (i) through (iv) of section 15(b)(4)(B), or has been made the subject of a judicial or administrative decree or order arising out of a governmental action that—

''(i) prohibits future violations of the anti-fraud provisions of the securities laws, as that term is defined in section 3 of the Securities Exchange Act of 1934;

''(ii) requires that the issuer cease and desist from violating the anti-fraud provisions of the securities laws; or

''(iii) determines that the issuer violated the anti-fraud provisions of the securities laws;

''(B) makes the forward-looking statement in connection with an offering of securities by a blank check company, as that term is defined under the rules or regulations of the Commission;

''(C) issues penny stock, as that term is defined in section 3(a)(51) of the Securities Exchange Act of 1934, and the rules, regulations, or orders issued pursuant to that section;

''(D) makes the forward-looking statement in connection with a rollup transaction, as that term is defined under the rules or regulations of the Commission; or

''(E) makes the forward-looking statement in connection with a going private transaction, as that term is defined under the rules or regulations of the Commission issued pursuant to section 13(e) of the Securities Exchange Act of 1934; or

''(3) except to the extent otherwise specifically provided by rule or regulation of the Commission—

''(A) included in a financial statement prepared in accordance with generally accepted accounting principles;

''(B) contained in a registration statement of, or otherwise issued by, an investment company, as that term is defined in section 3(a) of the Investment Company Act of 1940;

''(C) made in connection with a tender offer;

''(D) made by or in connection with an offering by a partnership, limited liability corporation, or a direct participation investment program, as those terms are defined by rule or regulation of the Commission; or

''(E) made in a disclosure of beneficial ownership in a report required to be filed with the Commission pursuant to section 13(d) of the Securities Exchange Act of 1934.

''(d) STAY PENDING DECISION ON MOTION.—In any private action arising under this title, the court shall stay discovery during the pendency of any motion by a defendant (other than discovery that is specifically directed to the applicability of the exemption provided for in this section) for summary judgment that is based on the grounds that—

''(1) the statement or omission upon which the complaint is based is a forward-looking statement within the meaning of this section; and

''(2) the exemption provided for in this section precludes a claim for relief.

''(e) AUTHORITY.—In addition to the exemption provided for in this section, the Commission may, by rule or regulation, provide exemptions from liability under any provision of this title, or of any rule or regulation issued under this title, that is based on a statement that includes or that is based on projections or other forward-looking information, if and to the extent that any such exemption is, as determined by the Commission, consistent with the public interest and the protection of investors.

''(f) COMMISSION DISGORGEMENT ACTIONS.—

''(1) IN GENERAL.—If the Commission, in any proceeding, orders or obtains (by settlement, court order, or otherwise) a payment of funds from a person who has violated this title through means that included the utilization of a forward-looking statement, and if any portion of such funds is set aside or otherwise held for or available to persons who suffered losses in connection with such violation, no person shall be precluded from participating in the distribution of, or otherwise receiving, a portion of such funds by reason of the application of this section.

''(2) JUDGMENT FOR LOSSES SUFFERED.—In any action by the Commission alleging a violation of this title in which the defendant or respondent is alleged to have utilized a forward-looking statement in furtherance of such violation, the Commission may, upon a sufficient showing, in addition to all other remedies available to the Commission, obtain a judgment for the payment

of an amount equal to all losses suffered by reason of the utilization of the forward-looking statement.

''(g) EFFECT ON OTHER AUTHORITY OF COMMISSION.—Nothing in this section limits, either expressly or by implication, the authority of the Commission to exercise similar authority or to adopt similar rules and regulations with respect to forward-looking statements under any other statute under which the Commission exercises rulemaking authority.''.

(b) SECURITIES EXCHANGE ACT OF 1934.—Title I of the Securities Exchange Act of 1934 (15 U.S.C. 78a et seq.) is amended by adding at the end the following new section:

''SEC. 37. APPLICATION OF SAFE HARBOR FOR FORWARD-LOOKING STATEMENTS.

''(a) SAFE HARBOR.—

''(1) IN GENERAL.—In any private action arising under this title that is based on a fraudulent statement, an issuer that is subject to the reporting requirements of section 13(a) or section 15(d) of the Securities Exchange Act of 1934, a person acting on behalf of such issuer, or an outside reviewer retained by such issuer, shall not be liable with respect to any forward-looking statement, whether written or oral, if and to the extent that the statement—

''(A) projects, estimates, or describes future events; and

''(B) refers clearly (and, except as otherwise provided by rule or regulation, proximately) to—

''(i) such projections, estimates, or descriptions as forward-looking statements; and

''(ii) the risk that actual results may differ materially from such projections, estimates, or descriptions.

''(2) EFFECT ON OTHER SAFE HARBORS.—The exemption from liability provided for in paragraph (1) shall be in addition to any exemption that the Commission may establish by rule or regulation under subsection (e).

''(b) DEFINITION OF FORWARD-LOOKING STATEMENT.—For purposes of this section, the term 'forward-looking statement' means—

''(1) a statement containing a projection of revenues, income (including income loss), earnings (including earnings loss) per share, capital expenditures, dividends, capital structure, or other financial items;

''(2) a statement of the plans and objectives of management for future operations;

''(3) a statement of future economic performance contained in a discussion and analysis of financial condition by the management or in the results of operations included pursuant to the rules and regulations of the Commission;

''(4) any disclosed statement of the assumptions underlying or relating to any statement described in paragraph (1), (2), or (3); or

''(5) a statement containing a projection or estimate of such other items as may be specified by rule or regulation of the Commission.

''(c) EXCLUSIONS.—The exemption from liability provided for in subsection (a) does not apply to a forward-looking statement that is—

''(1) knowingly made with the expectation, purpose, and actual intent of misleading investors;

''(2) except to the extent otherwise specifically provided by rule, regulation, or order of the Commission, made with respect to the business or operations of the issuer, if the issuer—

''(A) has been, during the 3-year period preceding the date on which the statement was first made, convicted of any felony or misdemeanor described in clauses (i) through (iv) of section 15(b)(4)(B), or has been made the subject of a judicial or administrative decree or order arising out of a governmental action that—

''(i) prohibits future violations of the anti-fraud provisions of the securities laws;

''(ii) requires that the issuer cease and desist from violating the anti-fraud provisions of the securities laws; or

''(iii) determines that the issuer violated the anti-fraud provisions of the securities laws;

''(B) makes the forward-looking statement in connection with an offering of securities by a blank check company, as that term is defined under the rules or regulations of the Commission;

''(C) issues penny stock;

''(D) makes the forward-looking statement in connection with a rollup transaction, as that term is defined under the rules or regulations of the Commission; or

''(E) makes the forward-looking statement in connection with a going private transaction, as that term is defined under the rules or regulations of the Commission issued pursuant to section 13(e); or

''(3) except to the extent otherwise specifically provided by rule or regulation of the Commission—

''(A) included in financial statements prepared in accordance with generally accepted accounting principles;

''(B) contained in a registration statement of, or otherwise issued by, an investment company;

''(C) made in connection with a tender offer;

''(D) made by or in connection with an offering by a partnership, limited liability corporation, or a direct participation investment program, as those terms are defined by rule or regulation of the Commission; or

''(E) made in a disclosure of beneficial ownership in a report required to be filed with the Commission pursuant to section 13(d).

''(d) STAY PENDING DECISION ON MOTION.—In any private action arising under this title, the court shall stay discovery during the pendency of any motion by a defendant (other than discovery that is specifically directed to the applicability of the exemption provided for in this section) for summary judgment that is based on the grounds that—

''(1) the statement or omission upon which the complaint is based is a forward-looking statement within the meaning of this section; and

''(2) the exemption provided for in this section precludes a claim for relief.

''(e) AUTHORITY.—In addition to the exemption provided for in this section, the Commission may, by rule or regulation, provide exemptions from liability under any provision of this title, or of any rule or regulation issued under this title, that is based on a statement that includes or that is based on projections or other forward-looking information, if and to the extent that any such exemption is, as determined by the Commission, consistent with the public interest and the protection of investors.

''(f) COMMISSION DISGORGEMENT ACTIONS.—

''(1) IN GENERAL.—If the Commission, in any proceeding, orders or obtains (by settlement, court order, or otherwise) a payment of funds from a person who has violated this title through means that included the utilization of a forward-looking statement, and if any portion of such funds is set aside or otherwise held for or available to persons who suffered losses in connection with such violation, no person shall be precluded from participating in the distribution of, or otherwise receiving, a portion of such funds by reason of the application of this section.

''(2) JUDGMENT FOR LOSSES SUFFERED.—In any action by the Commission alleging a violation of this title in which the defendant or respondent is alleged to have utilized a forward-looking statement in furtherance of such violation, the Commission may, upon a sufficient showing, in addition to all other remedies available to the Commission, obtain a judgment for the payment of an amount equal to all losses suffered by reason of the utilization of the forward-looking statement.

''(g) EFFECT ON OTHER AUTHORITY OF COMMISSION.—Nothing in this section limits, either expressly or by implication, the authority of the Commission to exercise similar authority or to adopt similar rules and regulations with respect to forward-looking statements under any other statute under which the Commission exercises rulemaking authority.''.

(c) INVESTMENT COMPANY ACT OF 1940.—Section 24 of the Investment Company Act of 1940 (15 U.S.C. 80a–24) is amended by adding at the end the following new subsection:

''(g) REGULATORY AUTHORITY FOR FORWARD-LOOKING STATEMENTS.—

''(1) IN GENERAL.—The Commission shall review and, if necessary to carry out the purposes of this title, promulgate such rules and regulations as may be necessary to describe conduct with respect to the making of forward-looking statements that the Commission deems does not provide a basis for liability in any private action arising under this title.

''(2) REQUIREMENTS.—A rule or regulation promulgated under paragraph (1) shall—

''(A) include clear and objective guidance that the Commission finds sufficient for the protection of investors;

''(B) prescribe such guidance with sufficient particularity that compliance shall be readily ascertainable by issuers prior to issuance of securities; and

''(C) provide that forward-looking statements that are in compliance with such guidance and that concern the future economic performance of an issuer of securities registered under section 12 shall be deemed not to be in violation of this title.

''(3) EFFECT ON OTHER AUTHORITY OF COMMISSION.—Nothing in this subsection limits, either expressly or by implication, the authority of the Commission to exercise similar authority or to adopt similar rules and regulations with respect to forward-looking statements under any other statute under which the Commission exercises rulemaking authority.''.

SEC. 106. WRITTEN INTERROGATORIES.

(a) SECURITIES ACT OF 1933.—Section 20 of the Securities Act of 1933 (15 U.S.C. 77t) is amended by adding at the end the following new subsection:

''(m) DEFENDANT'S RIGHT TO WRITTEN INTERROGATORIES.—In any private action arising under this title in which the plaintiff may recover money damages only on proof that a defendant acted with a particular state of mind, the court shall, when requested by a defendant, submit to the jury a written interrogatory on the issue of each such defendant's state of mind at the time the alleged violation occurred.''.

(b) SECURITIES EXCHANGE ACT OF 1934.—Section 21 of the Securities Exchange Act of 1934 (15 U.S.C. 78u) is amended by adding at the end the following new subsection:

''(m) DEFENDANT'S RIGHT TO WRITTEN INTERROGATORIES.—In any private action arising under this title in which the plaintiff may recover money damages, the court shall, when requested by a defendant, submit to the jury a written interrogatory on the issue of each such defendant's state of mind at the time the alleged violation occurred.''.

SEC. 107. AMENDMENT TO RACKETEER INFLUENCED AND CORRUPT ORGANIZATIONS ACT.

Section 1964(c) of title 18, United States Code, is amended by inserting before the period '', except that no person may rely upon conduct that would have been actionable as fraud in the purchase or sale of securities to establish a violation of section 1962''.

SEC. 108. AUTHORITY OF COMMISSION TO PROSECUTE AIDING AND ABETTING.

Section 20 of the Securities Exchange Act of 1934 (15 U.S.C. 78t) is amended—

(1) by striking the section heading and inserting the following:

''LIABILITY OF CONTROLLING PERSONS AND PERSONS WHO AID AND ABET VIOLATIONS''; AND

(2) by adding at the end the following new subsection:

''(e) PROSECUTION OF PERSONS WHO AID AND ABET VIOLATIONS.—For purposes of any action brought by the Commission under paragraph (1) or (3) of section 21(d), any person that knowingly provides substantial assistance to another person in the violation of a provision of this title, or of any rule or regulation issued under this title, shall be—

''(1) deemed to be in violation of such provision; and

''(2) liable to the same extent as the person to whom such assistance is provided.''.

SEC. 109. LOSS CAUSATION.

Section 12 of the Securities Act of 1933 (15 U.S.C. 77l) is amended—

(1) by inserting ''(a) IN GENERAL.—'' before ''Any person'';

(2) by inserting '', subject to subsection (b),'' after ''shall be liable''; and

(3) by adding at the end the following:

''(b) LOSS CAUSATION.—In an action described in subsection (a)(2), the liability of the person who offers or sells such security shall be limited to damages if that person proves that any portion or all of the amount recoverable under subsection (a)(2) represents other than the depreciation in value of the subject security resulting from such part of the prospectus or oral communication, with respect to which the liability of that person is asserted, not being true or omitting to state a material fact required to be stated therein or necessary to make the statement not misleading, and such portion or all of such amount shall not be recoverable.''.

SEC. 110. APPLICABILITY.

The amendments made by this title shall not affect or apply to any private action arising under title I of the Securities Exchange Act of 1934 or title I of the Securities Act of 1933 commenced before the date of enactment of this Act.

TITLE II—REDUCTION OF COERCIVE SETTLEMENTS

SEC. 201. LIMITATION ON DAMAGES.

Section 36 of the Securities Exchange Act of 1934, as added by section 104 of this Act, is amended by adding at the end the following new subsection:

''(e) LIMITATION ON DAMAGES.—

''(1) IN GENERAL.—Except as provided in paragraph (2), in any private action arising under this title, the plaintiff's damages shall not exceed the difference between the purchase or sale price paid or received, as appropriate, by the plaintiff for the subject security and the value of that security, as measured by the median trading price of that security, during the 90-day period beginning on the date on which the information correcting the misstatement or omission is disseminated to the market.

''(2) EXCEPTION.—In any private action arising under this title in which damages are sought, if the plaintiff sells or repurchases the subject security prior to the expiration of the 90-day period described in paragraph (1), the plaintiff's damages shall not exceed the difference between the purchase or sale price paid or received, as appropriate, by the plaintiff for the security and the median market value of the security during the period beginning immediately after dissemination of information correcting the misstatement or omission and ending on the date on which the plaintiff sells or repurchases the security.''.

SEC. 202. PROPORTIONATE LIABILITY.

Title I of the Securities and Exchange Act of 1934 (15 U.S.C. 78a et seq.) is amended by adding at the end the following new section:

''SEC. 38. PROPORTIONATE LIABILITY.

''(a) APPLICABILITY.—This section shall apply only to the allocation of damages among persons who are, or who may become, liable for damages in any private action arising under this title. Nothing in this section shall affect the standards for liability associated with any private action arising under this title.

''(b) LIABILITY FOR DAMAGES.—

''(1) JOINT AND SEVERAL LIABILITY.—A person against whom a judgment is entered in any private action arising under this title shall be liable for damages jointly and severally only if the trier of fact specifically determines that such person committed knowing securities fraud.

''(2) PROPORTIONATE LIABILITY.—Except as provided in paragraph (1), a person against whom a judgment is entered in any private action arising under this title shall be liable solely for the portion of the judgment that corresponds to that person's degree of responsibility, as determined under subsection (c).

''(3) KNOWING SECURITIES FRAUD.—For purposes of this section—

''(A) a defendant engages in 'knowing securities fraud' if that defendant—

''(i) makes a material representation with actual knowledge that the representation is false, or omits to make a statement with actual knowledge that, as a result of the omission, one of the material representations of the defendant is false; and

''(ii) actually knows that persons are likely to rely on that misrepresentation or omission; and

''(B) reckless conduct by the defendant shall not be construed to constitute knowing securities fraud.

''(c) DETERMINATION OF RESPONSIBILITY.—

''(1) IN GENERAL.—In any private action arising under this title in which more than 1 person is alleged to have violated a provision of this title, the court shall instruct the jury to answer special interrogatories, or if there is no jury, shall make findings, concerning—

''(A) the percentage of responsibility of each of the defendants and of each of the other persons alleged by any of the parties to have caused or contributed to the violation, including persons who have entered into settlements with the plaintiff or plaintiffs, measured as a percentage of the total fault of all persons who caused or contributed to the violation; and

''(B) whether such defendant committed knowing securities fraud.

''(2) CONTENTS OF SPECIAL INTERROGATORIES OR FINDINGS.—The responses to interrogatories, or findings, as appropriate, under paragraph (1) shall specify the total amount of damages that the plaintiff is entitled to recover and the percentage of responsibility of each person found to have caused or contributed to the damages sustained by the plaintiff or plaintiffs.

''(3) FACTORS FOR CONSIDERATION.—In determining the percentage of responsibility under this subsection, the trier of fact shall consider—

''(A) the nature of the conduct of each person; and

''(B) the nature and extent of the causal relationship between that conduct and the damages incurred by the plaintiff or plaintiffs.

''(d) UNCOLLECTIBLE SHARE.—

''(1) IN GENERAL.—Notwithstanding subsection (b)(2), in any private action arising under this title, if, upon motion made not later than 6 months after a final judgment is entered, the court determines that all or part of a defendant's share of the judgment is not collectible against that defendant or against a defendant described in subsection (b)(1), each defendant described in subsection (b)(2) shall be liable for the uncollectible share as follows:

''(A) PERCENTAGE OF NET WORTH.—Each defendant shall be jointly and severally liable for the uncollectible share if the plaintiff establishes that—

''(i) the plaintiff is an individual whose recoverable damages under the final judgment are equal to more than 10 percent of the net financial worth of the plaintiff; and

''(ii) the net financial worth of the plaintiff is equal to less than $200,000.

''(B) OTHER PLAINTIFFS.—With respect to any plaintiff not described in subparagraph (A), each defendant shall be liable for the uncollectible share in proportion to the percentage of responsibility of that defendant, except that the total liability under this subparagraph may not exceed 50 percent of the proportionate share of that defendant, as determined under subsection (c)(2).

''(2) OVERALL LIMIT.—In no case shall the total payments required pursuant to paragraph (1) exceed the amount of the uncollectible share.

''(3) DEFENDANTS SUBJECT TO CONTRIBUTION.—A defendant against whom judgment is not collectible shall be subject to contribution and to any continuing liability to the plaintiff on the judgment.

''(e) RIGHT OF CONTRIBUTION.—To the extent that a defendant is required to make an additional payment pursuant to subsection (d), that defendant may recover contribution—

''(1) from the defendant originally liable to make the payment;

''(2) from any defendant liable jointly and severally pursuant to subsection (b)(1);

''(3) from any defendant held proportionately liable pursuant to this subsection who is liable to make the same payment and has paid less than his or her proportionate share of that payment; or

''(4) from any other person responsible for the conduct giving rise to the payment that would have been liable to make the same payment.

''(f) NONDISCLOSURE TO JURY.—The standard for allocation of damages under subsections (b) and (c) and the procedure for reallocation of uncollectible shares under subsection (d) shall not be disclosed to members of the jury.

''(g) SETTLEMENT DISCHARGE.—

''(1) IN GENERAL.—A defendant who settles any private action arising under this title at any time before final verdict or judgment shall be discharged from all claims for contribution brought by other persons. Upon entry of the settlement by the court, the court shall enter a bar order constituting the final discharge of all obligations to the plaintiff of the settling defendant arising out of the action. The order shall bar all future claims for contribution arising out of the action—

''(A) by any person against the settling defendant; and

''(B) by the settling defendant against any person, other than a person whose liability has been extinguished by the settlement of the settling defendant.

''(2) REDUCTION.—If a person enters into a settlement with the plaintiff prior to final verdict or judgment, the verdict or judgment shall be reduced by the greater of—

''(A) an amount that corresponds to the percentage of responsibility of that person; or

''(B) the amount paid to the plaintiff by that person.

''(h) CONTRIBUTION.—A person who becomes liable for damages in any private action arising under this title may recover contribution from any other person who, if joined in the original action, would have been liable for the same damages. A claim for contribution shall be determined based on the percentage of responsibility of the claimant and of each person against whom a claim for contribution is made.

''(i) STATUTE OF LIMITATIONS FOR CONTRIBUTION.—Once judgment has been entered in any private action arising under this title determining liability, an action for contribution shall be brought not later than 6 months after the entry of a final, nonappealable judgment in the action, except that an action for contribution brought by a defendant who was required to make an additional payment pursuant to subsection (d) may be brought not later than 6 months after the date on which such payment was made.''.

SEC. 203. APPLICABILITY.

The amendments made by this title shall not affect or apply to any private action arising under title I of the Securities Exchange Act of 1934 commenced before the date of enactment of this Act.

TITLE III—AUDITOR DISCLOSURE OF CORPORATE FRAUD

SEC. 301. FRAUD DETECTION AND DISCLOSURE.

(a) IN GENERAL.—The Securities Exchange Act of 1934 (15 U.S.C. 78a et seq.) is amended by inserting immediately after section 10 the following new section:

''SEC. 10A. AUDIT REQUIREMENTS.

''(a) IN GENERAL.—Each audit required pursuant to this title of the financial statements of an

issuer by an independent public accountant shall include, in accordance with generally accepted auditing standards, as may be modified or supplemented from time to time by the Commission—

''(1) procedures designed to provide reasonable assurance of detecting illegal acts that would have a direct and material effect on the determination of financial statement amounts;

''(2) procedures designed to identify related party transactions that are material to the financial statements or otherwise require disclosure therein; and

''(3) an evaluation of whether there is substantial doubt about the ability of the issuer to continue as a going concern during the ensuing fiscal year.

''(b) REQUIRED RESPONSE TO AUDIT DISCOVERIES.—

''(1) INVESTIGATION AND REPORT TO MANAGEMENT.—If, in the course of conducting an audit pursuant to this title to which subsection (a) applies, the independent public accountant detects or otherwise becomes aware of information indicating that an illegal act (whether or not perceived to have a material effect on the financial statements of the issuer) has or may have occurred, the accountant shall, in accordance with generally accepted auditing standards, as may be modified or supplemented from time to time by the Commission—

''(A)(i) determine whether it is likely that an illegal act has occurred; and

''(ii) if so, determine and consider the possible effect of the illegal act on the financial statements of the issuer, including any contingent monetary effects, such as fines, penalties, and damages; and

''(B) as soon as practicable, inform the appropriate level of the management of the issuer and assure that the audit committee of the issuer, or the board of directors of the issuer in the absence of such a committee, is adequately informed with respect to illegal acts that have been detected or have otherwise come to the attention of such accountant in the course of the audit, unless the illegal act is clearly inconsequential.

''(2) RESPONSE TO FAILURE TO TAKE REMEDIAL ACTION.—If, after determining that the audit committee of the board of directors of the issuer, or the board of directors of the issuer in the absence of an audit committee, is adequately informed with respect to illegal acts that have been detected or have otherwise come to the attention of the accountant in the course of the audit of such accountant, the independent public accountant concludes that—

''(A) the illegal act has a material effect on the financial statements of the issuer;

''(B) the senior management has not taken, and the board of directors has not caused senior management to take, timely and appropriate remedial actions with respect to the illegal act; and

''(C) the failure to take remedial action is reasonably expected to warrant departure from a standard report of the auditor, when made, or warrant resignation from the audit engagement;

the independent public accountant shall, as soon as practicable, directly report its conclusions to the board of directors.

''(3) NOTICE TO COMMISSION; RESPONSE TO FAILURE TO NOTIFY.—An issuer whose board of directors receives a report under paragraph (2) shall inform the Commission by notice not later than 1 business day after the receipt of such report and shall furnish the independent public accountant making such report with a copy of the notice furnished to the Commission. If the independent public accountant fails to receive a copy of the notice before the expiration of the required 1-business-day period, the independent public accountant shall—

''(A) resign from the engagement; or

''(B) furnish to the Commission a copy of its report (or the documentation of any oral report given) not later than 1 business day following such failure to receive notice.

''(4) REPORT AFTER RESIGNATION.—If an independent public accountant resigns from an engagement under paragraph (3)(A), the accountant shall, not later than 1 business day following the failure by the issuer to notify the Commission under paragraph (3), furnish to the Commission a copy of the accountant's report (or the documentation of any oral report given).

''(c) AUDITOR LIABILITY LIMITATION.—No independent public accountant shall be liable in a private action for any finding, conclusion, or statement expressed in a report made pursuant to paragraph (3) or (4) of subsection (b), including any rule promulgated pursuant thereto.

''(d) CIVIL PENALTIES IN CEASE-AND-DESIST PROCEEDINGS.—If the Commission finds, after notice and opportunity for hearing in a proceeding instituted pursuant to section 21C, that an independent public accountant has willfully violated paragraph (3) or (4) of subsection (b), the Commission may, in addition to entering an order under section 21C, impose a civil penalty against the independent public accountant and any other person that the Commission finds was a cause of such violation. The determination to impose a civil penalty and the amount of the penalty shall be governed by the standards set forth in section 21B.

''(e) PRESERVATION OF EXISTING AUTHORITY.—Except as provided in subsection (d), nothing in this section shall be held to limit or otherwise affect the authority of the Commission under this title.

''(f) DEFINITION.—As used in this section, the term 'illegal act' means an act or omission that violates any law, or any rule or regulation having the force of law.''.

(b) EFFECTIVE DATES.—The amendment made by subsection (a) shall apply to each annual report—

(1) for any period beginning on or after January 1, 1996, with respect to any registrant that is required to file selected quarterly financial data pursuant to the rules or regulations of the Securities and Exchange Commission; and

(2) for any period beginning on or after January 1, 1997, with respect to any other registrant.

The PRESIDING OFFICER. The Senator from New York.

Mr. D'AMATO. Mr. President, S. 240, the Private Securities Litigation Reform Act of 1995, is the bill we take up today. There is no doubt that this bill is considered by some to be rather contentious. But this legislation is important and necessary to fix the problem caused by frivolous lawsuits that are making it difficult for companies to raise the capital needed to fuel our economy.

This bill seeks to strike the right balance, which is always difficult, between protecting the rights of those who are truly aggrieved and yet not opening the door to frivolous litigation. This legislation is necessary as there has developed a small but very effective cadre of lawyers who bring suits not to help recover losses for those who are truly aggrieved but because they see an opportunity to strike it rich for themselves.

There is a term for this kind of lawsuit, they are called ''strike suits.'' A strike suit occurs when a lawyer searches very carefully for negative news announcements by a company or a decline in a company stock price. Then these lawyers race to the courthouse to file a suit alleging securities frauds, alleging mismanagement, or misinformation. I look to my colleagues on the floor from Alaska for an analogy—there is gold in the hills if a firm offers a security. There are lawyers who are mining that gold for themselves. Sometimes, even if a stock price goes up, lawyers will race to bring suits because they allege that they were not given information that this company would have higher earnings than anticipated. Imagine. If there is bad news, you are vulnerable. If there is good news, you are vulnerable.

Mr. President, the purpose of the courts and the American judicial system is not to make these lawyers rich. It is to legitimately protect those who have been aggrieved; those who have been taken advantage of, who have suffered due to fraud, or who have suffered due to the deliberate withholding of information or insider trading.

The question is not should these suits be stopped. The contentious nature of this legislation comes from the question of how to protect the rights of our citizens and the integrity of the capital markets to assure there is not insider trading, taking advantage of information, withholding information, or misrepresenting facts to steal people's money, and at the same time protect companies from strike suits.

Let me first commend my distinguished colleagues, Senators DOMENICI and DODD, for their tireless work in spearheading the effort to reform securities litigation. I also want to thank Senator GRAMM for his leadership on this issue as chairman of the Securities Subcommittee.

Over the past 2 years, the Banking Committee has heard substantial testimony that certain lawyers file frivolous strike suits alleging violations of Federal securities laws in hopes that defendants will quickly settle. These suits, which unnecessarily interfere with, and increase the cost of, raising capital, are often based on nothing more than a company's announcement of bad news, not evidence of fraud. In addition, the fact that many of these lawsuits are brought as class actions has produced an in terrorem effect on corporate America.

S. 240 provides a strong disincentive for filing abusive lawsuits. It hits strike suit artists where it hurts—in the pocketbook. S. 240 does not contain a loser-pays provision. That would go too far. A loser-pays provision makes it difficult, if not impossible, for injured investors to maintain a legitimate cause of action.

Instead, the bill requires courts to make specific findings about whether an attorney violated rule 11 and to sanction attorneys who do.

One study showed that, in the early 1980's every company in one part of the business sector that had a market loss of $20 million or more in its capitalization was sued. Another survey of venture-backed companies in existence for less than 10 years—small companies that are the engine of economic growth—showed that one in six of

those companies had been sued at least once.

These lawsuits are expensive. The statistics show that although many suits are still pending, these suits have consumed on average over 1,000 hours of management time and legal cost—per case—of over $690,000 that the company has had to pay out. That is a lot of time and that is a lot of money.

Does Congress want to let this trend continue? This Senator cannot sit idly by and permit small businesses to be the target of abusive lawsuits. Most of these companies are startup or high-technology businesses, which play an important role in our economy. These businesses provide new, innovative products to consumers, improving the quality of life and the way we conduct business.

Small startup, high-technology firms depend on research and development for their new products. As products succeed, fail, or sometimes just take longer to develop, the stock price of these companies may fluctuate. This stock price fluctuation or product development slowdown is not, on its face, evidence of fraud. Yet, in many States, alleging that a product did not succeed and the price of the company's stock dropped is enough to sustain a complaint in a securities fraud lawsuit.

S. 240 creates a uniform pleading standard that will help to weed out frivolous complaints before companies must pay heavy legal bills. S. 240, codifies the pleading standard of the second circuit in New York, which requires that a plaintiff plead facts giving rise to a strong inference of the defendant's fraudulent intent.

Small, startup, and high-technology companies have become sitting ducks for securities fraud lawsuits. The costs of defending a securities fraud complaint, which does not have to show any evidence of fraud, is enormous. According to the American Electronics Association, who testified at one of the committee's hearings, of the 300 or so lawsuits filed every year, almost 93 percent settle at an average settlement cost of $8.6 million.

Furthermore, it is not just the company that is sued. Other, peripheral, deep-pocket defendants are joined to ensure there is enough money available to produce a meaningful recovery. As a result, underwriters, lawyers, accountants, and other professionals have become prime targets of securities fraud lawsuits. Insurance companies that provide director and officer liability insurance also pay up in these settlements. In 1994 alone, insurers and companies paid out $1.4 billion to settle securities fraud lawsuits.

Mr. President, this is not to say that some of those suits may not have been bona fide. But all too often companies are paying simply to stop the litigation because they cannot afford the legal bills or they cannot afford the incredible negative exposure that a case can bring, especially under the system of joint and several liability.

S. 240 modifies the doctrine of joint and several liability for peripheral defendants, who are named in the lawsuit more for their deep pockets than their culpability.

In the current system, if you have any connection to the defendant companies, if they can tie you in at all, you can be held liable for the full amount of the judgment. Even that defendant who has only a scintilla of liability for wrongdoing, or culpability or negligence—not gross negligence, not knowing or wanton misconduct, not fraud—has a chance of being held 100 percent liable for damages. That is just not fair. That is wrong.

Who benefits from these settlements? Not the plaintiffs. According to the statistics, the victims of these so-called frauds generally get pennies on the dollar. They are just being used.

Not only is this unfair, but often the investors do not understand exactly what the settlement represents, what their portion of the settlement is, or why the lawyers even recommended the settlement.

S. 240 requires that certain information be provided to class members and that counsel be available to answer questions about the settlement.

No longer will attorneys be able to make a settlement for $6 million, $7 million, and not properly inform the people in the class. Nor will the attorneys be able to pocket most of the settlement while class members receive pennies for their losses.

As one witness told the committee, and I quote:

> As a stockholder, I feel that lawyers use the stockholders as a steppingstone, preying on their misfortune, as a means to file a lawsuit that will inevitably settle, in which the lawyers will reap millions in fees while their clients recover pennies on the dollar in their losses.

S. 240 limits the award of the attorney's fees to a ''reasonable'' percentage of the damages awarded to investors. Notably, it is the investors who end up paying the costs of these lawsuits.

Institutional investors, with about $9.5 trillion in assets, approximately $4.5 trillion of which are pension funds, are long-term investors. This means that the value of retirees' pension fund investments are adversely affected by abusive litigation. As the Council for Institutional Investors advised the committee, and I quote:

> We are . . . hurt if the system allows someone to force us to spend huge sums of money in legal costs by merely paying ten dollars and filing a meritless cookie cutter complaint against a company or its accountants.

Abusive litigation also severely impacts the willingness of corporate managers to disclose information to the marketplace. Many companies refuse to talk or write about future business plans, knowing that projections that do not materialize will inevitably lead to lawsuits, many of which will simply allege that a prediction did not come true. Once discovery begins, plaintiff's counsel begins what we call a fishing expedition for evidence. And as one witness told the committee, the overbroad discovery request in this typical case ended up with the company producing over 1,500 boxes of documents at an expense of $1.4 million. Companies cannot continue to spend the time and the money that these cases cost. So many times they are forced to settle meritless cases.

As a result, investors do not have the benefit of knowing about the future plans of a company because companies are afraid to make that information available. As a former SEC Chairman told the committee, and I quote:

> Shareholders are also damaged due to the chilling effect of the current system on the robustness and candor of disclosure. Understanding a company's own assessment of its future potential would be amongst the most valuable information shareholders and potential investors could have.

S. 240 will encourage companies to make what we call forward-looking statements by reducing the threat of abusive litigation. Companies that make projections and that provide a clear warning to investors that the projections may not be accurate will be protected from costly litigation.

Some have said that this safe harbor for forward looking statements would give license for companies to say anything. That it will give license to the quick buck artist, the penny stock guys, the people who come out with IPO's. This is not true. We have excluded newly started companies which have not established a track record from this protection. Only recognized companies with substantial interests will get this protection. Most importantly, if a defendant knowingly makes a false or misleading forecast, they are not protected.

The statement that this legislation will allow companies to knowingly lie and get away with it—and that statement has been made—is just not true. If you knowingly lie, if you intentionally mislead, you can be held liable. There is no safe harbor for initial public offerings, for blank check offerings, for rollups, for penny stocks, for tender offers and leveraged buyouts. Safe harbor does not affect the power to bring an enforcement case.

Now, exactly who are the victims of securities fraud? Many times, there is no victim. Instead there is just a professional plaintiff whose name appears in the lawsuits, these names appear time after time after time. In one case, a retired lawyer appeared as the lead plaintiff in 300 lawsuits, he bought small numbers of shares in many companies and then served when they were sued. Last year, an Ohio judge refused to permit class action certification, noting that the lead defendant had filed 182 class action suits in 12 years.

Now, that is not what the private right of action is intended to do.

S. 240 discourages the use of professional plaintiffs by eliminating the bonus payments to plaintiffs and prohibiting referral fees. In other words, if

you are one of these people who bought 10 shares in 700, 800, or 900 companies you can no longer receive a bonus when a lawyer uses your name for a suit.

The practice of using professional plaintiffs permits the lawyers to hire the client. Professional plaintiffs also permit the lawyer to win the ''race to the courthouse'' in filing a complaint. Often whoever files a claim first becomes the lead plaintiff, the lead counsel, even when multiple complaints are filed against the companies alleging securities fraud.

Because the huge settlements in these cases provide significant fees to counsel, the competition is fierce. This bill creates a new procedure to ensure that the plaintiffs who are legitimately damaged, who have a real stake, who are not these professional plaintiffs, who own 1 share or 10 shares in multiple companies, can control the suit. This bill says the institutional investors, the people who have billions in pension funds, the retirees, those managers will have a greater stake in the case.

Can you imagine empowering somebody who owns 10 shares to represent you when you represent 500 million. Someone who has a half billion dollars invested could have no say in who the attorney will be, or what the eventual settlement will be while the case is managed by someone who has only 10 shares.

Mr. DOMENICI. Will the Senator yield for some observations?

Mr. D'AMATO. Certainly.

Mr. DOMENICI. The Senator said it would be managed by shareholders with 10 shares.

Mr. D'AMATO. That is what is taking place now.

Mr. DOMENICI. Actually, it is even worse than that because it is managed by the lawyer of the shareholder of 10 shares.

Mr. D'AMATO. Correct. Because in many cases the shareholder receives a bonus from the lawyer but is not otherwise involved in the case.

Mr. DOMENICI. The lawyer calls himself an entrepreneurial lawyer in this case. He is in business. It is not the shareholder; it is the lawyer who is in the business of managing the lawsuit. In fact, I will quote some courts that have found that to be the case.

Mr. D'AMATO. That is correct. I thank the Senator for bringing this point to the floor. Again I would like to commend Senator DOMENICI and Senator DODD who have labored for years to craft a bill that is fair, that is balanced, that protects those investors, the small investors, the pension people, who have invested their life savings and also protects businesses who raise the capital that keeps our communities healthy, from lawyers who go after deep pocket firms and file suits against people just because their projections did not come true. This bill will curb private securities fraud lawsuits, but only the frivolous ones that result from abusive practices. Victims of securities fraud will not be left without remedy. The time for reform of this system is now. This bill has 51 cosponsors and I urge all of my colleagues to support this legislation. It is well crafted. It is contentious only because it tries to strike a balance. Whenever you try to find a middle ground there are people on either side who think you should go further in their direction. No one can doubt that the system is out of control and it needs fixing; that is what we attempt to do with this legislation.

Mr. President, I yield the floor.

Mr. DOMENICI. Senator DODD, why do you not proceed and I will follow you, if it is all right?

Mr. DODD. Let me inquire, Mr. President, of my colleague from Maryland, does my colleague from Maryland, the ranking member of the banking committee if he wishes to proceed first. I am obviously interested in the bill, but I also appreciate immensely the seniority system.

Mr. SARBANES. We are quite happy to hear the three proponents of the bill who are on the floor now. We heard from Senator D'AMATO, and we would be happy to hear from the Senator from Connecticut and Senator DOMENICI. And then those of us who oppose it might have a chance to make our statements. But I would be happy to defer to the Senator from Connecticut. Then we can address his comments.

Mr. DODD. I thank my colleague from Maryland.

Mr. President, let me begin by thanking my colleague from New Mexico. I worked with him for a long time on this issue, Mr. President. We go back several years. This is not a recent event but rather goes back into the previous Congress and before, so I thank him for his tremendous efforts in helping us fashion a piece of legislation here that we hope will attract the support of a substantial number of our colleagues. It has already, as my colleague from New York pointed out—and I thank my colleague from New York, the chairman of the Banking Committee, for his leadership on this issue for setting up a set of hearings for us, timely hearings, and a markup of this legislation and bringing the bill to the floor.

I also want to commend my colleague from Maryland who has a different point of view on this legislation but nonetheless is working cooperatively with us, expressing his points of view very forcefully and offered various amendments in the committee, and I am confident he will again on the floor.

Mr. President, this is an important day for American investors and for the American economy. This is the day we start a full Senate debate on a bill that would restore, in my view, fairness and integrity to our securities litigation system.

To some this may sound like a dry and technical subject. But in reality it is crucial to our investors, our economy and our international competitiveness. We are all counting on our high-technology firms to fuel our economy into the 21st century. We are counting on them to lead the charge for us in the global marketplace, so to speak. Those are the same firms that are most hamstrung, I would point out, by a securities litigation system that, frankly, works for no one, save plaintiffs' attorneys.

Over the past year-and-a-half the process by which private individuals bring securities lawsuits has been under the microscope. The result of this intense scrutiny has been to dramatically change the terms of the debate. We are no longer arguing about whether the current system needs to be repaired. We are now focused on how best to repair it. Even those who once maintained that the litigation system needed no reform are now conceding that substantive and meaningful changes are required if we are to maintain the fundamental integrity of private securities litigation.

The flaws, Mr. President, of the current system are simply too obvious to deny. The record is replete with examples of how the system is being abused, and misused. In fact, the Chairman of the Securities and Exchange Commission, Arthur Levitt, said at the beginning of this year—and I quote him—''There is no denying,'' he said, ''that there are real problems in the current system,''—speaking of securities litigation—''problems that need to be addressed not just because of abstract rights and responsibilities, but because investors and markets are being hurt by litigation excesses.''

The legislation under consideration today is based upon a bill that the distinguished Senator from New Mexico and I have introduced for the last several Congresses. While there are some provisions from the original version of S. 240 that, frankly, I would have liked to have seen included in this bill—and we will discuss that later—I understand, as I think my colleagues do, the need to produce a consensus document if you are going to proceed. Producing a balanced bill is never easy. The old saw, Mr. President, that ''if a compromise makes everyone somewhat angry, then it must be fair'' is perfectly apt for today's debate. But that is what we have today, Mr. President, a bill that carefully and considerately balances the need for our high-growth industries with the legitimate rights of investors, large and small.

I am proud of the spirit of fairness and equity that permeates this legislation. I am also proud, Mr. President, of the fact that this legislation tackles a very complicated and difficult issue in a thoughtful way that avoids excess and achieves, I believe, and I think my colleagues from New York and New Mexico do, a meaningful equilibrium under which all of the interested parties can survive and thrive.

Moreover, Mr. President, perhaps most importantly, this is a broadly bipartisan effort. This bill passed the

Banking Committee 11–4, with strong support from both sides of the political aisles. And the 51 cosponsors of S. 240 in this body are composed of U.S. Senators from both parties, reflecting all points on the so-called ideological spectrum. H.L. Mencken once said, every problem has a solution that is neat, simple, and usually wrong. Believe me, if there were a simple solution to the problem besetting securities litigation today almost everyone in this Chamber would have jumped at it. But those problems are so pervasive and complex that we have moved far beyond the point where the public interest is served by waiting for the courts or other bodies to fix them for us.

The private securities litigation system is far too important to the integrity and vitality of American capital markets to continue to allow it to be undermined by those who seek to line their own pockets with abusive and meritless suits. Let me be clear, Mr. President, private securities litigation is an indispensable tool with which defrauded investors can recover their losses without having to rely upon Government action.

Mr. President, I cannot possibly overstate just how critical securities lawsuits brought by private individuals are to ensuring public and global confidence in our capital markets. I believe that very deeply. These private actions help deter wrongdoing, help guarantee that corporate officers, auditors and directors, lawyers and others properly perform their jobs. That is the high standard to which this legislation seeks to return the securities litigation system. But as it stands today, the current system has drifted so far from that noble role that we see more buccaneering barristers taking advantage of the system than we do corporate wrongdoers being exposed by it.

But there is more at risk, Mr. President, if we fail to reform this flawed system. Quite simply put, the way the private litigation system works today is costing millions of investors, the vast majority of whom do not participate in these lawsuits, their hard-earned cash. As Ralph Whitworth of the United Shareholders Association told the securities subcommittee—I quote him—''The winners in these suits are invariably lawyers who collect huge contingency fees, professional 'plaintiffs,' who''—as our colleague from New York has already described—''collect bonuses, and, in cases where fraud has been committed, executives and board members who use corporate funds and corporate-owned insurance policies to escape personal liability. The one constant,'' he went on to say, ''is that the shareholders pay for it all.''

And Maryellen Anderson from the Connecticut Retirement and Trust Funds testified that the participants in the pension funds,

> * * * are the ones who are hurt if a system allows someone to force us to spend huge sums of money in legal costs * * * when that plaintiff is disappointed in his or her investment.
>
> Our pensions and jobs depend on our employment by and investment in our companies.
>
> If we saddle our companies with big and unproductive costs * * *. We cannot be surprised if our jobs and raises begin to disappear and our pensions come up short as our population ages.

There lies the risk of allowing the current securities litigation system to continue to run out of control. Ultimately, it is the average investor, the retired pensioner who will pay the enormous costs clearly associated with this growing problem.

Much of the problem lies in the fact that private litigation has evolved over the years as a result of court decisions rather than explicit congressional action.

Private actions under rule 10(b) were never expressly set out by Congress, but have been construed and refined by courts, with the tacit consent of Congress.

But the lack of congressional involvement in shaping private litigation has created conflicting legal standards and has provided too many opportunities for abuse of investors and companies.

First, it has become increasingly clear that securities class actions are extremely vulnerable to abuses by entrepreneurs masquerading as lawyers. As two noted legal scholars recently wrote in the Yale Law Review:

> * * * The potential for opportunism in class actions is so pervasive and evidence that plaintiffs' attorneys sometimes act opportunistically so substantial that it seems clear that plaintiffs' attorneys often do not act as investors' ''faithful champions.''

It is readily apparent to many observers in business, academia—and even Government—that plaintiffs' attorneys appear to control the settlement of the case with little or no influence from either the ''named'' plaintiffs or the larger class of investors.

For example, during the extensive hearings on the issue before the Subcommittee on Securities, a lawyer cited one case as a supposed showpiece—using his words—of how well the existing system works. This particular case was settled before trial for $33 million.

The lawyers asked the court for more than $20 million of that amount in fees and costs. The court then awarded the plaintiffs' lawyers $11 million and the defense lawyers for the company $3 million.

Investors recovered only 6.5 percent of their recoverable damages. That is 6½ cents on the dollar.

That is a case cited by those who are opposed to this legislation as a showcase example of how the system works.

This kind of settlement sounds good for entrepreneurial attorneys, but it does little to benefit companies, investors or even the plaintiffs on whose behalf the suit was brought.

It should not surprise anyone that those who benefit most from the flaws in the current system are the same people who are the most vociferous in opposing the provisions in this bill that would clean up the mess.

It is not the companies, nor investors nor even plaintiffs—large or small—who are fueling the opposition.

The loudest squeals come from the lawyers who will no longer be able to feather their nests by picking clean as many corporate defendants as possible.

A second area of abuse is frivolous litigation. Companies, particularly in the high-technology and bio-technology industries, face groundless securities litigation days or even hours after adverse earnings announcements.

In fact, the chilling consequence of these lawsuits is that companies, especially new companies in emerging industries, frequently release only the minimum information required by law so that they will not be held liable for any innocent, forward-looking statement that they may make.

In fact, I received a letter just this past Monday from Raytheon Co., one of the Nation's largest high-technology firms.

Raytheon made a tender offer of $64 a share for E-Systems, Inc., a 41-percent premium over the closing market price. Let me allow Raytheon to explain what happened next:

> Notwithstanding the widely held view that the proposed transaction was eminently fair to E-Systems shareholders, the first of eight purported class action suits was filed less than 90 minutes after the courthouse doors opened on the day that the transaction was announced. Ninety minutes, Mr. President. This was a letter sent to me on June 19.

You tell me we do not have a problem here. Minutes after announcement, the lawsuits, before any examination, any inquiry is made, 90 minutes later there is a lawsuit being filed for millions of dollars claiming unfairness. That is what is wrong, and that is what this bill tries to correct. This ought not to be a matter of division in this body. This is a mess, and it should be cleaned up.

No one lawyer could possibly have investigated the facts this quickly. What the lawyers want is to force a quick settlement. That is all this is. This is a holdup. You would get arrested in most States if you try to do this to a retailer.

The Supreme Court in Blue Chip Stamps versus Manor Drug Store echoed this concern about abusive litigation, pointing out:

> [I]n the field of Federal securities laws governing disclosure of information, even a complaint which by objective standards may have very little success at trial has a settlement value to the plaintiff out of any proportion to its prospect of success at trial . . . the very pendency of the lawsuit may frustrate or delay normal business activity of the defendant which is totally unrelated to the lawsuit.

The third area of abuse is that the current framework for assessing liability is simply unfair and creates a powerful incentive to sue those with the

deepest pockets, regardless of their relative complicity in the alleged fraud.

The result of the existing system of joint and severable liability is that plaintiffs' attorneys seek out any possible corporation or individual that has little relation to the alleged fraud—but which may have extensive insurance coverage or otherwise may have financial reserves.

Although these defendants could frequently win their case were it to go to trial—we all know it happens—the expense of protracted litigation and the threat of being forced to pay all the damages makes it more economically efficient for them to settle with the plaintiffs' attorneys, and that is what happens.

The current Chairman of the SEC, Arthur Levitt, as well as two former Chairmen, Richard Breeden and David Ruder, have all spoken out against the abuses of joint and several liability.

Chairman Levitt said at the April 6 hearing of the Securities subcommittee that he was concerned, in particular, ''about accountants being unfairly charged for amounts that go far beyond their involvement in particular fraud.''

Frequently, these settlements do not appreciably increase the amount of losses recovered by the actual plaintiffs, but instead add to the fees collected by the plaintiff's attorneys.

Again, the current system has devolved to a point where it favors those lawyers who are looking out for their own financial interest over the interest of virtually everybody else involved, and that is the fact.

The bill before us today contains four major initiatives to deal with these complex problems. Let me identify them briefly.

First, the legislation empowers investors so that they, not their lawyers, have greater control over their class action cases by allowing the plaintiff with the greatest claim to be the named plaintiff and allowing that plaintiff to select their counsel.

That sounds so commonsensical, I do not know why we have to write it into law, but that is what you have to do. In fairness to the plaintiff, that ought to be the lead plaintiff.

Second, it gives investors better tools to recover losses and enhances existing provisions designed to deter fraud, including providing a meaningful safe harbor for legitimate forward-looking statements so that issuers are encouraged, instead of discouraged, from volunteering much-needed disclosures that potential investors ought to have in making decisions about whether to invest or not.

Third, it limits opportunities for frivolous or abusive lawsuits and makes it easier to impose sanctions on those lawyers who violate their basic professional ethics.

Fourth, it rationalizes the liability of deep-pocket defendants, while protecting the ability of small investors to fully collect all damages awarded them through a trial or settlement.

I would like to go into each of these provisions in a bit more detail.

EMPOWERING INVESTORS

The legislation ensures that investors, not a few marauding attorneys, decide whether to bring a case, whether to settle, and how much the lawyers should receive, and that is the way it ought to work.

The bill strongly encourages the courts to appoint the investor with the greatest losses—usually an institutional investor like a pension fund—to be the lead plaintiff.

This plaintiff would have the right to select the lawyer to pursue the case on behalf of the class.

So for the first time in a long time, plaintiffs' lawyers would have to answer to a real client, not one they have hired.

We are bringing an end to the days when a plaintiffs' attorney can crow to Forbes magazine that ''I have the greatest practice of law in the world. I have no clients.''

That is one of the lawyers talking. A practice without clients, and that is what this has turned into.

The bill requires that notice of settlement agreements that are sent to investors clearly spell out important facts such as how much investors are getting—or giving up—by settling and how much their lawyers will receive in the settlement.

This means that plaintiffs would be able to make an informed decision about whether the settlement is in their best interest—or in their lawyers' best interest.

Again, what a radical thought to be included in the bill, allowing the plaintiffs to decide what is in their interest rather than the attorneys deciding it. The fact we even have to write this into law tells you volumes about the mess the present system is in.

And the bill would end the practice of the actual plaintiffs receiving, on average, only 6 to 14 cents for every dollar lost, while 33 cents of every settlement dollar goes to the plaintiffs' attorneys. This is the average you get back as a plaintiff under the present system.

The bill would require that the courts cap the award of lawyers' fees based upon how much is recovered by the investors. And that is what it ought to be, how much do the investors get back as plaintiffs, then you set the fees.

Simply putting in a big bill will not guarantee the lawyers multimillion-dollar fees if their clients are not the primary beneficiaries of the settlement.

Taken together, Mr. President, these provisions should ensure that defrauded investors are not cheated a second time by a few unscrupulous lawyers who siphon huge fees right off the top of any settlement.

The bill requires auditors to detect and report fraud to the SEC, thus enhancing the reliability of independent audits.

The bill maintains current standards of joint and several liability, for those persons who knowingly engage in a fraudulent scheme, thus keeping a heavy financial penalty for those who would commit knowing security fraud.

The bill restores the ability of the Securities and Exchange Commission to pursue those who aid and abet in securities fraud, a power that was diminished by the Supreme Court in last year's Central Bank decision.

The bill clarifies current requirements that lawyers should have some facts to back up their assertion of securities fraud by adopting the reasonable standards established by the Second Circuit Court of Appeals. Again, Mr. President, imagine that—you have to have facts to back up your assertion. I thought that is what they taught you. I learned that in the first year of law school. Now I have to write it into the legislation here because we get these 90-minute lawsuits being filed. So we require that in the bill as well.

This legislation is there for using a pleading standard that has been successfully tested in the real world. This is not some arbitrary standard pulled out of a hat or crafted in committee; it follows the Federal courts.

The bill requires the courts, at settlement, to determine whether any attorney violated rule 11 of the Federal Rules of Civil Procedure, which prohibits lawyers from filing claims that they know to be frivolous.

If a violation has occurred, the bill mandates that the court must levy sanctions against the offending attorney. Though the bill does not change existing standards of conduct, it does put some teeth into the enforcement of these standards.

The bill provides a moderate and, I think, thoughtful statutory safe harbor for predicative statements made by companies that are registered with the SEC.

Further, the bill provides no such safety for third parties, like brokers, or in the case of merger offers, tenders, roll-ups, or the issuance of penny stocks. There are a number of other exceptions to the safe harbor provisions, as well, Mr. President, which my colleagues can look at.

Importantly, anyone who deliberately makes a false and misleading statement in a forecast is not protected by the safe harbor. My colleague from New York made that point, and I emphasize it again here this afternoon.

By adopting this provision, the Senate will encourage, we think, responsible corporations to make the kind of disclosures about projected activities that are currently missing in today's investment climate.

This legislation preserves the rights and claims of small investors. The legislation preserves the rights of investors whose losses are 10 percent or more of their total net worth of $200,000.

These small investors will still be able to hold all defendants responsible for paying off settlements, regardless of the relative guilt of each of the named parties.

But while the bill will fully protect small investors, so that they will recover all of the losses to which they are entitled, the bill establishes a proportional liability system to discourage the naming of deep-pocket defendants, merely because they have deep pockets.

The court would be required to determine the relative liability of all the defendants and thus deep-pocket defendants would only be liable to pay a settlement amount equal to their relative role in the alleged fraud.

A defendant who was only a 10 percent responsible for the fraudulent actions would be required to pay 10 percent of the settlement amount.

In some circumstances, the bill requires solvent defendants to pay 150 percent of their share of the damages to help make up for any uncollectible amount in the lawsuit.

By creating a two-tiered system of both proportional liability and joint and several liability, the bill preserves the best features, I think, of both systems.

There has been an unfortunate tendency during the course of many debates on these proposed reforms for advocates on both sides to increase the rhetoric, to use increasingly extreme examples in order to politicize and polemicize the atmosphere of this debate.

When the steam of overheated rhetoric blows off, when the extremists on both sides have been discounted, I believe we are left with the inescapable conclusion: Action is needed—and needed now, Mr. President—to make the securities litigation system work in the manner for which it was designed.

A system of litigation in which merits and facts matter little, in which plaintiffs recover less than lawyers, in which defendants are named solely on the basis of the amount of their insurance coverage, or the size of their wallets, does not serve us well at all.

In short, we have a system in which there is increasingly little integrity and confidence—a system incapable of producing confidence and integrity in our Nation's capital markets.

This bill is an important step in repairing an ailing system. It is a bill that has strong bipartisan support within this Chamber. And it has broad support outside these walls, as well, from virtually every segment of the business and investment community.

Mr. President, this legislation needs to be enacted and I urge my colleagues to support it.

Mr. President, I noted that our colleague from New Mexico was on the floor. I do not know whether or not he is still here. I see him now.

I yield the floor, and we will now hear from the Senator from New Mexico.

The PRESIDING OFFICER (Mr. INHOFE). The Senator from New Mexico is recognized.

Mr. DOMENICI. Mr. President, might I first say that when I first started working on this legislation—actually, it came to me after reading some articles about the litigation and the contention of both sides as to what was happening to class action lawsuits as they applied to securities and to companies that issued stocks and securities and bonds—I came to a conclusion that it would be a very interesting thing to look into and, perhaps, see what I could do.

I made one glaring mistake. I had arrived at the conclusion that there was something very, very wrong, but I failed to understand, I say to my friend and cosponsor—and we varied. I put it in one time and the Senator put it in the next time. It was Domenici-Dodd and then Dodd-Domenici. But I failed to recognize how those lawyers, small in number, for this is not the whole of America, this is a small group. I failed to recognize or perceive how tough they were going to be in saving their domain—and tough they are, and tough they are to this day. They are getting people to run advertisements in our States—in my State, it is not so easy because Representative RICHARDSON, a Democrat, voted for the House reform; I am for it here, and all the Representatives from New Mexico voted for it. I do not know where Senator BINGAMAN is, but he was a cosponsor. Maybe he does not like the bill on the floor. So I am not talking for myself on these ads. Can you imagine what point we have reached, in terms of lawyering, and the old concept of who the lawyers work for? Who do they belong to? They belong to the justice system and they work for the courts of America. Here they are running ads and protecting their domain. It is rather amazing. I never thought we were going to get into this when we started down this path, but I soon found out.

I want to say that, while this cries out for reform, apparently our judges are not going to make the reform, although they created the rules; these are court-created private rights of action, as I understand it. Section 10b private lawsuits are not statutory. Judges created it. They are not going to fix it. Although, there seems to be a tendency, in the last 6 months, for the judges to be a little more through this process. Senator DODD explained that somewhere they caught them red-handed. Ninety minutes after an announcement of a merger intention, they are suing for collusion or fraud and just claiming huge damages. The courts are beginning to say, ''What is this?''

But I began to find out, when we started having our first hearings, that we were talking about some very, very rich lawyers—not rich over 40 years of practice or an accumulation of assets, but because they made millions every year—not a few hundred thousand dollars, but millions. And surely it would be tough for them to ever appreciate that maybe they were not adding very much of a positive nature to the United States society, or to securities or bonds or stocks, or to the plaintiffs that they sued for as a class.

Now, our country is suffering from hyperlexia. That is a nice word, and I believe it means a serious disease caused by an excessive reliance on law and lawyers. Hyperlexia. It is a disease—and a disease it is. For those who think that hyperlexia, relying upon law and lawyers, is the basic ingredient for good regulation, for good behavior, you have just told the American people that it is going to cost you an awful lot of money for that, because it is inconclusive, and very vague. Each case sets its own pattern. So people do not know how to behave and what the law is.

So from this Senator's standpoint, I do not think we would be here if it were not for the chairman of the Banking Committee, the distinguished Senator from New York, Senator D'AMATO, who took this cause on and, obviously, is leading it here on the floor today. He brought a balance to it, because he had a feel for both sides. I thank him tonight because we are going to make some good, solid law. When it is interpreted by our courts and by the bar of America, we are going to end up doing right, because those who are cheating and ripping off stockholders—they are going to still get stuck, but those doing almost nothing wrong, except their company's stock price goes up or down, they are no longer going to get stuck for millions in settlements just to pay to the lawyers.

So, from this Senator's standpoint, I do not usually use words like vexatious or vexatiousness, but I found that the Supreme Court described this confusing system, ''presents a danger of vexatiousness, different in degree and kind from that which accompanies litigation in general.'' I believe my good friend Senator DODD alluded to that; that is, there is a degree and a kind of vexatiousness about this that is much different from a normal complaint in a lawsuit in negligence or other Common Law torts.

So let me define the word. I tried to find out what does the word means, because to me it meant to bring fear or such. It comes from a verb, to vex, which means, ''to harass, to torment, to annoy, to irritate and to worry.'' And, as a noun it is synonymous with ''troublesome.'' In the legal context it means ''a case without sufficient grounds brought in order to cause annoyance to the defendant or a proceeding instituted maliciously and without probable cause.''

It is time that we stop vexatious securities litigation, and fix it we will. During our hearings—and I am no longer on the Banking Committee, and I will help the chairman out wherever I can for the next couple of days as we attempt to pass this legislation, but obviously the responsibility and the credit is to the Banking Committee and those who are working on it now.

During the hearings, we found that the threat of a huge jury award is being misused to sue emerging, rapidly

growing companies, especially in the high-technology and biomedical technologies where stock prices are volatile under the best of circumstances. A drop in a stock price is all that these—and I will call them, for the remainder of my discussion on the floor, I will name those lawyers involved in this as a new kind of lawyer. I will call them entrepreneurial lawyers, because they are in it to manage the suit, and in a very real sense the lawsuit becomes their business rather than the business of the plaintiff. The way it is currently structured, they do not even have to respond to anyone.

Let me proceed.

Cases settle regardless of merit. We could go on with many, many reasons for this litigation not serving the public good. But let me wrap up with just one on this first part of my comments. This system is not deterring fraud because insurance companies, most of the time, make the settlements and pay the money. So what we have and what is wrong with this system is very, very fundamental. Lawyers, not clients, control these cases. That is number one.

Number two, this system obstructs voluntary disclosure of information. Who will voluntarily disclose information when they are apt to be liable for just doing that?

And the last is defendants are forced to settle meritless cases. When you add that up, it is time to change the system.

The Wall Street Journal labeled these cases as ''the class action shakedown racket.'' That is what it is, a shakedown racket.

Let me talk about who wins when one of these lawsuits is settled, for this is the most significant part of it all. Investors are only recovering about 7 cents on the dollar when compared with the amount of losses alleged. The lawyers earned on average $2.12 million per settlement, about 30 percent of the whole, during a 12-month period ending July of 1993 according to a study by the National Economic Research Association.

Other studies confirm that investors recover only 6 to 14 cents under the system. Obviously, the system is not working, because the SEC and others who have analyzed it say that a system, to be working, is supposed to do the following. The primary yardstick is that it enables defrauded investors to seek compensatory damages and thereby recover the full amount of their losses. So we ought to start by measuring this system against the criterion of full amount of losses recovered. You will find it fails. On a scale of A through F—F being failure. It gets worse than an F in terms of its ineffectiveness.

As investors are recovering a few cents on the dollar, attorneys are boasting that these securities class actions are a perfect practice, according to—I think my friend from Connecticut quoted this one—one of these distinguished lawyers, who said in Forbes magazine, ''The reason this is a great practice is because there are no clients.''

These are clientless lawsuits. These are clientless lawyers who claim to be acting in the best interests of investors. The institutional investors believe that these lawsuits are merely transferring money from one set of shareholders to another with the plaintiffs' class action lawyers taking a lion's share. That looks a lot like greenmail.

Mr. BENNETT. Will the Senator yield for a question?

Mr. DOMENICI. I will be pleased to yield.

Mr. BENNETT. You speak of clientless lawyers and clientless cases. Is that the reason all of the money goes to the lawyers and not to the clients?

Mr. DOMENICI. You got it. As a matter of fact, what it really means is that the lawyers have quickly become more interested in settling a lawsuit on terms that are satisfactory to their pockets. So, if it looks like they can fight on but they are going to get $6 million in this settlement and the others are going to get 8 cents on their shares, that is looking pretty good.

What prevents it from happening? Maybe the judges are getting more involved now. But, normally, for many and many a year, nobody had anything to say about it. In reality, although if you had a lawyer here, he would tell you that he is bound by this and he is bound by that and the judge can do this and the judge can do that. But history says they are getting the lion's share of the money and the client or plaintiff is not getting very much.

Does one think the client is managing the case and calling the shots? In many cases the members of the class do not even know what is happening. Let me also tell you, plaintiffs are not making very much unless they are very fortunate. If they are professional plaintiffs, they are doing pretty well because they receive bonuses of $10,000 to $15,000 for letting the lawyers use their names, and, frankly, we are going to prohibit that. I think that ought to be prohibited and should have been prohibited. It has no place in solid lawyering. What happens is some people have shares in 300 or 400 companies and the lawyers the same person's name on 20, 30, 50 lawsuits. These are individuals with 10 shares and the lawyers give them this bonus. The rest of the class does not make very much, but that fellow does very well. I think we had one, Mr. President, who was 92 or 94 years old that we found out—do you remember that case? He had a lot of these. He had 10 shares of stock and he was a very big friend of these entrepreneurial law firms. He was readily available. He pulled the trigger.

Mr. BENNETT. Will the Senator yield further?

Mr. DOMENICI. I am pleased to.

Mr. BENNETT. It is my understanding that the judge referred to him in one case as ''the unluckiest investor in the world'' because he was always suing for losses. He did not invest in order to make any money. He invested so he could be a professional plaintiff, and he was in court so often the judge referred to him in that manner.

Mr. DOMENICI. I was not there when that was done and I do not recall it, but it surely seems right to me. And if you say it, it happened. It is exactly what is happening.

The race to the courthouse has been described by both the chairman of the full committee and by Senator DODD. I will not proceed beyond saying that whenever you find, in the American judicial system, that a substantial portion of a certain kind of lawsuit is based upon the premise that whoever gets to the courthouse first gets to control the lawsuit, then it seems to me you do not have to have that situation very long until you ought to look and see what is this all about? Because it is an invitation to craft poor complaints, to state anything you want or invent things and then waste a year and a half of time, money, and take depositions to try to find out whether you have a lawsuit or not. When I started practicing law—maybe that is passe—that was not the way to practice. Now it seems to be for many of those, and they would like to keep it that way for this system.

It also makes us do sloppy legal work—not us but those who are doing it—sloppy legal work. The cookie-cutter complaint, which is probably the one the Senator referred to as to Raytheon—cookie-cutter complaint. All the allegations are the same, case after case. Senator D'AMATO, we have one, they always use the same allegations and the same words. The lawyers just change the name of the company being sued—it pops out of the computer. In fact, I think some of them have terminals where they are hooked into the stock market. The stock is going to fluctuate and the computer is going to spit out a lawsuit.

The lawyer just signs his name on it. But a judge took one of these not so lightly because a plaintiff's lawyer inserted in the complaint the name of the company he was suing: Philip Morris. They accused Philip Morris of fraudulently manufacturing toys, t-o-y-s, not cigarettes. Philip Morris does not manufacture toys, a typical cookie cutter complaint—a demand for hundreds of millions of dollars in damages. This bill is about stopping this kind of lawsuit. It is shoot, aim, ready. Instead of ready, aim, shoot, it is shoot, aim, ready.

The National Association of Securities and Commercial Lawyers suggests that 56 percent of the cases they had hand picked to provide data on to the Securities Subcommittee were filed within 30 days of the triggering event. A triggering event is usually a missed earnings projection, a so-called earnings surprise. Twenty-one percent of the cases were filed within 48 hours of

the triggering event. The stock prices dropped, and class action suits are filed with little due diligence to investigate the basis of the case.

But you can count on it. If the lawyer is a good entrepreneur and sticks with it, he will get paid something even for that kind of suit, whether there is anything to the suit. Companies have to settle.

Of the 111 cases filed in 1990 and 1991, 25 percent were filed by pet plaintiffs, the plaintiff that we described a while ago. In 25 percent of the cases, they went out and hired the plaintiff and paid them a bonus. Even if they had a lawsuit that was decent, the point of it is that was an effort to get to the courthouse quick with the pet plaintiff. So you could be the lead counsel, or at least you could maybe be representing $500 million worth of securities for a $150, $200, $300 pet plaintiff.

So from this Senator's standpoint, the bill before us is a very good approach to settling and solving these problems. As I see it, the details of this bill will be debated and amendments will be offered. So I am not going to go into details.

But I would like to just close with one current situation. I know about it because a company has one of its biggest production plants in New Mexico. The general counsel for Intel testified that Intel had been sued. When it was a startup, such a suit probably would have bankrupted the company long before it investigated in microchips.

This is an example of the innovation and entrepreneurship that these cases are threatening to snuff out. So let me give you one about Intel. If this had been filed when it was a young company, we would not have Intel.

On December 19, 1994, Intel was sued over the flaw in the Pentium chip. Despite the fact that it would take 29,000 years for the chip's flaw to become apparent, and despite the fact that on December 20, 1994, Intel responded to market concerns about the chip by implementing its ''no questions asked'' replacement policy. The lawyers who filed on December 19 are asking $6 million in fees for 1 day's work. Even though they dropped the suit and Intel did not have to pay anything to the shareholders, the lawyers have inserted a provision in the settlement which forbids defendants, the defendant Intel, from publicly discussing the fee or any other provision of the settlement.

S. 240 before this Senate would require disclosure of settlements, even this kind of settlement—nothing to the plaintiffs, everything to the lawyers. With better disclosure I doubt whether that will happen very often.

Can you imagine a public disclosure for that? We did not do anything for anyone, but we get $6 million. That is nice. It is interesting. Would you not like to be doing that? It is pretty good. It might even be better than being a Senator. Who knows?

Well, there are many more like this. I have a great deal of explanation.

Prof. Joseph Grundfest of Stanford Law School has said that the plaintiffs lawyers have done little if anything to earn their hefty request.

Says Grundfest: ''much of the settlement would have come about even if no lawsuit was filed * * * to reward lawyers for that at all is the equivalent of double-dipping.''

Mesa Airlines' officers and directors were sued for keeping their mouth shut. They had a corporate policy not to talk to analysts. The analysts make some projections about Mesa. The airline neither confirmed nor denied whether they agreed or disagreed with the analysts. The mesa officers just tried to run an efficient airline. The plaintiff's lawyers have alleged that Mesa's failure to talk about analysts' projections was ''deemed to be acceptance'' of the content of the analysts' prediction. The company missed the earnings projections, their stock price dropped, and they got sued.

Prudential Bache Securities. Investors represented by the firm who testified before the committee received 4 cents on the dollar under the class action lawsuit settlement. The firm took $6 million plus expenses. Other investors who hired their own lawyers, and went to arbitration came away fully compensated.

Frivolous litigation is time-consuming and distracts chief executive and other corporate officials from productive economic activity. It has been estimated that defending one of these lawsuits is as costly as starting up a totally new product line.

These frivolous lawsuits are such a menace to publicly traded companies on the NASDAQ that the NASDAQ Self-Regulatory Organization decided to recommend reforms to Senator DODD and me.

SYSTEM IS BROKEN

The conclusion of any one who has examined the issue carefully is: The current securities implied private litigation system is broken. The system is broken because too many cases are pursued for the purpose of extracting settlements from corporations and other parties, without regard to the merits of the case. The settlements yield large fees for plaintiffs' lawyers but compensate investors only for a fraction of their actual losses. Janet Cooper Alexander of Stanford University has proven that most securities class actions are settled by the parties without regard to whether the case has merit. Chairman of the SEC, Arthur Levitt acknowledged that ''virtually all securities class actions are settled for some fraction of the claimed damages, and some alleged that settlements often fail to reflect the underlying merits of the cases. If true, this means that weak claims are overcompensated and strong claims are undercompensated.'' Prof. John Coffee has concluded the plaintiffs' attorneys in many securities class actions appear to ''sell out their clients in return for an overly generous fee award,'' and that the defendants may also join in this collusion by passing on the cost of the settlement to absent parties, such as insurers.''

The plaintiffs' lawyers like to sue the officers and directors, and the accountants, underwriters and issuers. These cases are brought under joint and several liability which means that any one defendant could be made to pay the entire judgment even if he or she were only marginally responsible. If a person is one percent liable he/she could be asked to write a check for 100 percent of the awarded damages. That is not fair.

Our bill builds upon the State law trend of imposing proportionate liability.

Under proportionate liability each person found responsible pays a share of the damages that is equivalent to the harm he or she caused.

Our bill would retain joint and several liability for the really bad actors, but would provide proportionate liability for those parties only incidentally involved. In response to the Securities and Exchange Commission's staff concern we also included a special provision to address the problem of the insolvent codefendant. We believe this provision strikes the correct balance. This liability reform is important to outside officers and directors, auditors and others who often get named in the law suit but who have little if any true liability. It helps change the economics that drive these frivolous cases.

BIG MONEY DAMAGES

The system seeks huge monetary recoveries from outside directors, outside lawyers, and independent accountants who may be only marginally involved in activities for which corporate officers should be primarily liable. Experienced people are declining to serve on boards because of the liability exposure. This denies growing companies the expertise they need to succeed. The system is not deterring fraud because insurance companies pay most of the settlement amount.

The current system also discriminates against defendants. People who have deep pockets are often named in the law suits to coerce settlements. Accountants bear the brunt of our current system of joint and several liability. Suing the accountant insures that the settlement will be 50 percent larger because of their deep pocket.

The fundamental purposes of the Federal securities laws are to promote investor confidence and deter fraud. But the system is failing its deterrent mission. A system where the merits don't matter isn't a deterrent. A system where most settlement funds are paid by insurance companies isn't a deterrent.

A system that is having a chilling effect on corporate disclosure is actually working at cross-purposes with its objective. Class action securities cases inhibit voluntary disclosure by corporations, discouraging them from making any public statements except

when absolutely required, for fear that anything they say which might move the company's stock price might trigger a lawsuit.

In order for our capital markets to function efficiently, for Wall Street analysts to evaluate stocks, or for main street investors to buy, hold, or sell a stock, they need a lot of information. An important type of information is the projections of how the company will do in the future—the so-called forward-looking statement.

By its definition, a forward looking statement is a prediction about the future. Earnings projections, growth rate projections, dividend projections, and expected order rates are examples of forward looking statements. Predictions about the future have become one of the more common types of frivolous securities lawsuits filed.

Few people know why it is important for the bill to provide a safe harbor for predictive statements. Let me ask a few questions to help my colleagues understand.

First, do you believe that earnings projections about the future are promises?

Second, do you believe stock volatility is stock fraud?

Third, do you believe that projections about future earnings should be unanimous among every single employee in the company in order for that prediction to be eligible for protection for abusive lawsuits?

Fourth, do you believe that it is fraud when an officer or director or other employee receives a significant portion of his compensation in stock options sells stock regularly?

Fifth, if you believe that any statement about future performance can, and should be used against you no matter how well intended, no matter how well reasoned, regardless of how dramatic circumstances change?

The five statements I just read are the basis for most predictive statement, class action securities cases.

To me, these cases represent everything that I find discouraging about our legal system—professional plaintiffs, fishing expeditions for documents, boiler-plate fraud accusations, contingency fee lawyers, and settlement that resemble legal blackmail.

A safe harbor is needed to encourage companies to make information available. To keep the system honest, there are laws on the books to make sure that executive trades do not create even the appearance of illegal insider trading, the process is highly regulated by the SEC. In addition, most companies have their own internal policies regulating when executives can make trades. These controls ensure that executives do not trade during lengthy black out periods within months of important announcements. The SEC also has imposed rules regarding executive selling that require prompt reports, which are then available to the investing public.

First, if you believe that efficient capital markets need information, you agree with investors, the SEC, and securities analysts. As the California Public Employees Retirement System [CALPERS] recently stated, ''forward-looking statements provide extremely valuable and relevant information to investors.''

SEC Commissioner Arthur Levitt recently wrote: ''There is a need for a stronger safe harbor than currently exists. The current rules have largely been a failure * * *.''

Former SEC Chairman Richard Breeden testified:

> Shareholders are also damaged due to the chilling effect of the current system on the robustness and candor of disclosure. . . . Understanding a company's own assessment of its future potential would be among the most valuable information shareholders and potential investors could have about a firm.

Second, if you believe that disclosure of information helps investors make intelligent decisions you should be calling for reform because the very nature of forward-looking statements makes them particularly fertile ground for abusive lawsuits. If a company fails to meet analysts' profit expectations, or production of a new product is delayed, it is often faced with a law suit. As a result, companies are increasingly reluctant to disclose forward-looking information. Numerous studies have documented this trend. According to testimony given by James Morgan, National Venture Capital Association, one study found that over two-thirds of venture capital firms were reluctant to discuss their performance with analysts or the public because of the threat of litigation.

Keeping quiet is not an escape route from these frivolous cases. One company in my State had a policy not to talk to analysts which developed from a fear of being sued. But they were sued anyway for failing to disagree with an analysts' projection. The legal theory was that the company incorporated by silence the analysis's estimations. Mesa Airlines is not the only company to be sued for keeping its mouth shut.

Third, if you recognize that predictions about the future do not always come true and that investing has some risks attached, you should support the statutory safe harbor: Institutional investors are the most professional, sophisticated investors in our markets. In addition, they have a fiduciary duty to retirees to prudently manage their pension funds. These institutional investors have argued that forward looking statements accompanied by warnings should be per se immune from liability. The Council of Institutional Investors told the SEC that any safe harbor must be 100 percent safe. This means that all information in it must be absolutely protected from law suits even if it is irrelevant or unintentionally or intentionally false or misleading. The bill does not go as far as the institutional investors suggested. We think it strikes the correct balance.

The SEC Rule 175 permits issuers to make forward looking statements about certain categories of information provided that the prediction is made in good faith with a reasonable basis. Currently, this SEC safe harbor rule actually discourages issuers from voluntarily disclosing this information. To quote the SEC:

> Some have suggested that companies that make voluntary disclosure of forward-looking information subject themselves to a significantly increased risk of securities antifraud class actions.'' As such, ''contrary to the Commission's original intent, the safe harbor is currently invoked on a very limited basis in the litigation context.'' Critics state that the safe harbor is ineffective in ensuring quick and inexpensive dismissal of frivolous private lawsuits. (SEC Securities Act of 1993 Release No. 7101, October 1994)

An American Stock Exchange survey supports that conclusion. It found that 75 percent of corporate CEO's limit the information disclosed to investors out of fear that greater disclosure would lead to an abusive lawsuit.

As the SEC has realized, forward-looking statements are predictions—not promises. This bill recognizes that a reasonable basis for such information doesn't have to be a unanimous basis. This bill creates a statutory safe harbor which:

Provides a clear definition of ''forward looking statement'' for both the 1933 and 1934 acts;

Covers written and oral statements;

Requires that the predictive statement contain a Miranda warning describing the statement as a prediction and a disclosure that there is a risk that the actual results may differ materially from those predicted;

No safe harbor protection for statements knowingly made with the expectation, purpose, and actual intent of misleading investors. There is no so-called license to lie under this bill;

Protects statements made by issuers, persons acting on their behalf such as officers, directors, employees, and outside reviewers retained by the issuer. Accounting and law firms are eligible for the safe harbor, brokers and dealers are not;

No safe harbor protection for initial public offerings [IPOs], penny stocks, roll-up transactions and issuers who have violated the securities laws;

Provides the SEC with new authority to sue for damages on behalf of investors in predictive statement cases. The SEC's recovery should be much better than the average of 6 cents on the dollar currently recovered by private attorneys;

Encourages SEC to review the need for additional safe harbors.

New Mexico is a high-technology State. It is the home to Los Alamos and Sandia National Laboratories. We have more engineers and PhD's per capita than any State in the Union. High technology and high growth companies are our future, yet they are the companies that are hit most often by frivolous lawsuits. They have volatile stock. I do not really see how New Mexico can expect to develop the spin-off companies from the labs and to

grow high technology companies unless we pass legislation that has a meaningful safe harbor for predictions about the future.

I am pleased that the final bill includes a statutory safe harbor. Originally, S. 240 contained an instruction to the SEC to develop a new safe harbor. However, the SEC has been working on it for more than a year and they are gridlocked. They held some very good hearings and some of the material presented before them has been very useful to the committee in developing its statutory safe harbor.

We want to get back to basics. The central principle underlying the securities laws is that investors should receive accurate and timely disclosure of the financial condition of publicly traded companies.

The objective of this bill is to recognize that litigation isn't George Orwell's 1994 version of Big Brother looking out for investors' best interest. We reject ''stock volatility is fraud''; we reject ''justice is pennies for lawyers''; We reject ''equity is millions for lawyers.''

S. 240 will encourage disclosure, strengthen confidence, realine the role of the entrepreneurial plaintiffs' lawyers with the best interests of their clients, and change the risk/benefit equation of taking cases to the jury.

The basis of our bill is to make the plaintiffs' bar, ''Stop, think, investigate, and research.''

The spirit motivating this bill is the obligation that Chairman Levitt identified, ''to make sure the current system operates in the best interest of all investors. This means focusing not just on the interests of those who happen to be aggrieved in a particular case, but also on the interests of issuers and the markets as a whole.''

With S. 240, we have decided to take a historic step. For the first time since Congress created the Federal securities laws in 1933 and 1934, we have decided to revisit section 10(b) and rule 10b–5 in order to fix many of the problems created by the courts and our own failure to act during the past 60 years. If you would like to put an end to the inconsistency and confusion, you should support S. 240. If you would like to relieve the courts of the burden of revisiting 10b–5 every year and put an end to the judicial activism associated with this area of the law, vote for this bill. If you want to allow the abuse of investors and companies, the stifling of job creation and the continued shaping of the contours of the law to continue, you should vote against it. In the end, S. 240 will give courts greater guidance to deal with meritorious securities class actions and greater incentive to eliminate most, if not all, of the frivolous ones. We owe it to investors, companies, and our capital markets to take this historic step.

Mr. President, hopefully, in the next few days, we will change this law and go to conference with the House, and maybe before this year is out, set some of these things straight.

I yield the floor.

Mr. SARBANES addressed the Chair.

The PRESIDING OFFICER (Mr. BENNETT). The Senator from Maryland is recognized.

Mr. SARBANES. Mr. President, I have listened to my colleagues now for well over an hour very carefully. This is an important piece of legislation, and it deserves very careful attention. I think perhaps the best summary, in a sense, of some of the statements we have heard was the comment made by my distinguished colleague from Connecticut, who said that there might well be a tendency in the course of debating this bill to use increasingly extreme examples and overheated rhetoric. I think that was his exact quote. And we have already seen some of that at work over the opening debate that has taken place now for well over an hour.

I do not know of anyone who differs with the goal of deterring frivolous lawsuits, and sanctioning appropriate parties when such lawsuits are filed. My colleague from Connecticut at one point said this bill is an important step in repairing an ailing system. Parts of this bill are an important step in doing that. Other parts of this bill will, in my judgment, contribute to an unhealthy system. And the challenge that is before the Senate over the next few days as we work through this legislation is to be able to distinguish between those parts in this legislation.

In the course of this consideration, amendments will be offered. Amendments were offered in committee. Some were decided by very close votes. We hope by proposing those amendments to be able to focus on what the problems are. But let me just generally make the point that this legislation as now drafted will affect far more than frivolous suits. The examples that have been cited, the horror cases, are examples that any of us would want to address and try to deal with. This bill goes beyond that. This bill overreaches that mark and, in fact, in my judgment, will make it more difficult for investors to bring legitimate fraud actions. That is the essential question. That is the discernment we have to make here.

Jane Bryant Quinn said in an article less than a week ago in the Washington Post, entitled ''Making it Easier to Mislead Investors,'' and I quote from the opening of this article:

> A lawsuit protection bill speeding through Congress will give freer rein to Wall Street's eternal desire to hype stocks. It's cast as a law against frivolous lawsuits that unfairly torture corporations and their accountants, but the versions in both the House and Senate do far more than that. They effectively make it easier for corporations and stockholders to mislead investors. Class action suits against the deceivers would be costly for small investors to file and incredibly difficult to win. I'm against frivolous lawsuits. Who is not? But these bills would choke meritorious lawsuits, too.

At the end of this long article, she concludes as follows, and I quote:

> Baseless lawsuits do indeed exist. Lawyers may earn too much from a suit, leaving defrauded investors too little. The incentives to sue should be reduced, but not with these bills. They let too many crooks get away.

And an article in the U.S. News & World Report, the most recent issue, by Jack Egan entitled, ''Will Congress Condone Fraud,'' says in part, and I quote, speaking about this legislation:

> It just might come to be remembered as legislation that has steeply tilted the playing field against investors. It makes it very hard for shareholders to sue over legitimate grievances.

And, at the end, it goes on to say:

> The pendulum has swung too far toward the lawyers, and now it is swinging too far the other way. Unfortunately, some major investor frauds may have to take place before it again moves back toward the center.

The challenge for the Senate is to get this pendulum in the right place to begin with, here, now, over the course of the next few days so that they do not have to have major investor frauds in order to swing the pendulum back toward the center.

This legislation, and certain of its provisions, goes too far. In fact, two provisions that were in the original bill as introduced were dropped in the course of evolving this legislation. Those provisions, had they remained in the bill, would deal with a number of the problems which we intend to outline over the next few days in the course of its consideration. That was in the original proposed legislation, and was taken out. As a consequence, the legislation, in my judgment, has been weakened, and the balance has tilted in an unfair and unjust way.

The fact is that this bill will make it harder to bring securities fraud actions and to recover losses. Individual investors, local governments, pension plans, all will find it more difficult to bring fraud actions and to recover their full damages as a result of this legislation.

I know examples are going to be used, but I say to my colleagues, you have to move beyond those examples. The provisions in the bill which deal with the egregious examples that would be cited ought to be in this bill and they ought to be passed. The difficulty is that the bill overreaches and it goes too far. Let me give you some instances of that.

The safe harbor provision will for the first time protect fraudulent statements within the Federal securities laws. Individual investors will not be able to sue people who make fraudulent projections of important items such as revenues and earnings.

The SEC has been working to address the question of forward looking statements, but the Chairman of the SEC, Arthur Levitt, has raised very serious questions about the safe harbor provision in this legislation. If I wanted to engage in the Senator's rhetorical combat that he spoke about earlier, I would say, rather than safe harbor, it is a pirate's cove that is in this legislation. The proportionate liability provision will for the first time put fraud

participants ahead of innocent victims and individual investors. Fraud victims will not recover their full damages.

The argument is made that you have people who are held liable, they vary in their proportionate share of the responsibility, and the deep-pocket people are held entirely liable when the principal malefactor goes bankrupt or cannot pay the award. This is in a suit that is proven to be successful, been upheld as being meritorious in court. Well, there is a problem amongst the malefactors. But to throw the burden on the innocent victim as a solution to that problem is a departure which really astounds one.

In other words, you are the victim of the fraud. A number of people have participated in it in varying degrees, and you are going to be held to assume a large part of the burden before the participants in the fraud have to be responsible. As a consequence, fraud victims will not recover the full damages.

The managers of the bill speak about its balance. In fact, the bill has a tilt, as this column in U.S. News & World Report said, and I quote it again:

It just might come to be remembered as legislation that's steeply tilted the playing field against investors.

There is not included in this legislation provisions that the SEC and the State securities regulators feel are necessary to protect victims of securities fraud. I was interested that the Senator from Connecticut quoted Arthur Levitt as saying in a hearing there is a need for change.

That is quite true. But Chairman Levitt criticizes the measure that is now before us. If you are going to cite Arthur Levitt as supporting the proposition for change, which actually none of us is contending against here—we are not coming to the floor and saying do nothing, just leave the existing law. We are saying that there are some provisions in this legislation that ought to be passed, but there are other provisions that overreach and go too far, and Arthur Levitt says the same.

The very person cited in a sense as an expert for the proposition that change ought to be made has also told us that some of the changes contained in this legislation are undesirable.

In addition to the safe harbor issue, which we will come back and revisit in the course of the amending process, is the proportionate liability issue. This bill does not extend the statute of limitations for securities fraud actions. Fraud victims will not have time to bring their cases to court. That in fact was a provision that was in the original bill as introduced and has been dropped from the provision now before us.

The bill does not restore the ability of investors to sue individuals who aid and abet violations of the securities laws. Fraud victims will not be able to pursue everyone who helped commit a securities fraud.

It is asserted that this bill as is has reached the proper balance, but the fact remains that it is opposed, the legislation as before us, by a host of securities regulators, by State and local government officials, by consumer groups, by labor unions, by bar associations, and others, including the North American Securities Administrators Association, the Government Finance Officers Association, the National League of Cities, the U.S. Conference of Mayors, the Consumer Federation of America, and a number of the large trade unions, including the Teamsters and the United Auto Workers.

The assault from the other side has been on the lawyers. These groups do not represent the lawyers. These groups represent the public, consumers, investors, and they have all reached the judgment that this bill is unbalanced—unbalanced.

Let me just speak for a moment or two about the background. It is asserted by some that there is a crisis in the securities litigation system that is threatening our capital markets. Let us take a look very quickly at our capital markets and some statistics about it.

For 1993, the U.S. equity market capitalization stood at $5.2 trillion, over one-third of the world total. More than 600 foreign companies from 41 different countries are listed on our exchanges and more foreign companies come every year. Average daily trading volume on the New York Stock Exchange has increased from 45 million shares in 1980 to 291 million shares in 1994. From 1980 to 1993, mutual fund assets increased by more than 10 times to $1.9 trillion.

In effect, Mr. President, what this demonstrates is that the U.S. capital markets remain the largest and the strongest in the world.

Now, this, I would submit, is not in spite of the Federal securities laws but in part because of the Federal securities laws. This tremendous growth in the American marketplace and its preeminent position worldwide is not in spite of Federal securities laws but in part because of Federal securities laws. The Federal securities laws have generally provided for sensible regulation and self-regulation of exchanges, brokers, dealers, and issues.

This regulation has helped to sustain investor confidence in our markets. Without that confidence in the markets, you are not going to get the kind of dominant position that we have had. And confidence in the markets on the part of investors is a consequence not only of the public regulatory scheme administered by the SEC but also because investors know that they have effective remedies against people who try to swindle them.

In other words, if you weaken unreasonably or improperly these remedies, you are going to affect investor ability to have recourse in instances in which they have been unfairly or improperly exploited, and the consequence of that is you begin to cast a doubt over the integrity of the securities markets.

Both Republican and Democratic Chairmen of the Securities and Exchange Commission have stressed the crucial role of the private right of action in maintaining investor confidence.

In 1991, then-Chairman Richard Breeden testified before the Banking Committee, and I quote:

Private actions . . . have long been recognized as a ''necessary supplement'' to actions brought by the Commission and as an ''essential tool'' in the enforcement of the Federal securities laws. Because the Commission does not have adequate resources to detect and prosecute all violations of the Federal securities laws, private actions perform a critical role in preserving the integrity of our securities markets.

Current Chairman Arthur Levitt echoed this very point in testimony delivered this year.

The Securities Subcommittee held hearings over the past 2 years reviewing the Federal securities litigation system. It received testimony from plaintiffs' lawyers, from corporate defendants, from accountants, from academics, from securities regulators, and from investors. There was considerable disagreement among the witnesses over how well the existing securities litigation system is functioning. Some argued, and my colleagues who have already spoken argue, American business, particularly younger companies in the high-technology area, face a rising tide of frivolous securities litigation. Corporate executives suggested that securities class actions are filed when a company fails to meet projected earnings or its stock drops.

Clearly, some frivolous securities cases are filed as, indeed, some frivolous cases of every sort are filed. However, the Director of the SEC's Division of Enforcement testified in June 1993 with respect to statistics from the Administrative Office of the U.S. Courts:

The approximate aggregate number of securities cases, including Commission cases, filed in Federal district courts does not appear to have increased over the past 2 decades. Similarly, while the approximate number of securities class actions filed during the past 3 years is significantly higher than during the 1980's, the numbers do not reveal the type of increase that ordinarily would be characterized as an ''explosion.''

Some said that these actions were inhibiting the capital formation process. In fact, initial public offerings have been setting records in recent years: $39 billion in 1992; $57 billion in 1993. The $34 billion in initial public offerings in 1994 was exceeded only by the records set in the previous 2 years.

On May 22, the New York Times reported, and I quote:

One of the great booms in initial public offerings is now under way, providing hundreds of millions in new capital for high-tech companies, windfalls for those with good enough connections to get in on the offerings and millions in profit for the Wall Street firms underwriting the deals.

Asserting a crisis in securities litigation, which the figures do not seem to bear out, this bill makes it harder to bring lawsuits. We should ask ourselves

not simply whether these changes will result in fewer lawsuits, but whether each proposed change will make the securities laws serve our Nation better. We should ask whether legitimate cases can still be brought or whether the provisions in this legislation, which it is asserted are designed to screen out the frivolous cases, will go beyond that and, in effect, make it difficult to bring legitimate cases.

I hope Members will focus on this very issue. It is very important not to become, as it were, mesmerized by these extreme examples which my colleague from Connecticut said would obviously be cited, because no one is protecting the extreme examples.

The question is whether the provisions here will make it impossible or highly difficult to bring legitimate actions, whether it will swing the pendulum too far in the other direction. One of the articles I quoted said:

> Unfortunately, some major investor frauds will have to take place before it, again, moves back toward the center.

We do not want that to happen. We have an opportunity here on the floor by correcting this legislation to prevent that from happening.

Let me very quickly turn to some of the major defective provisions in the legislation.

First is the so-called safe harbor provision. This legislation has a statutory definition of an exemption from liability for forward-looking statements which the bill broadly defines to include both oral and written statements. Examples include projections of financial items such as revenues and income for the quarter or for the year, estimates of dividends to be paid to shareholders, and statements of future economic performance, such as sales trends and development of new products. In short, forward-looking statements include precisely the type of information that is most important to investors deciding whether to purchase a particular stock.

The SEC currently has a safe harbor regulation for forward-looking statements that protects specified forward-looking statements that were made in documents filed with the SEC. To sustain a fraud suit, the investor must show that the forward-looking information lacked a reasonable basis and was not made in good faith.

The SEC, recognizing the desirability of having some safe harbor for forward-looking statements, has been seeking to define it in regulation.

It has been conducting, in fact, a comprehensive review of its safe harbor regulation. This legislation, as originally introduced by Senators DOMENICI and DODD, would have allowed the SEC to continue this regulatory effort. And Chairman Levitt endorsed that approach. However, the committee print substitute for S. 240, unlike the bill as introduced, abandoned this approach in favor of enacting a statutory safe harbor.

The committee print now before us, in effect, protects fraudulent forward-looking statements. For the first time, such statements would find shelter under the Federal securities law. In a letter to the committee, Chairman Levitt, expressing his personal views about a legislative approach to safe harbor, stated:

> A safe harbor must be thoughtful so that it protects considered projections but never fraudulent ones.

The bill, as reported, provides safe harbor protection for all statements except those knowingly made with the expectation, purpose, and actual intent of misleading investors. The committee report states that expectation, purpose, and actual intent are separate elements, each of which must be proven by the investor, otherwise the maker of the statement is shielded.

This language so troubled Chairman Levitt that he wrote to committee members on May 25, the morning of the markup. He stressed that the substitute committee print failed to adhere to his belief that a safe harbor should never protect fraudulent statements.

I want to be very clear about this. No one is arguing whether there should be some provision for a safe harbor. The question is: What should that provision be? What is reasonable? What is proper? What is balanced? What constitutes overreaching? The chairman of the SEC said the following in that letter to the committee on the morning of the markup:

> I continue to have serious concerns about the safe harbor fraud exclusion as it relates to the stringent standard of proof that must be satisfied before a private plaintiff can prevail. As Chairman of the Securities and Exchange Commission, I cannot embrace proposals which would allow willful fraud to receive the benefit of safe harbor protection. The scienter standard in the amendment may be so high as to preclude all but the most obvious frauds.

He warned that the bill's standard of ''knowingly made with the expectation, purpose, and actual intent of misleading investors'' was a far more stringent standard than currently used by the SEC and the courts. The committee report states that the safe harbor provision is intended to encourage disclosure of information by issuance. Encouraging reasonable disclosure is one thing. Encouraging fraudulent projections is obviously yet another.

The safe harbor provision that is in this bill, which was not in the original bill as introduced by Senators DODD and DOMENICI—this safe harbor provision before us would hurt investors trying to make intelligent investment decisions and penalize companies trying to communicate honestly with their shareholders. It runs counter to the entire philosophy of Federal securities laws, the very laws that have helped give us such strong markets, laws that rest on the premise that fraud must be deterred and punished when it occurs. That is one of the major areas in which attention will have to be focused over the next few days.

Next I turn to the proportionate liability provision in the bill. The difficulty with the proportionate liability section in the bill is we need to understand the issue of liability for reckless conduct.

In 1976, the Supreme Court held that a defendant is liable under Federal securities antifraud provisions only if he or she possesses the state of mind known in the law as ''scienter.'' Conduct that is intended to deceive or mislead investors satisfies the scienter requirement. While the Supreme Court did not decide the question, courts in every Federal circuit have held that reckless conduct also satisfies the scienter requirement. This follows the guidance of hundreds of years of court decisions in fraud cases. As the Restatement of Torts states, ''The common law has long recognized recklessness as a form of scienter for the purposes of proving fraud.''

Now, the most commonly accepted definition of reckless conduct was set forth by the Seventh Circuit in the Sundstrand case. That standard—and I will quote it, an order which attached joint and several liability—said:

> A highly unreasonable omission involving not merely simple, or even gross, negligence, but an extreme departure from the standards of ordinary care and which present a danger of misleading buyers or sellers that is either known to the defendant or is so obvious that the actor must have been aware of it.

Now, recklessness liability is often applied to the issuers' professional advisers—attorneys, underwriters, accountants. And under joint and several liability, all parties who participate in a fraud are liable for the entire amount of the victim's damages—both those parties who intended to mislead the investors, and those whose conduct was reckless.

The rationale for this is that a fraud cannot succeed without the assistance of each participant, so each wrongdoer is held equally liable.

This bill limits joint and several liability under the Federal securities laws to certain defendants, specifically excluding defendants whose conduct was reckless. This change will hurt investors in cases where the perpetrator of the fraud is bankrupt, has fled, or otherwise cannot pay the investors' damages. In those cases, innocent victims of fraud will be denied full recovery of their damages. Chairman Levitt said:

> The Commission has consistently opposed proportionate liability.

Before the Securities Subcommittee, he said:

> Proportionate liability would inevitably have the greatest effect on investors in the most serious cases (for example, where an issuer becomes bankrupt after a fraud is exposed). It is for this reason that the Commission has recommended that Congress focus on measures directly targeted at meritless litigation before considering any changes to the liability rules.

Now, even the authors of the measure before us recognize something of a problem, so they have tried to make

some compensating features with respect to proportionate liability, and we will address those in greater detail when we propose an amendment.

Let me just simply make this point. They would provide coverage to victims with a net worth under $200,000 who lose more than 10 percent of that net worth. Well, that hardly is meaningful. Virtually anyone who owns a home has a net worth of $200,000. And to require many small investors to lose more than 10 percent of that net worth—in other words, you would have to lose $20,000 before you would be made whole by those who have participated in or condoned the fraud.

There is another provision for a 50-percent overage, but neither provision will make fraud victims whole. They will protect only a tiny number of investors. For most investors, the balance of their losses may be uncollectible. So the innocent party is going to be called upon to bear this burden. Just think of the equities of that.

Reckless participation. Participants will no longer be responsible for the result of their conduct. Innocent investors—individuals, pension funds, county governments—will have to make up the loss. This is not fairness—certainly not to the investors.

In addition, I am disappointed that this legislation, as reported, does not contain provisions to help investors bring meritorious suits. In his letter to the members of the Banking Committee, Chairman Levitt stated:

> In addition to my concerns about the safe harbor, there is not complete resolution of two important issues for the Commission. First, there is no extension of the statute of limitations for private fraud actions from 3 to 5 years.

My very able, distinguished colleague from Nevada, who is a member of the subcommittee that considered this legislation, and is extremely knowledgeable on all aspects of it, will later, in the course of the amending process, address this specific provision.

For over 40 years, courts held that the statute of limitations for private rights of action under section 10(b) of the Securities Exchange Act of 1934, the principal antifraud provision of the Federal securities laws, was the statute of limitations determined by applicable State law. While these statutes varied, they generally afforded securities fraud victims sufficient time to discover and bring suit.

In 1991, in the Lampf case, the Supreme Court significantly shortened the period of time in which investors may bring such securities fraud actions. By a 5 to 4 vote, the Court held that the applicable statute of limitations is 1 year after the plaintiff knew of the violation and in no event more than 3 years after the violation occurred. This is shorter than the statute of limitations for private securities actions under the law of more than 60 percent of the States today.

This shorter period does not allow individual investors adequate time to discover and pursue violations of securities laws. Testifying before the Banking Committee in 1991, SEC Chairman Richard Breeden stated ''the timeframes set forth in the [Supreme] Court's decision is unrealistically short and will do undue damage to the ability of private litigants to sue.'' Chairman Breeden pointed out that in many cases,

> Events only come to light years after the original distribution of securities and the . . . cases could well mean that by the time investors discover they have a case, they are already barred from the courthouse.

The FDIC and the State securities regulators joined the SEC in favor of overturning the Lampf decision.

On this basis, the Banking Committee in 1991 without opposition adopted an amendment to a banking bill. The amendment lengthened the statute of limitations for securities fraud actions to 2 years after the plaintiff knew of the securities law violation, but in no event more than 5 years after the violation occurred.

When the bill reached the Senate floor in November 1991, some Senators indicated they would seek to attach additional provisions relating to securities litigation. They argued that the statute of limitations should not be lengthened without additional reform of the litigation system. No arguments were raised specifically against the extension of the statute of limitations. To expedite consideration of the bill, the extension of the statute of limitations was dropped. Senators DOMENICI and DODD included the extended statute of limitations in their comprehensive securities litigation reform bill, both in the last Congress and in this Congress.

There was no rationale for dropping that provision out. Chairman Levitt testified before the Securities Subcommittee in April 1995, ''extending the statute of limitations is warranted because many securities frauds are inherently complex, and the law should not reward the perpetrator of a fraud who successfully conceals its existence for more than 3 years.''

I defy any of my colleagues to explain to us why the perpetrator of the fraud ought to be given a shorter period of time in which to get away with this fraudulent conduct.

Finally, let me turn to the failure to restore aiding and abetting liability. This was another matter touched on by Chairman Levitt when he expressed his disappointment that ''the draft bill does not fully restore the aiding and abetting liability eliminated in the Supreme Court's Central Bank of Denver opinion.''

Prior to that decision, courts in every circuit in the country had recognized the ability of investors to sue aiders and abettors of securities frauds. Most courts required that an investor show that a securities fraud was committed, that the aider and abettor gave substantial assistance to the fraud, and that the aider and abettor has some degree of scienter—intent to deceive or recklessness toward the fraud.

Why should the aiders and abettors of the fraud escape any liability? As Senator DODD stated at a May 12, 1994, Securities Subcommittee hearing, ''aiding and abetting liability has been critically important in deterring individuals from assisting possible fraudulent acts by others.'' Testifying at that hearing, Chairman Levitt stressed the importance of restoring aiding and abetting liability for private investors:

> persons who knowingly or recklessly assist the perpetration of a fraud may be insulated from liability to private parties if they act behind the scenes and do not themselves make statements, directly or indirectly, that are relied upon by investors. Because this is conduct that should be deterred, Congress should enact legislation to restore aiding and abetting liability in private actions.

The North American Securities Administrators Association and the Association of the Bar of the City of New York also endorsed restoration of aiding and abetting liability in private actions.

In summing up, let me simply say I support the goal of deterring and sanctioning frivolous securities litigation. This bill, though, will deter legitimate fraud actions as well. By protecting fraudulent forward looking statements, and by restricting the application of joint and several liability, this bill may undermine the investor confidence on which our markets depend. Further, it fails to include provisions that are needed to ensure that investors have adequate time and means to pursue securities fraud actions.

We are not alone in concluding this legislation will threaten our markets by undermining investor confidence. Since the Banking Committee approved this bill we have received letters of opposition from securities regulators, State and local government officials, consumer groups and others, which I will place in the RECORD following this statement.

The assertion is, on the other side, there is a certain private interest involved. We are trying to get at the abuse of the existing securities laws. But, in effect, independent observers, as it were, the securities regulators, local government officials, State government officials, have looked at this thing and they say this is excessive. This is overreaching.

In a June 8, 1995 letter, the Government Finance Officers Association [GFOA] strongly supported our position. Consisting of more than 13,000 State and local government financial officials, the GFOA's members both issue securities and invest billions of dollars of public pension and taxpayer funds. In its letter, the GFOA opposed S. 240 as reported:

> We support efforts to deter frivolous securities lawsuits, but we believe that any legislation to accomplish this must also maintain an appropriate balance that ensures the rights of investors to seek recovery against those who engage in fraud in the securities markets. We believe that S. 240 does not

achieve this balance, but rather erodes the ability of investors to seek recovery in cases of fraud.

The North American Securities Administrators Association, which represents the 50 State securities regulators, wrote earlier this week ''to express * * * opposition to S. 240 as it was reported out of the Banking Committee.'' The letter expresses ''NASAA's view that the bill succeeds in curbing frivolous lawsuits only by making it equally difficult to pursue rightful claims against those who commit securities fraud.''

And they mention the amendments pertaining to safe harbor, proportional liability, the statute of limitations, and aiding and abetting liability as being desirable changes to be made in this legislation.

On May 23, 1995, 12 separate groups wrote to the Committee, including the National League of Cities, the American Council on Education, and the California Labor Federation of the AFL–CIO They wrote that the committee print ''has not moved at all in the direction of the achieving the balance we believe is so critical.''

The St. Louis Post Dispatch had an editorial headed ''Don't Protect Securities Fraud''; the Los Angeles Times, ''This Isn't Reform—It's a Steamroller: GOP bill curbing lawsuits would flatten the small investor''; the Philadelphia Inquirer, ''Going easy on crooks in 3-piece suits''; and other papers across the country.

Mr. President, I ask unanimous consent that the letters that I cited and earlier made reference to, the articles, and these editorials be printed in the RECORD at the end of my statement.

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

(See Exhibit 2)

Mr. SARBANES. Mr. President, the securities markets are crucial to our economic growth; we should evaluate efforts to tamper with them very, very carefully. I hope in the course of our consideration of this measure over the next few days that Members will focus on the issues. I mean, the issue is not an extreme example for which there are provisions in the bill to deal with, with which no one quarrels. The issues are these items which I have cited about which we have heard from the Chairman of the Securities and Exchange Commission, from the Government Finance Officers Association, from the North American Securities Administrators Association, from a broad range of consumer groups, and from leading editorials and columnists across the country.

I very much hope my colleagues will support amendments to correct the flaws in this legislation. If that were to be done, then we could move forward with a piece of legislation that I think would accomplish the proper balance.

Mr. President, I yield the floor.

EXHIBIT 1

SECURITIES AND EXCHANGE COMMISSION,
Washington, DC, May 19, 1995.

Hon. ALFONSE M. D'AMATO,
Chairman, Committee on Banking, Housing, and Urban Affairs, U.S. Senate, Washington, DC.

DEAR MR. CHAIRMAN: As Chairman of the Securities and Exchange Commission I have no higher priority than to protest American investors and ensure an efficient capital formation process. I know personally just how deeply you share these goals. In keeping with our common purpose, both the SEC and the Congress are working to find an appropriate ''safe harbor'' from the liability provisions of the federal securities laws for projections and other forward-looking statements made by public companies. Several pieces of proposed legislation address the issue of the safe harbor and the House-passed version, H.R. 1058, specifically defines such a safe harbor.

Your committee is now considering securities litigation reform legislation that will include a safe harbor provision. Rather than simply repeat the Commission's request that Congress await the outcome of our rulemaking deliberations, I thought I would take this opportunity to express my personal views about a legislative approach to a safe harbor.

There is a need for a stronger safe harbor than currently exists. The current rules have largely been a failure and I share the disappointment of issuers that the rules have been ineffective in affording protection for forward-looking statements. Our capital markets are built on the foundation of full and fair disclosure. Analysts are paid and investors are rewarded for correctly assessing a company's prospects. The more investors know and understand management's future plans and views, the sounder the valuation is of the company's securities and the more efficient the capital allocation process. Yet, corporate America is hesitant to disclose projections and other forward-looking information, because of excessive vulnerability to lawsuits if predictions ultimately are not realized.

As a businessman for most of my life, I know all too well the punishing costs of meritless lawsuits—costs that are ultimately paid by investors. Particularly galling are the frivolous lawsuits that ignore the fact that a projection is inherently uncertain even when made reasonably and in good faith.

This is not to suggest that private litigation under the federal securities laws is generally counterproductive. In fact, private lawsuits are a necessary supplement to the enforcement program of the Commission. We have neither the resources nor the desire to replace private plaintiffs in policing fraud; it makes more sense to let private forces continue to play a key role in deterrence, than to vastly expand the commission's role. the relief obtained from Commission disgorgement actions is no substitute for private damage actions. Indeed, as government is downsized and budgets are trimmed, the investor's ability to seek redress directly is likely to increase in importance.

To achieve our common goal of encouraging enhanced sound disclosure by reducing the threat of meritless litigation, we must strike a reasonable balance. A carefully crafted safe harbor protection from meritless private lawsuits should encourage public companies to make additional forward-looking disclosure that would benefit investors. At the same time, it should not compromise the integrity of such information which is vital to both investor protection and the efficiency of the capital market—the two goals of the federal securities law.

The safe harbor contained in H.R. 1058 is so broad and inflexible that it may compromise investor protection and market efficiency. It would, for example, protect companies and individuals from private lawsuits even where the information was purposefully fraudulent. This result would have consequences not only for investors, but for the market as well. There would likely be more disclosure, but would it be better disclosure? Moreover, the vast majority of companies whose public statements are published in good faith and with due care could find the investing public skeptical of their information.

I am concerned that H.R. 1058 appears to cover other persons such as brokers. In the Prudential Securities case, prudential brokers intentionally made baseless statements concerning expected yields solely to lure customers into making what were otherwise extremely risky and unsuitable investments. Pursuant to the Commission's settlement with Prudential, the firm has paid compensation to its defrauded customers of over $700 million. Do we really want to protect such conduct from accountability to these defrauded investors? In the past two years or so, the Commission has brought eighteen enforcement cases involving the sale of more than $200 million of interests in wireless cable partnerships and limited liability companies. Most of these cases involved fraudulent projections as to the returns investors could expect from their investments. Promoters of these types of ventures would be immune from private suits under H.R. 1058 as would those who promote blank check offerings, penny stocks, and roll-ups. It should also address conflict of interest problems that may arise in management buyouts and changes in control of a company.

A safe harbor must be balanced—it should encourage more sound disclosure without encouraging either omission of material information or irresponsible and dishonest information. A safe harbor must be thoughtful—so that it protects considered projections, but never fraudulent ones. A safe harbor must also be practical—it should be flexible enough to accommodate legitimate investor protection concerns that may arise on both sides of the issue. This is a complex issue in a complex industry, and it raises almost as many questions as one answers: Should the safe harbor apply to information required by Commission rule, including predictive information contained in the financial statements (e.g. pension liabilities and over-the-counter derivatives)? Should it extend to oral statements? Should there be a requirement that forward-looking information that has become incorrect be updated if the company or its insiders are buying or selling securities? Should the safe harbor extend to disclosures made in connection with a capital raising transaction on the same basis as more routine disclosures as well? Are there categories of transactions, such as partnership offerings or going private transactions that should be subject to additional conditions?

There are many more questions that have arisen in the course of the Commission's exploration of how to design a safe harbor. We have issued a concept release, received a large volume of comment letters in response, and held three days of hearings, both in California and Washington. In addition, I have met personally with most groups that might conceivably have an interest in the subject: corporate leaders, investor groups, plaintiff's lawyers, defense lawyers, state and federal regulators, law professors, and even federal judges. The one thing I can state unequivocally is that this subject eludes easy answers.

Given these complexities—and in light of the enormous amount of care, thought, and work that the Commission has already invested in the subject—my recommendation would be that you provide broad rulemaking authority to the Commission to improve the safe harbor. If you wish to provide more specificity by legislation, I believe the provision must address the investor protection concerns mentioned above. I would support legislation that sets forth a basic safe harbor containing four components: (1) protection from private lawsuits for reasonable projections by public companies; (2) a scienter standard other than recklessness should be used for a safe harbor and appropriate procedural standards should be enacted to discourage and easily terminate meritless litigation; (3) ''projections'' would include voluntary forward-looking statements with respect to a group of subjects such as sales, revenues, net income (loss), earnings per share, as well as the mandatory information required in the Management's Discussion and Analysis; and (4) the Commission would have the flexibility and authority to include or exclude classes of disclosures, transactions, or persons as experience teaches us lessons and as circumstances warrant.

As we work to reform the current safe harbor rules of the Commission, the greatest problem is anticipating the unintended consequences of the changes that will be made in the standards of liability. The answer appears to be an approach that maintains flexibility in responding to problems that may develop. As a regulatory agency that administers the federal securities laws, we are well situated to respond promptly to any problems that may develop, if we are given the statutory authority to do so. Indeed, one possibility we are considering is a pilot safe harbor that would be reviewed formally at the end of a two year period. What we have today is unsatisfactory, but we think that, with your support, we can expeditiously build a better model for tomorrow.

I am well aware of your tenacious commitment to the individual Americans who are the backbone of our markets and I have no doubt that you share our belief that the interests of those investors must be held paramount. I look forward to continuing to work with you on safe harbor and other issues related to securities litigation reform.

Thank you for your consideration.

Sincerely,

ARTHUR LEVITT.

SECURITIES AND EXCHANGE COMMISSION,
Washington, DC, May 25, 1995.

Hon. ALFONSE M. D'AMATO,
Chairman, Committee on Banking, Housing, and Urban Affairs, U.S. Senate, Washington, DC.

DEAR MR. CHAIRMAN: I understand that this morning you and the members of the Banking Committee will be considering S. 240 and that you will be offering an amendment in the nature of a substitute. While I have not had the opportunity to analyze fully the May 24th manager's amendment to the Committee print, I appreciate your leadership and efforts to address the concerns of the Commission in drafting your alternative.

The safe harbor provision in the amendment, in my opinion, is preferable to the blanket approach of H.R. 1058. It addresses a number of the concerns pertaining to the size of the safe harbor and the exclusions from the safe harbor. The Committee staff appears to be genuinely interested in the Commission's views of its draft legislation and has attempted to be responsive. I was pleased to see the latest draft deleted the requirement that a plaintiff must read and actually rely upon the misrepresentation before a claim is actionable. Your attempt to tailor the breadth of the safe harbor of the Securities Exchange Act of 1934 to the more narrow safe harbor of the Securities Act of 1933 was encouraging. However, I continue to believe that the definition should be further narrowed to parallel the items contained in my letter of May 19th. Moreover, there remain a number of troubling issues.

I continue to have serious concerns about the safe harbor fraud exclusion as it relates to the stringent standard of proof that must be satisfied before a private plaintiff can prevail. As Chairman of the Securities and Exchange Commission, I cannot embrace proposals which allow willful fraud to receive the benefit of safe harbor protection. The scienter standard in the amendment may be so high as to preclude all but the most obvious frauds. I believe that there should be a direct relationship between the level of scienter required to prove fraud and the types of statements protected by the safe harbor. My letter of May 19th indicated the discreet list of subjects that are suitable for safe harbor protection, assuming a simple ''knowing'' standard. Accordingly, if the Committee is unwilling to lower the proposed scienter level to a simple ''knowing'' standard, the safe harbor should not protect forward-looking statements contained in the management's discussion and analysis section. This would be better left to Commission rulemaking.

In addition to my concerns about the safe harbor, there is no complete resolution of two important issues for the Commission. First there is no extension of the statute of limitations for private fraud actions from three to five years. Second, the draft bill does not fully restore the aiding and abetting liability eliminated in the Supreme Court's Central Bank of Denver opinion. I am encouraged by the Committee's willingness to restore partially the Commission's ability to prosecute those who aid and abet fraud; however, a more complete solution is preferable.

I also wish to call your attention to a potential problem with the provision relating to Rule 11 of the Federal Rules of Civil Procedure. I worry that the standard employed in your draft may have the unintended effect of imposing a ''loser pays'' scheme. The greater the discretion afforded the court, the less likely this unintended consequence may appear.

I would like to express my particular gratitude for the courtesy and openness displayed by the Committee and its staff. I hope we will continue to work together to improve the bill so as to reduce costly litigation without compromising essential investor protections.

Thank you for your consideration.

Sincerely,

ARTHUR LEVITT.

GOVERNMENT FINANCE
OFFICERS ASSOCIATION,
Washington, DC, June 8, 1995.

Hon. PAUL S. SARBANES,
U.S. Senate, Washington, DC.

DEAR SENATOR SARBANES: I am writing on behalf of the more than 13,000 state and local government financial officials who comprise the membership of the Government Finance Officers Association (GFOA) to bring to your attention serious concerns we have with the Securities Litigation Reform Act, S. 240, recently approved by the Senate Banking Committee. As you know, the GFOA is a professional association of state and local officials who are involved in and manage all the disciplines of public finance. The state and local governmental entities our members represent bring a unique perspective to this proposed legislation because they are both investors of billions of dollars of public pension funds and temporary cash balances, and issuers of debt securities as well.

We support efforts to deter frivolous securities lawsuits, but we believe that any legislation to accomplish this must also maintain an appropriate balance that ensures the rights of investors to seek recovery against those who engage in fraud in the securities markets. We believe that S. 240 does not achieve this balance, but rather erodes the ability of investors to seek recovery in cases of fraud.

The strength and stability of our nation's securities markets depend on investor confidence in the integrity, fairness and efficiency of these markets. To maintain this confidence, investors must have effective remedies against those persons who violate the antifraud provisions of the federal securities laws. In recent years, we have seen how investment losses caused by securities laws violations can adversely affect state and local governments and their taxpayers. It is essential, therefore, that we fully maintain our rights to seek redress in the courts.

S. 240 would drastically alter the way America's financial system has worked for over 60 years—a system second to none. Following are the major concerns state and local governments have with this ''reform'' legislation:

Fraud victims would face the risk of having to pay the defendant's legal fees if they lost. S. 240 imposes a modified ''loser pays'' rule that carries the presumption that if the loser is the plaintiff, all legal fees should be shifted to the plaintiff. The same presumption, however, would not apply to losing defendants. The end result of this modified ''loser pays'' rule is that it would strongly discourage the filing of securities fraud claims by victims, regardless of the merits of the cases. This is particularly true for state and local governments that have lost taxpayer funds through investments, involving financial fraud in derivatives, for example, but who simply cannot afford to risk further taxpayer funds by taking the risk that they might lose their case and have to pay the legal fees of large corporations. The argument is made that a modified loser pays rule is necessary to deter frivolous lawsuits, but we understand there are only 120 companies sued annually—out of over 14,000 public corporations, and that the number of suits has not increased from 1974.

Fraud victims would find it exceedingly difficult to fully recover their losses. Our legal standard of ''joint and several'' liability has enabled defrauded investors to recover full damages from accountants, brokers, bankers and lawyers who help engineer securities frauds, even when the primary wrongdoer is bankrupt, has fled or is in jail. S. 240 sharply limits the traditional rule of joint and several liability for reckless violators. This means that fraud victims would be precluded from fully recovering their losses.

Wrongdoers who ''aid and abet'' fraud would be immune from cases brought by fraud victims. As you know, aiders had been held liable in cases brought by fraud victims for 25 years until a 5–4 Supreme Court ruling last year eliminated such liability because there was not specific statutory language in federal securities law. If aiders and abettors are immune from liability, as issuers of debt securities, state and local governments would become the ''deep pockets,'' and as investors they would be limited in their ability to recover losses. The Securities and Exchange Commission and the state securities regulators have recommended full restoration of liability of aiders and abettors and GFOA supports that recommendation.

Wrongdoers would be let off the hook by a short statute of limitations. We had supported the modest extension of the statute—

from one year from discovery of the fraud but no more than three years after the fraud to two years after the violation was, or should have been, discovered but not more than five years after the fraud was committed—that was contained in an earlier version of S. 240. We are disappointed that this extension was removed in the Committee's markup of the legislation and hope it will be restored when the full Senate considers the bill.

Under S. 240, corporations could deceive investors about future events and be immunized from liability in cases brought by defrauded investors. Corporate predictions are inherently prone to fraud as they are an easy way to make exaggerated claims of favorable developments to attract investors. The ''safe harbor'' in S. 240 is a very broad exemption and immunizes a vast amount of corporate information so long as it is called a ''forward-looking statement'' and states that it is uncertain and there is risk it may not occur. Such statements are immunized even if they are made recklessly. We believe this opens a major loophole through which wrongdoers could escape liability while fraud victims would be denied recovery.

Access to fair and full compensation through the civil justice system is an important safeguard for state and local government investors, and is a strong deterrent to securities fraud. We believe. S. 240 as written does not provide such access to state and local governments or to other investors. Just as state and local government investors are urged to use extreme caution in investing public funds, the Senate should use extreme caution in reforming the securities regulation system.

We hope you will work to bring about needed changes in the legislation when it is considered by the full Senate. If there is any way we can help in this effort, please do not hesitate to call on us.

Sincerely,

CATHERINE L. SPAIN,
Director, Federal Liaison Center.

NORTH AMERICAN SECURITIES ADMINISTRATORS ASSOCIATION, INC.,
Washington, DC, June 20, 1995.

Re S. 240, the ''Private Securities Litigation Reform Act.''

Hon. PAUL S. SARBANES,
U.S. Senate, Hart Senate Office Building, Washington, DC.

DEAR SENATOR SARBANES: The full Senate may consider as early as Wednesday or Thursday of this week, S. 240, the ''Private Securities Litigation Reform Act of 1995.'' On behalf of the North American Securities Administrators Association (NASAA), we are writing today to express the Association's opposition to S. 240 as it was reported out of the Banking Committee. In the U.S., NASAA is the national voice of the 50 state securities agencies responsible for investor protection and the efficient functioning of the capital markets at the grassroots level.

While everyone agrees on the need for changes to the current securities litigation system, not everyone is prepared to deny justice to defrauded investors in the name of such reform. Proponents of the bill make two claims: first, that they have modified the bill to satisfy many of the objections to the earlier version; and second, that the bill will not prevent meritorious claims from going forward. Neither claim is accurate. First, the changes made to the bill do little to resolve the serious objections to S. 240 raised by NASAA and its members. In fact, it may be argued that during the Banking Committee's deliberations the bill was made less acceptable from the perspective of investors. Second, it is NASAA's view that the bill succeeds in curbing frivolous lawsuits only by making it equally difficult to pursue rightful claims against those who commit securities fraud.

The reality is that the major provisions of S. 240 will work to shield even the most egregious wrongdoers among public companies, brokerage firms, accountants and others from legitimate lawsuits brought by defrauded investors. Do we really want to erect protective barriers around future wrongdoers?

NASAA agrees that there is room for constructive improvement in the federal securities litigation process. The Association supports reform measures that achieve a balance between protecting the rights of defrauded investors and providing relief to honest companies and professionals who may unfairly find themselves the targets of frivolous lawsuits. Regrettably, S. 240 as approved by the Senate Banking Committee fails to achieve this necessary balance.

Although this bill has been characterized in some quarters as an attempt to improve the cause of defrauded investors in legitimate lawsuits, that simply is not the case. Attempts to incorporate into the bill provisions that would work to the benefit of defrauded investors were rejected when the Banking Committee considered the bill. At the same time, the few provisions in the original bill that may have worked to the benefit of defrauded investors were deleted.

For example, during the Committee' deliberations: (1) the rather modest extension of the statute of limitations for securities fraud suits contained in the original version was deleted; (2) attempts to fully restore aiding and abetting liability under the securities laws were rejected; (3) a regulatory safe harbor for forward-looking statements contained in the original version of S. 240 was replaced with an overly broad safe harbor for such information, making it extremely difficult to sue when misleading information causes investors to suffer losses; and (4) efforts to loosen the strict limitations on the applicability of joint and several liability were rejected, making it all but impossible for more than a very few to ever fully recover their losses when they are defrauded. The truth here is that this is a one-sided measure that will benefit corporate interests at the expense of investors.

As state government officials responsible for administering the securities laws in our jurisdictions, we know the important role private actions play in the enforcement of our securities laws and in protecting the honesty and integrity of our capital markets. The strength and stability of our nation's securities markets depend in large measure on investor confidence in the fairness and integrity of these markets. In order to maintain this confidence, it is critical that investors have effective remedies against persons who violate the anti-fraud provisions of the securities laws.

When S. 240 is considered on the Senate floor, it is expected that several pro-investor amendments will be offered in an attempt to inject some balance into the measure. Among the amendments we expect to be offered are those that would: (1) extend the statute of limitations for private securities fraud actions; (2) fully restore aiding and abetting liability under the securities laws; (3) replace the expansive safe harbor for foward-looking statements with a directive to the Securities and Exchange Commission to continue its rulemaking efforts and report back to Congress; and (4) lift the severe limitations on joint and several liability so that defrauded investors may fully recover their losses.

On behalf of NASAA, we respectfully encourage you to vote in favor of all such amendments when they are offered on the Senate floor. If all four amendments are not adopted, we respectfully encourage you to oppose S. 240 on final passage.

NASAA regrets that the Association cannot support the litigation reform proposed as reported out of the Senate Banking Committee. The Association believes that this issue is an important one and one that should be addressed by Congress. However, NASAA believes that is more important to get it done right than it is to get it done quickly. S. 240 as it was reported out of the Banking Committee should be rejected and more carefully-crafted and balanced legislation should be adopted in its place.

If you have any questions about NASAA's position on this issue, please contact Maureen Thompson, NASAA's legislative adviser.

Sincerely,

PHILIP A. FEIGN,
Securities Commissioner, Colorado Division of Securities, President, North American Securities Association.

MARK J. GRIFFIN,
Director, Utah Securities Division, Chairman, Securities Litigation Reform Task Force of the North American Securities Administrators Association.

AMERICAN COUNCIL ON EDUCATION, CALIFORNIA LABOR FEDERATION—AFL–CIO, CONGRESS OF CALIFORNIA SENIORS—LA COUNTRY, CONSUMER FEDERATION OF AMERICA, CONSUMERS FOR CIVIL JUSTICE, INTERNATIONAL BROTHERHOOD OF TEAMSTERS, GOVERNMENT FINANCE OFFICERS ASSOCIATION, GRAY PANTHERS, NATIONAL LEAGUE OF CITIES, NEW YORK STATE COUNCIL OF SENIOR CITIZENS, NORTH AMERICAN SECURITIES ADMINISTRATORS ASSOCIATION, U.S. PUBLIC INTEREST RESEARCH GROUP,
May 23, 1995.

Re: securities litigation reform.

Hon. ALFONSE D'AMATO,
Chairman, Committee on Banking, Housing and Urban Affairs, U.S. Senate, Dirksen Senate Office Building, Washington, DC.

DEAR CHAIRMAN D'AMATO: Our organizations have been actively involved in the securities litigation reform debate. We are writing today to express the very serious concerns our organizations and individual members have with the major provisions of S. 240, the ''Private Securities Litigation Reform Act,'' introduced by Senators Dodd and Domenici, and with the substitute language that emerged on Monday.

Let us be clear: our organizations strongly believe that any securities litigation reform must achieve a balance between protecting the rights of defrauded investors and providing relief to honest companies and professionals who may find themselves the target of a frivolous lawsuit. We agree that abusive practices should be deterred, and where appropriate, sternly sanctioned. At the same time, the doorway to the American system of civil justice must remain open for those investors who believe they have been defrauded.

Although we understand that some of the specifics of S. 240 remain under discussion,

we are extremely disappointed to see that the substitute language now being circulated (and expected to be marked up on Thursday, May 25th) has not moved at all in the direction of achieving the balance we believe is so critical to resolving this debate. While we appreciate the fact that some of the provisions we found most objectionable in the bill as introduced were deleted, we are dismayed to find other equally troubling provisions inserted in the new draft. Perhaps most disturbing is that the one pro-investor provision found in S. 240 as introduced—the extension of the statute of limitations—has been dropped entirely in the latest version of the bill.

Collectively, our organizations and those with which we have worked closely on this issue represent tens of millions of ordinary Americans who increasingly must rely on investments to build retirement nest eggs, finance the college education of children, and to save for major purchases, such as a home. The organizations represent the thousands of state and local governments, that participate in the securities markets both as investors of pension funds and temporary cash balances and as issuers of municipal debt. Our ranks also include colleges and universities and other institutions of higher learning, as well as labor organizations, that participate in the securities markets as investors of endowment and pension funds.

Our general and primary concerns with respect to the provisions of S. 240, as well as with other proposals that now are under discussion or are present in the House version of this legislation, include;

Unreasonable standards for fraud pleadings, burden of proof and damages;

Any form of ''means testing'' for access to justice of recovery, including conferring a special status on certain, larger investors;

Limits on joint and several liability that will work to immunize from liability certain professional groups;

''Loser pays'' rules;

Expansive safe harbor exemptions from private liability for forward looking statements (we believe the more appropriate response is SEC rulemaking in this area); and

Expanding the scope of this bill to go beyond cases involving private class actions brought under the 1934 Securities Exchange Act.

At the same time, we have expressed support for major reform proposals, including:

An early evaluation procedure designed to weed out clearly frivolous cases, with sanctions imposed in certain instances;

A more rational system of determining liability based on proportionate liability for reckless violators and joint and several liability for knowing violators, with provisions made for special circumstances in which knowing securities violators are unable to satisfy a judgment;

The right to contribute among liable defendants according to proportionate responsibility.

Certification of complaints and improved case management procedures;

Improved disclosure of settlement terms;

Curbs on potentially abusive practices on the part of plaintiffs' attorneys;

A reasonable extension of the statute of limitations for securities fraud suits; and

Restoration of liability for aiding and abetting securities fraud.

Although some people may mistakenly believe that the markets run on money, the truth is that the markets run on public confidence. As investors ourselves and as representatives of investors, we can tell you that the confidence we have in the marketplace will be dramatically altered if we come to believe that not only are we at risk of being defrauded, but that we will have no recourse to fight back against those who have victimized us. We fear that is exactly what will be the case if S. 240 or its substitute version is enacted. There should be little doubt that under such a scenario many investors will seriously reconsider whether they want to remain in the marketplace.

Finally, we want to take this opportunity to put to rest the frequently voiced claim that no defrauded investor with a meritorious case will be denied justice under these reform proposals. That is just plainly and demonstrably untrue.

Any questions about this letter should be directed to any of the contacts listed below:

Contacts;

American Council on Education: Shelly Steinbach.

CA Labor Federation—AFL–CIO: Bill Price.

Congress of CA Seniors—LA County: Max Turchen.

Consumer Federation of America: Mern Horan.

Consumers of Civil Justice: Walter Fields.

International Brotherhood of Teamsters: Bart Naylor.

Government Finance Officers Association: Cathy Spain.

Gray Panthers: Dixie Horning.

National League of Cities: Frank Shafroth.

New York State Council of Senior Citizens: Eleanor Litwak.

North American Securities Administrators Association: Maureen Thompson.

U.S. Public Interest Research Group: Ed Mierzwinski.

MAY 24, 1995.

Re oppose S. 240—devastating for consumers, seniors, investors.

Hon. PAUL S. SARBANES,
Senate Committee on Banking, Housing, and Urban Affairs, Hart Senate Office Building, Washington, DC.

DEAR SENATOR SARBANES: We are writing to express our strong opposition to S. 240, the so-called ''Private Securities Litigation Reform Act.'' In our earlier analysis of the bill (January 25, 1995), we discussed the eight most harmful provisions for consumers, seniors, and investors. We stressed that S. 240 would effectively eliminate private enforcement of the securities law and greatly reduce the likelihood that innocent victims of fraud could recover their losses from corporate and individual wrongdoers.

Now that the Banking Committee's substitute has been issued in preparation for the markup on Thursday, May 25, we are deeply concerned that the bill has not moved in the direction of balanced reform. On the whole, the bill is now even worse for average Americans. The intentions of the Senate Banking Committee's substitute bill are clear—to promote the interests of big corporations, big accounting firms, big brokerage firms and big investment banking houses at the expense of average Americans. The bill is now entirely anti-consumer, anti-senior, anti-investor, and pro-defendant, pro-industry, and pro-wealthy. Any pretensions of protecting small investors and meritorious fraud actions have been abandoned.

Only one of our concerns (the insider-dominated disciplinary board for accountants) has been addressed, while seven deeply troubling provisions remain or have gotten even worse. We have attached a consumer critique of the Banking Committee's substitute which explains our strong opposition, as well as a recent article which highlights the urgency of our concerns.

S. 240 strikes a blow to the heart of the middle class and average, hard-working Americans who depend on the federal securities system to protect their savings, investments, and retirements. A study published in the 1991 Maine Law Review found that 87% of managers surveyed were willing to commit financial statement fraud, more than 50% were willing to overstate assets, 48% were willing to understate loss reserves, and 38% would ''pad'' a government contract. In addition, securities fraud is increasing at an alarming rate. Cases brought by federal and state regulators have increased by more than 45% in just five years.

Moreover, a new major financial fraud that could rival the savings and loan fiasco—involving high-risk, highly speculative derivative securities—is just being discovered. Orange County is not alone. Already, 40 American communities and public institutions across the country have reported derivatives losses totalling some $3 billion. And indications are that fraud may have played a large role in many of those disasters.

Clearly, this is no time to be immunizing fraud and removing vital investor protection laws that have served American consumers so well for decades. We urge you to vote against S. 240 in the markup on Thursday.

Sincerely,

RICHARD VUERNICK,
Legal Policy Director, Citizen Action.
MERN HORAN,
Legislative Representative, Consumer Federation of America.
MARY GRIFFIN,
Counsel, Consumers Union.
JOAN CLAYBROOK,
President, Public Citizen.
EDMUND MIERZWINSKI,
Consumer Program Director, U.S. Public Interest Research Group.
M. KRISTEN RAND,
Director of Federal Policy, Violence Policy Center.

Attachment.

[From the New York Times, May 22, 1995]

FRIENDS OF FRAUD?

(By Anthony Lewis)

Of all the bills making their way through this Congress, the most devastating to its area of the law may be one that has had relatively little attention: legislation to weaken the protection of the public against securities fraud.

The House passed a bill in March. Now the Senate Banking Committee is working on its version. To judge how devastating the legislation would be, consider what it would have done to some of the most notorious recent fraud cases.

In the 1980's Prudential Securities brokers lure customers to invest in risky securities with deliberately false statements about how much they would make. The defrauded investors and the Securities and Exchange Commission sue Prudential Securities, and in the S.E.C. case alone the firm agreed to repay more than $700 million to the victims.

The victims would probably have been unable to sue if one section of the current House bill had been law. Known as the ''safe harbor'' provision, it immunizes from suits by the defrauded all ''forward-looking statements'' about securities. Companies and their agents could make false ''projections'' and ''estimates'' of future performance, even if they were deliberate lies, without fear of lawsuits by those defrauded.

The chairman of the S.E.C., Arthur Levitt Jr., is concerned about the ''safe harbor'' provision. He has just written to the Senate

committee urging it not thus to protect ''purposefully fraudulent'' financial predictions.

That is not the only part of the pending legislation that would make it difficult—perhaps impossible—for victims of fraud to sue. Another is a provision of the House bill requiring anyone who brings a securities fraud suit to show at once, when he or she sues, the state of mind of the defendant indicating fraudulent intent. That kind of information is usually found only during the discovery phase of a case.

For example, two months ago shareholders in Koger Properties Inc. won an $81.3 million judgment in a fraud suit against its accounting firm, Deloitte & Touche. During pretrial discovery, the plaintiffs' lawyers found that the partner in charge of the audit owned stock in Koger, a violation of accounting standards. They could not have known that when they sued.

Still another provision of the House bill, and the Senate's as it stands, would limit what is called ''joint and several liabilities.'' That allows the victims of fraud to recover from others involved if the principal fraud perpetrator is not able to pay.

Last month, for example, Steven Hoffenberg of Towers Financial Corporation pleaded guilty to securities fraud and criminal conspiracy in a Ponzi scheme that cost investors $460 million. He said his accountants and lawyers helped carry out the fraud by issuing false financial statements and making misleading statements to the S.E.C. Towers is bankrupt, so the victims are suing the lawyers and accountants.

Some of the worst scams in recent history would have left the defrauded investors with little or no recourse if the ''joint and several liability'' limit had been in effect. The victims of Charles Keating, the great savings and loan swindler, would have been out of luck when he went to prison and said he was broke.

The legislation sounds highly specialized, and it is. But it would have widespread effects on real people. In addition to individual investors who have been defrauded, many local governments have lost large sums in recent years and are suing brokerage firms and others. The big example is Orange County, California, which lost more than $1 billion, but there are dozens more.

It is a peculiar time to weaken legal protections: a time of spectacular financial frauds. The latest involves the Foundation for New Era Philanthropy, whose scam attracted many charities and such investors as Lawrence S. Rockefeller and William E. Simon. New Era collapsed last week, and the S.E.C. charged its founder with ''massive'' securities fraud.

But this Congress evidently does not care a lot about the victims of fraud. It is listening to the lobbyists for accounting firms and insurance companies, whose political action committees have made large campaign contributions, and others who want to operate without fear of being sued for securities fraud.

CONSUMERS UNION, CONSUMER FEDERATION OF AMERICA, U.S. PUBLIC INTEREST RESEARCH GROUP, CITIZEN ACTION, PUBLIC CITIZEN, VIOLENCE POLICY CENTER

CONSUMER CRITIQUE OF S. 240 ''PRIVATE SECURITIES LITIGATION REFORM ACT''

(1) Abrogation of joint and several liability, which would effectively immunize professional wrongdoers. The original S. 240 eliminated joint and several liability in a wide class of cases, favoring large corporations, accountants, brokers and bankers—who have been found liable—over defrauded victims. The substitute S. 240 restricts joint and several liability even further.

Under joint and several liability, if one wrongdoer is found liable but has no assets, the victim can be reimbursed fully by the other wrongdoers, without whose assistance the fraud could not have succeeded. This traditional aspect of America's legal system for fraud is based on the policy that it is more fair for other wrongdoers to pay for a loss that cannot be collected from one of the coconspirators than it is for the victims to go uncompensated. The rule has enabled swindled consumers to recover full damages from accountants, brokers, bankers, lawyers and other wrongdoers who participate in securities scams, even when the primary wrongdoer has no assets left, has fled, or is in jail.

The original S. 240 sharply limited this rule, immunizing reckless wrongdoers from joint and several liability. If S. 240 had been in effect, most investors would not have recovered their life savings in the Charles Keating/Lincoln Savings & Loan debacle. Although Keating had become bankrupt, the victims recovered their damages from the accountants, bankers, and lawyers who assisted Keating. Despite extensive testimony to Congress that restricting joint and several liability will reduce recoveries for defrauded victims and encourage more fraud, the substitute bill restricts joint and several liability even further.

Under the substitute, in the all-too-often cases where a knowing violator's share is uncollectible, the liability of reckless violators for the uncollectible share would be subject to a lower ''cap'' than under the original bill. The rest of the uncollectible share simply will be lost to the defrauded victims. Although the ''cap'' would not apply to victims with a net worth over $200,000 and recoverable damages of more than 10% of their net worth, that basically eliminates anyone who owns a house.

Adjudged perpetrators of securities fraud are given a gift while fraud victims are denied full recover of the money that was stolen from them—that is the policy of S. 240. Under the substitute, it will be virtually impossible for many victims of fraud to recover a large part of their losses.

(2) Failure to restore the liability of those who aid and abet fraud. The original S. 240 failed to restore aiding and abetting liability for accountants, lawyers, brokers, bankers and others who assist primary wrongdoers in committing securities fraud. The substitute also fails to do so.

Last year, in the Central Bank of Denver case, the Supreme Court overturned in a 5–4 ruling 25 years of established precedent (including all 11 federal appellate courts that addressed the issue) by wiping out aiding and abetting liability of accountants, lawyers, brokers, bankers and others who assist primary wrongdoers in committing securities fraud. This right of action has played a vital role in compensating swindled consumers in the major financial frauds of the last several decades and must be restored by Congress. Central Bank severely weakens the deterrence of securities fraud because it sends a dangerous signal to the markets that a primary enforcement tool has been eliminated. That not only hurts defrauded consumers, it hurts all Americans. S. 240 fails to address this issue for obvious reasons—the entire thrust of the bill is to further immunize defendants from liability.

In their Congressional testimony, the Securities and Exchange Commission (''SEC'') and state regulators recommended restoring aiding and abetting liability. Even Senator Dodd has stressed the importance of restoring the liability of those who aid and abet securities fraud. During a May 12, 1994 hearing before the Senate Subcommittee on Securities, Senator Dodd stated ''Lawyers, accountants, and other professionals should not get off the hook, in my view, when they assist their clients in committing fraud . . . The Supreme Court has laid down a gauntlet for Congress . . . In my view, we need to respond to the Supreme Court decision promptly and I emphasize promptly.''

(3) Discrimination against small shareholders. The original S. 240 contained a blatantly discriminatory wealth-test for filing securities fraud class actions. The substitute replaces the wealthiest with an equally discriminatory wealth-control provision.

The substitute adds a new provision that sets up a strong presumption that the ''most adequate plaintiff'' in any private class action is the plaintiff that has the largest financial interest in the outcome of the action. The bill then grants this ''most adequate plaintiff'' the power to select the lead counsel and control the case, including settling for any amount or even dismissing the case.

Perhaps no other change to S. 240 makes plainer the real motives behind the bill and makes hollower any pretensions to protect meritorious fraud actions. This ''most affluent plaintiff'' requirement would have a devastating effect on average consumers who are defrauded in the securities markets. Mutual funds and large investors, who may have close ties to big corporate fraud defendants (e.g., mutual fund managers enjoy ready access to information from corporate managers) and who may care less about full recovery because its loss reflects a smaller proportion of total investment than smaller investors' losses, can afford to accept less than full recoveries, would have complete control over class actions at the expense of average investors. What makes a mutual fund that has lost $1 million of its $1 billion portfolio more adequate to represent a class of defrauded investors than an elderly widow who has lost $27,000 out of her $30,000 net worth?

Aside from raising the specter of collusive intervention by large investors simply to dismiss cases or enter into sweetheart settlements, the substitute virtually precludes small investors from being able to obtain attorneys willing to invest their time on cases in which they can have no control and may not be paid fairly (or at all) by lead counsel.

This provision also directly contradicts the primary rationale for class actions—to give average investors who cannot afford to litigate against major corporate defendants on their own a means by which they could band together to seek a remedy for their losses.

(4) Inadequate efforts to deal with unwarranted secrecy. As we outlined in our January letter, the original S. 240 made no effort to address the serious problem of defendant-coerced secrecy orders covering all the underlying documents relevant to the fraud. These orders remain in effect throughout the litigation and generally require that, once a case is terminated, the documents be destroyed or returned to the defendants. Such secrecy orders block significant corporate wrongdoing from public scrutiny and allow defendants, at the time of settlement, to proclaim their innocence without fear of contradiction. The substitute continues to ignore this problem, further demonstrating that the bill is not really intended to solve the real problems in securities litigation.

(5) Imposition of ''loser pays'' fee shifting. The original S. 240 abrogated a 200-year-old legal principle reflecting our national policy in favor of access to justice. It did so by requiring losing parties who decline to accept out-of-court resolution of their cases to pay all of the prevailing parties' legal fees and costs.

The substitute simply replaces this ''loser pays'' rule with a different ''loser pays''

rule—mandatory sanctions under Rule 11 of the Federal Rules of Civil Procedure which includes a strong presumption in favor of shifting all legal fees and costs to the loser. The new provision suffers from the same flaw as the original—average consumers who have just lost their retirement savings in a financial fraud cannot afford to take the risk that they might lose their house as well if they lose their case. Moreover, the new rule would prolong cases, waste more resources on litigating additional issues, and add to the money spent on legal fees by requiring the court to make specific findings regarding compliance by every party and every attorney, even when no party requests it.

The end result of this ''loser pays'' rule will be a severe chill on the assertion of securities fraud claims, regardless of their merits.

(6) Free reign for false statements. The original S. 240 allowed the SEC to consider creating a safe harbor exemption for corporate predictive statements—the substitute creates a ''safe ocean'' exemption from fraud liability for corporate predictions that essentially grants would-be wrongdoers a license to lie. The substitute adopts a wholesale exemption which would completely immunize a vast amount of corporate information (''any statement, whether made orally or in writing, that projects, estimates, or describes future events'') so long as it is called a forward-looking statement and states that it is uncertain and may not occur, even if they are made with reckless disregard for their accuracy. This is a gaping loophole through which wrongdoers could escape liability while fraud victims would be denied recovery.

Corporate ''forward-looking statements'' are prone to fraud as they are an easy way to make exaggerated claims of favorable developments in order to attract cash. They continue to be a favorite tool of con artists, promoters and illegal insider traders to artificially pump up the price of public company stock in order to profit at investors' expense. The substitute's safe harbor provision creates an incentive to provide bad information to consumers and a disincentive to provide the best available information. It would effect an upheaval in the mandatory corporate disclosure system in the United States, with immense potential adverse market consequences.

Finally, by itself, the safe harbor would eliminate many, if not most, fraud class actions. The safe harbor provision would require, with limited exemptions, that every class action member prove actual knowledge of and reliance on the fraudulent statement, an (almost) impossible requirement in class action suits. Under this provision, even purposefully fraudulent forward-looking statements could be made without the possibility of redress through a class action lawsuit.

The SEC is currently in the middle of a rulemaking proceeding to study forward-looking statements and has requested that Congress allow it to complete its process. We believe that Congress should defer establishing a safe harbor provision until the agency experts have thoroughly reviewed this matter.

(7) A flawed limitations period. The current statute of limitations—1 year from discovery of the fraud but in no event more than 3 years after the fraud—is generally regarded as too short. The original S. 240 extended the period to 2 years after the violation was or should have been discovered but not more than 5 years after the fraud. Rather than heed the SEC and the state securities regulators, who testified that the limitations period should be even longer, the substitute simply drops the extension entirely. There is now not a single provision in the bill that would increase recoveries for fraud victims—it is totally one-sided and should really be called the ''Wrongdoer Protection Act of 1995.''

(8) An insider-dominated disciplinary board for accountants. The substitute deletes the provision of the bill that would have allowed the trade association for the accountants—the AICPA—to be a sham self-disciplinary board for public accountants. This is the only one of our original concerns that has been adequately addressed by the substitute bill.

[From the Washington Post, June 18, 1995]

MAKING IT EASIER TO MISLEAD INVESTORS

(By Jane Bryant Quinn)

A lawsuit-protection bill speeding through Congress will give freer rein to Wall Street's eternal desire to hype stocks.

It's cast as a law against frivolous lawsuits that unfairly torture corporations and their accountants. But the versions in both the House and Senate do far more than that. They effectively make it easier for corporations and stockbrokers to mislead investors. Class action suits against the deceivers would be costly for small investors to file and incredibly difficult to win.

I'm against frivolous lawsuits. Who isn't? But these bills would choke meritorious lawsuits, too. They affect only claims filed in federal court, so bilked investors would still have the option of seeking justice in a state courts. But the federal law would set a terrible precedent and leave the markets more open to fraud.

The congressional proposals started out as a way of protecting companies against so-called strike suits—lawsuits filed against companies whose stock price unexpectedly plunges.

The companies complain that ''vulture lawyers'' lie in wait for these drops in price. When they occur, the lawyers find willing plaintiff and immediately file suit. The usual charge: that the firm, its executives and accountants misled investors with falsely optimistic statements. That's not true, the companies say, but they tend to settle just to avoid the legal expense. If so, this represents a grave cost—on corporations, shareholders and economic efficiency.

But are strike suits really overwhelming corporations? There's evidence on both sides of this issue, but most of it fails to document the executives' broad complaints.

As an example, take the new study by Baruch Lev, a professor at the University of California at Berkeley. He looked at public companies whose share price fell more than 20 percent in the five days around the time of a disappointing quarterly earnings report. There were 589 such cases, from 1988 through 1990. But related class action suits were filed against only 20 of the firms.

Lev compared those 20 companies with similar firms where no lawsuits were filed. Among other things, the litigated companies tended to put out rosy statements—in some cases, just before releasing the bad earnings report. By contrast, the firms that weren't sued tended to publish more sober statements and to warn investors in advance that earnings would be lower than expected.

Lev warns that his sample is too small to reach statistical conclusions. But his basic data undermine the claims that companies are bombarded with lawsuits whenever their stock goes down.

The new bills contain many provisions to worry investors. For example, if you lost a class action suit, you might have to pay the legal fees for the other side. Psychologically, that could stop you from suing no matter how badly you'd been burned.

The bills also give excessive protection to so-called forward statements, which are the business projections that corporations make. Under current law, it's all right to make a reasonable projection, even if it doesn't come true. But a company can be held liable for making an unreasonable projection that misleads investors. In many of the cases where lawsuits are brought, ''executives are telling the public that everything is going to be great while they're bailing out and selling their own stock,'' Jonathan Cuneo, general counsel of the National Association of Securities and Commercial Law Attorneys, told my associate Louise Nameth.

If these bills become law, however, companies could get away with making misleading, even reckless statements. To win a class action lawsuit, you would have to prove that a falsehood was uttered with a clear intent to deceive. That's incredibly tough to do.

This provision, in particular, troubles Arthur Levitt Jr., chairman of the Securities and Exchange Commission. ''The law should not protect persons who make material statements they know to be false or misleading,'' he says, ''nor should it protect offerings such as penny stocks, nor persons who have committed fraud in the past.''

Baseless lawsuits do indeed exist. Lawyers may earn too much from a suit, leaving defrauded investors too little. The incentives to sue should be reduced. But not with these bills. They'd let too many crooks get away.

[From U.S. News & World Report, June 26, 1995]

WILL CONGRESS CONDONE FRAUD?

(By Jack Egan)

Some of the most unpopular people in Washington these days are shareholders' lawyers who sue companies at the drop of a stock, usually claiming that management deceived investors about the outlook and is liable for losses when shares fall.

Lawmakers have concluded—without much supporting evidence—that this happens far too frequently, hamstringing corporations and causing executives to be wary of making forecasts. And so legislation is zipping through Congress to curb ''frivolous'' or ''speculative'' lawsuits against public companies. The high-sounding Private Securities Litigation Reform Act of 1995 easily passed the House in March. It was approved by the Senate's banking panel and will soon be taken up by the full body.

It just might come to be remembered as legislation that steeply tilted the playing field against investors. The bill may make executives feel easier about discussing what they see ahead, with shareholders benefiting from more candid disclosure. But it makes it very hard for shareholders to sue over legitimate grievances. The House version even protects management when it lies, provided the deception is a projection.

Unhappy Levitt. The Securities and Exchange Commission, which has always viewed private actions as complementing its own limited enforcement abilities, is not happy. In a letter to Senate Banking Committee Chairman Alfonse D'Amato sympathizing with ''the punishing costs of meritless lawsuits,'' SEC Chairman Arthur Levitt also wrote that the House-passed bill might ''compromise investor protection.'' And while the Senate Banking Committee's bill is more moderate, the SEC chairman complained in another letter that shareholders were still hampered from bringing suits against ''all but the most obvious frauds.''

The crusade to throttle shareholder lawsuits has been spearheaded by high-tech companies and the big accounting firms. The stocks of technology companies tend to be quite volatile, flying high and suddenly nose-

diving, often when companies fail to meet ambitious earnings expectations. That makes them especially vulnerable to mugging by lawsuit; according to the American Electronics Association, which represents the industry, 9 out of 10 suits are settled out of court—averaging $8.6 million—simply to avoid the cost of lengthier litigation.

But claims that nuisance lawsuits are hurting the ability of such companies to raise capital come at a time when technology shares have led the stock market to an all-time high and initial public offerings are running at record levels. ''There are 200 to 300 companies sued each year out of 20,000 that are registered,'' notes Democratic Sen. Richard Bryan of Nevada—about the same as 20 years ago. ''I also oppose frivolous lawsuits, but that issue is really a trojan horse for firms that simply want to limit their liability.''

The accounting firms felt stung by large liability verdicts against them in connection with the S&L scandal of the early 1990s. But the cases that produced the biggest judgments were brought not by individual shareholders but by the federal government, seeking to recoup its depleted S&L insurance fund. Nevertheless, the ''Big Six'' are eagerly backing the bill because it would bar shareholders from suing outsiders who are parties to securities fraud—like accountants.

When the full Senate debates the bill, perhaps at the end of June, efforts may be made to make it less hostile to shareholders and to deal with some of the SEC's objections. The Clinton administration has yet to weight in. But a veto threat from the president would be risky, since the lopsided vote in the House is enough for an override.

Shareholders already are barred from suing brokerages and must arbitrate instead. ''The pendulum had swung too far toward the lawyers, and now it's swinging too far the other way,'' notes Richard Kraut, an attorney with Washington-based Storch & Brenner, which specializes in securities law. ''Unfortunately, some major investor frauds may have to take place before it again moves back toward the center.''

[From the St. Louis (MO) Post-Dispatch, May 9, 1995]

DON'T PROTECT SECURITIES FRAUD

The House has passed and the Senate is considering a bill to make it much harder for defrauded investors to bring class-action suits against investment firms that defraud them, as well as the accountants who helped them. The impetus for such legislation is the same as that driving tort revision, only with even less justification.

The Senate bill is sponsored by New Mexico Republican Pete Domenici and, surprisingly, Christopher Dodd, Democrat of Connecticut. Though its final provisions have yet to be settled, it is likely to restrict significantly the rights of small investors to sue for fraud.

The industry's complaint: The explosion of securities litigation needs to be curbed. But there isn't one; the number of suits has remained nearly constant in the last 20 years, despite huge growth in the volume of securities. However, recent events have created a new problem: Many accounting firms that put their names to false documents during the junk bond craze and the thrift debacle are finding themselves in court more often than ever before. They want protection. This bill would give it to them.

It would prohibit lawyers and accountants from being named as primary defendants in a class action unless the plaintiffs first can show that these defendants had actual knowledge of the fraud and the precise state of mind of those they helped perpetrate it. That can only be done by the discovery process in a lawsuit, not beforehand. The bill would also bar any plaintiff from suing who had less than 1 percent or $10,000 invested in the securities in question. This will keep a lot of people out of court.

When they do get in, if they lose, they will be responsible for court costs if they have holdings of more than very limited size, clearly a deterrent to small-investor suits for securities fraud.

These are just the highlights of a complex bill whose provisions work against not only the rights of small investors, but even large government bodies, such as Orange County or the city of Joplin, Mo., which lost huge amounts on derivatives that may have been sold to them without full disclosure.

Among those senators on the Banking Committee who are in a position to slow down the bill is Missouri's Christopher S. Bond. He should do so. His new colleague from Missouri, John Ashcroft, who has yet to take a position on the bill, should join him.

[From the Los Angeles (CA) Times, Mar. 12, 1995]

THIS ISN'T REFORM—IT'S A STEAMROLLER: GOP BILL CURBING LAWSUITS WOULD FLATTEN THE SMALL INVESTOR

Once again House Republicans have put the timetable for their ''contract with America'' ahead of the substance of the bills they are ramming through the lower chamber. On Wednesday the House approved a drastic revision of the nation's securities laws as part of the GOP's agenda for legal reform. The proposed Securities Litigation Reform Act, which is a key provision in the ''contract,'' would sharply curb the ability of investors and shareholders to sue stockbrokers, accounting firms and companies for fraud.

The measure, authored by Rep. Christopher Cox (R–Newport Beach), simply goes too far. It is one thing to craft legislation directed at curbing specific abuses of securities litigation, but the House measure would amount to a wholesale dismantling of the system that enables investors and shareholders to seek redress for financial fraud.

Opponents, including state securities administrators as well as consumer groups, maintain that the bill would virtually destroy the ability of citizens of modest means to sue when they are victims of fraud. Arthur Levitt Jr., the chairman of the Securities and Exchange Commission, who has worked to improve investor protections, has reservations about the measure. So has U.S. Atty. Gen. Janet Reno. Small wonder.

The proposed law would tilt the legal system in favor of corporations and their accounting firms, lawyers and investment firms by making it too easy for them to defend themselves against shareholder suits.

What might such a law portend for cases like Orange County? County officials are seeking legal recourse against Merrill Lynch Co., which sold high-risk securities to the county's ill-fated investment pool, utilmately triggering its bankruptcy. The fear is that the proposed law could be interpreted by the courts in ways that would work against plaintiffs in cases like this one.

Under the House bill, a judge could require the losers in a securities fraud case to pay the legal expenses of the winner if the judge determined that the investors' complaint did not originally possess substantial merit. Currently there is no ''loser pays'' general provision. The proposed law also would demand that the plaintiff show that the company or its officials acted knowingly and recklessly in committing the fraud. The current standards are simpler: They allow investors to sue for fraud if a company withholds information or issues misleading information that affects the market price.

Between these two standards there perhaps is a sensible middle ground—but that's not to be found in the House bill.

Cox casts his bill as a limitation against so-called ''strike suits,'' brought by shareholders who file lawsuits when the share price drops in a company in which they own a small part of the stock. The congressman likes to point out that high-technology companies are a favorite target of such lawsuits. Abuses of such lawsuits absolutely do exist and should certainly be curbed, but the House bill, as drawn, is overly broad in its potential application.

The Senate will take up the securities reform bill soon. We urge it to take a reasoned approach to the problems posed by frivolous securities lawsuits. The current House bill is not the answer.

[From the Philadelphia (PA) Inquirer, June 4, 1995]

GOING EASY ON CROOKS IN 3-PIECE SUITS

(By Jeff Brown)

True or false: Republicans are the law-and-order people who want to see more crooks go to jail and stay there longer?

True—unless the crook wears a three-piece suit instead of a ski mask. Corporate executives, accountants, securities industry poohbahs—they need special protection against claims they're thieves.

This, in a nutshell, is the point of the Private Securities Litigation Reform Act of 1995, approved, 11 to 4, by the Senate Banking Committee on May 24 and likely to reach the Senate floor this month. It's meant to discourage ''frivolous'' claims. But what about legitimate ones?

Unlike a similar House bill passed in March, the version sponsored by Sen. Alfonse D'Amato (R., N.Y.), the committee chairman, doesn't include a sweeping requirement that the loser in a stock-fraud case pay the winner's legal fees. But a trial judge could implement ''loser pays'' by finding the plaintiff had engaged in ''abusive litigation.''

Loser pays could deter stockholders from filing legitimate lawsuits by making it too risky to challenge rich corporations.

The D'Amato bill has other flaws as well, says Securities and Exchange Commission Chairman Arthur Levitt. ''Willful fraud'' would be made easier by a ''safe harbor'' provision, he says, because executives would be overly protected from lawsuits regarding misleading projections about a company's performance.

Stock frauds usually use bloated financial projections to entice investors. D'Amato would require a new, higher level of proof—essentially, that a company intended to mislead, giving defrauded investors the nearly insurmountable task of establishing a corporate executive's state of mind. An executive could make virtually any projection, then insulate himself against a fraud verdict by adding that things might not turn out that way.

The bill has some good provisions to protect investors joining in a class action from abuse by their own attorneys, and it would ensure that plaintiffs are illegitimate victims and not stooges for ambulance-chasers.

But federal court figures don't support Republican claims there's a flood of frivolous suits. There are only a few hundred class-action securities cases filed a year, while there are more than 14,000 public companies. And, of course, many securities suits are legitimate—just ask the victims in the Crazy Eddie or Lincoln Savings & Loan cases. Class actions are the cheapest way for small investors to fight abuses by well-heeled corporations.

SEC lawyers say most people who commit stock fraud could be charged with criminal

violations that carry prison terms. But they aren't because in criminal cases, prosecutors need proof beyond a reasonable doubt. So most stock-fraud cases, which are tough for jurors to grasp, go to civil court, where only a preponderance of evidence is required.

Still, a crook is a crook, whether he burgled your home or lied to sell you stocks at an inflated price. And the D'Amato bill would relax the penalties for many stock crooks.

It would scrap rules that make each participant in a fraud liable for the entire sum-ordered returned to investors or paid in fines. Under the current ''joint and several'' liability rules if one defendant can't come up with his share, the others have to pay it.

Instead, D'Amato would establish ''proportional liability,'' in which, with few exceptions, each defendant would pay a percentage of the penalty equal to his share of guilt, as determined at trial. Thus, if the defendant who owes 80 percent is bankrupt, the defrauded investors would be unable to recover most of what they are owed, even if another defendant has the money.

This provision was aggressively sought by the accounting profession after some firms were assessed hefty penalties for S&L frauds.

Proportional liability is like letting the getaway driver off with a speeding ticket if he didn't *intend* for his partner to shoot the bank teller. It protects the partially guilty at the expense of the investor who is completely innocent.

Surely, most corporate executives are honest. But since there's little evidence that frivolous lawsuits are a real problem, it looks as if business groups seek ''reform'' *legitimat* lawsuits.

A cynic could guess what goes through their minds when they see a thief in a three-piece suit held to account:

''There, but for the grace of God, go I.

Mr. FAIRCLOTH addressed the Chair.

The PRESIDING OFFICER. The Senator from North Carolina.

Mr. FAIRCLOTH. Mr. President, I rise in strong support of S. 240. I was an original cosponsor of this bill in this Congress, and in the last Congress.

Mr. President, securities litigation reform is not a household issue. It is not one that many people follow. But the fact is that it is very important for our economy, and very important for job creation in our country.

Very simply, this bill will attempt to put an end to frivolous class action lawsuits that are filed against America's publically traded companies. These are lawsuits that have little and often no bearing. They are filed for the sole purpose of blackmailing the companies. They are not lawsuits; they are legalized blackmail into settling suits rather than going to court. Everyone that has followed the issue at all knows, or who has ever been sued knows, that it is often cheaper to settle up front than it is to go all the way to trial with the cost of lawyers today. Of course, once the suit is settled, the attorneys that brought them keep the money. They keep the larger portion of it. It has become a cottage industry for certain lawyers that has been created over the last 20 years. I think it is time to put an end to it. And that is the purpose of this bill.

The problem is dramatic. Since 1980, there has been a 73-percent increase in the number of civil suits filed in Federal court. It is estimated that class action suits have increased three fold in just the last 5 years.

The cost of these suits is no small matter. At the end of 1993, class action suits were seeking $28 billion in damages.

The impact of these suits is having a detrimental effect on our economy. Many companies are afraid to go public and sell stock. By remaining private, they can avoid these kinds of suits, but they also sacrifice an increase in growth and jobs that can come from going public. This is costing America jobs.

Some have suggested that companies from overseas are afraid to establish businesses in America out of fear that they too will fall victim to these suits. This is costing America jobs as well and economic growth.

Money that would otherwise be spent on new job growth, and on research and development is paid out to lawyers to settle these suits or money is spent fighting them.

Furthermore, excessive costs are passed along to consumers in the form of higher prices. All of this has a ripple affect on our economy. Mr. President, it is making America less competitive and creating fewer jobs at a time in this country's history when we should become competitive, and we should be creating more jobs in order to stay competitive.

In my home State of North Carolina alone, 116 companies have contacted me and asked for help in passing this bill. They are united in their effort to end the abusive lawsuits that are being filed. Together, these companies in one small State alone, in North Carolina, employ 118,000 people. That is why the bill is so important not only to North Carolina but to the Nation as a whole.

Mr. President, let me assure you that nothing in this bill will prevent anyone from filing a legitimate fraud case against any company. Not one sentence in this bill will restrict anyone's rights who has a legitimate complaint.

If it did, I do not think 50 Members of the Senate would have cosponsored the bill.

Also, please do not be fooled by the ads you are seeing or hearing on this bill. They are not paid for by consumers. They are paid for by trial lawyers—wanting to protect their lucrative industry.

Consumers will be helped by this bill. Any consumer that has a job—or wants a job—or wants to keep a job will be helped by this bill. Not one consumer with a legal, legitimate lawsuit will be hurt by this bill.

Mr. President, a point that is not often made is that the consumers and plaintiffs in the class action suits rarely benefit from these lawsuits. You would think that the consumers and plaintiffs are receiving the benefits. But they are not. Study after study shows that lawyers get the vast major portion of any settlement.

We had testimony that the average investor received 6 or 7 cents for every $1 lost in the market because of these suits—and this is before the lawyers are paid. So after the lawyers are paid, there is practically nothing left.

Mr. President, I particularly want to note that an important part of this bill is the reform of proportionate liability rules. This bill requires that those who are responsible for causing a loss pay their fair share. But it does not require them to pay more than their fair share except in certain extenuating circumstances.

This will stop the tactic of going after the deep pockets—like the accountants. The rule is sue everybody and anybody, and then get the rich defendants to do the paying.

Under this bill, if a party to the suit is found to have contributed to a loss but did not do so knowingly, that person pays only the percentage of the loss he or she caused. For example, if this person caused 2 percent of the loss, they pay 2 percent of the liability claim.

Mr. President, I strongly support S. 240. I think we need to act on it now. And I am going to oppose any amendment that I think will weaken this bill. I think it needs to be passed as it is. This bill has already been moderated enough in committee to give it bipartisan support. So I urge the Senate to pass S. 240 as soon as possible.

Mr. President, I yield the floor.

Mr. BRYAN addressed the Chair.

The PRESIDING OFFICER (Mr. MACK). The Senator from Nevada.

Mr. BRYAN. Mr. President, I thank the Chair.

Mr. President, I rise in opposition to S. 240. I should like to make a couple of preliminary observations.

This is not the kind of riveting stuff that keeps everybody in America who is watching on television at the edge of their seats. Much of this discussion is esoteric, technical, and full of legal nuances, but no one should conclude from that preliminary observation that it does not have an enormous impact on millions and millions of Americans. Everyone who has a retirement account in which he or she has invested in securities, millions of small investors, all have a stake in this legislation.

The American securities market is acknowledged by all to be the world's safest and most effectively regulated, and the underpinning for this system has been twofold. No. 1, the powers which the Congress has vested in the Securities and Exchange Commission to regulate and keep the marketplace honest, fair and open to investors is one important aspect, in addition to the adjunctive support provided by State securities administrators in the respective 50 States. But as has been pointed out by my distinguished colleague, the senior Senator from Maryland, the ranking member of the Banking Committee, private causes of action are recognized by security regulators to be an equally important part

in keeping the marketplace free from fraud.

Mr. President, we are not talking about something that is academic, as if there were problems in the past and all of those have been taken care of. The New York Times in an article dated Friday, June 9 of this year makes this observation, and I quote:

Securities regulators say they are opening investigations into insider trading at a rate not seen since the mid 1980's, the era in which Ivan Boesky, who went to jail for trading on inside information, became a household name.

And then later I quote again.

''It's a growth industry,'' said William McLucas, Director of the Division of Enforcement of the Securities and Exchange Commission. ''In terms of raw numbers, we have as many cases as we have had since the 1980's, when we were in the heyday of mergers and acquisition activity.''

The North American Association of Securities Administrators estimates that each year there is approximately $40 billion of fraud in the securities marketplace. So millions of investors, people who do not think of themselves as stock barons but have their small retirements invested in the securities market, can be affected by what this Congress does on this legislation.

In my view, Mr. President, the bill pits innocent investors, many of whom are elderly and are dependent upon those investments for their sole source of retirement, on one side and those who are trying to immunize themselves from liability by reason of their own fraud on the other side.

I recognize the need for some changes in our securities litigation system. I do not appear before my colleagues this evening as a defender of the status quo.

I commend the distinguished chairman and the sponsors of this bill because in a number of areas the bill which they have introduced improves the present system, and it does so in these areas without disadvantaging the innocent investors who may have been defrauded. These areas include the prohibition of referral fees to brokers, prohibition on attorney's fees paid from SEC settlements, no bonus payments to class plaintiffs, elimination of conflicts of interest, payment of attorney's fees on a percentage basis, and improved settlement notices.

Mr. President, I think all of us would agree that those are important and positive changes which impact the securities litigation system in America. And if we are not in unanimity, there is virtually a consensus everywhere that these go a long way to correcting abuses in the securities litigation system. But any system must be balanced, and it must be fair so that it does not preclude meritorious suits.

The Trojan horse that brings this legislation to the floor unfurls the ensign of preventing frivolous lawsuits. I share that conclusion, as does the distinguished ranking member, who previously spoke in the Chamber. But the passengers inside this Trojan horse have very little interest in deterring frivolous lawsuits. Their primary objective is to shield themselves, to immunize themselves from liability as a result of their own, in some instances, intentional fraud and, in other instances, reckless misconduct.

It is for that reason my colleague and friend, the junior Senator from Alabama, Senator SHELBY, and I introduced our own bill earlier this year, S. 667, as an alternative to the legislation that is before us today. Our bill is a carefully tailored, fair approach that would prevent frivolous actions from proceeding while at the same time protecting meritorious actions.

Let me make a comment about frivolous lawsuits. I think there is a legitimate problem there, but the way in which we deal with frivolous lawsuits is to impose sanctions on attorneys who file frivolous lawsuits and make them be financially responsible for their misconduct in filing those frivolous lawsuits. I favor enhancements to rule 11 under the Federal Rules of Civil Procedure, and earlier this year I was privileged to offer the Frivolous Lawsuit Prevention Act which is designed to provide an additional power to Federal judges once a determination is made that a frivolous lawsuit or claim is made to impose sanctions, and that means financial responsibility so that the defendant who is required to defend that frivolous lawsuit can make his or her or its expenses whole again. I support that.

I submit to my colleagues that this legislation which we have before us this evening is far more than an attempt to curb frivolous lawsuits because if that were its purpose, I would be in the vanguard of urging my colleagues to adopt this legislation.

S. 667, which has been endorsed by numerous groups including the North American Association of Securities Regulators, the U.S. Conference of Mayors, and the Government Finance Officers Association contains reform measures that will improve the system for all Americans.

S. 667 also contains many provisions to eliminate abusive suits and to protect all parties to litigation including a novel proposal for an early evaluation procedure designed to weed out those cases that are clearly frivolous cases and, as I said previously, to impose sanctions when necessary. It provides for a rational, proportionate liability system.

Mr. President, it protects the defrauded investors fully so that when there is an uncollectible judgment against the primary wrongdoer, they can fully recover the amounts of their losses. It provides a reasonable regulatory safe harbor provision, as my distinguished friend and colleague, the Senator from Maryland, pointed out earlier this evening. And importantly, S. 667 also contains other measures to preserve meritorious suits.

It restores aiding and abetting liability eliminated last year by the Supreme Court in the Central Bank of Denver case by a 5 to 4 decision. The effect of that case was to wipe out liability of aiders and abetters and to immunize them from lawsuits based upon their own reckless misconduct that has been responsible for losses incurred by innocent investors.

S. 667 would also extend the statute of limitations for security fraud action in a manner suggested by the SEC and virtually every other unbiased witness who appeared before the Banking Committee. It codifies the reckless standard of liability with current law with the Sunstrand case, which Senator SARBANES referred to, and it restricts, Mr. President, secret settlements, protective orders, and the sealing of cases so that the public really knows what happens in these cases.

In my judgment, the bill that Senator SHELBY and I sponsored is reasonable, targeted, and balanced. It solved those problems that have been identified while preserving the system that has made our capital markets the envy of the world as the strongest and most safe. By contrast, Mr. President, the bill before us today makes radical changes in our securities laws, laws that have worked exceedingly well over the past six decades.

Let me discuss some of the arguments made for these radical changes. The primary premise of those who support S. 240 deals with an allegation that there has been an explosion of class action security lawsuits and that we must undertake these radical reforms in order to prevent this abuse.

The Congressional Research Service, at my request, prepared a report that was issued on May 16 of this year and entitled ''Securities Litigation Reform: Have frivolous shareholder suits exploded?'' Let me read to you some of the findings of the CRS study. Again, Mr. President, I quote:

While some current legislation . . . and the outcry of various corporate executives suggest that the volume of warrantless securities litigation has exploded to crisis proportions, evidence of this ''explosion'' is far from definitive. We know that in the 1990's, the number of annual Federal class action, securities cases filed has returned to the proximate level of such filings during the early and mid-1970's.

And I continue with the quote.

By the standards of the docket sizes faced by Federal courts, the upper limits of these potentially ''abusive'' securities suits remain exceptionally small; the filings have never exceeded 315 yearly in 20 years.

''* * * 315 cases a year in the past 20 years.'' Let me reiterate that point again. ''* * * 315 cases in 20 years.''

In fact, when multiple filings are consolidated, because some companies face more than one lawsuit as a result of the allegation of securities fraud, approximately 120 to 150 companies are sued each year.

Mr. President, that is out of some 14,000 registered companies —14,000 registered companies. And approximately 120 to 150 companies get sued each year.

The CRS goes on to say:

There are observers who argue that shareholder suits legally and unfairly exploit the high stock price volatility often observed among high tech firms.

However, another analysis of these high tech firms indicates that their unusually short, and unpredictable product cycles may, in fact, predispose their management toward a greater tendency to suppress proper disclosure or to provide false ones.

On balance, the evidence does not appear to be compelling enough for one to definitively assert that warrantless class action suits have exploded.

Mr. President, let us take an even closer look at the underlying premise upon which opponents would rewrite, in my view, in a radical way, our highly successful 60-year-old securities law. First, we are told there is an explosion of securities fraud cases. The CRS report demonstrates that this simply is not the case.

Let me invite my colleagues' attention to a chart that I have had prepared. These are securities class action lawsuits filed from 1974 to 1993. In 1974, over here, perhaps 290 cases; 20 years later, in 1993, approximately 290 cases. So in more than 20 years, when the population of America has geometrically increased, when the amount of general civil litigation—general civil litigation, not securities class actions—has grown dramatically, the number of class actions brought on behalf of securities plaintiffs has remained relatively constant, somewhere at the highest point, 315, and currently 290 cases.

Mrs. BOXER. Will the Senator yield for a question on that point?

Mr. BRYAN. I will be pleased to yield.

Mrs. BOXER. I am astounded by this chart. The proponents of this bill have been saying, since we started in the committee, that there has been an explosion in class action lawsuits filed—an explosion. We are going to hear tonight from all quarters. What the Senator is showing us tonight is really extraordinary. There has been no explosion.

Mr. BRYAN. My colleague is correct. Over the past 20 years, the numbers have been relatively constant. This represents one-tenth of 1 percent of the 235,000 Federal suits filed in 1994—one-tenth of 1 percent. There were 235,000 cases filed in the Federal court system in America last year, and one-tenth of 1 percent involved class action securities lawsuits. So my distinguished colleague is correct in her observation.

Mrs. BOXER. May I just say to my friend, thank you for this very straightforward chart because we are going to hear it all over the place in this U.S. Senate. And I am going to refer back to your chart, I say to my friend. Thank you very much for setting the record straight. There is no explosion of these class action lawsuits. Those are the facts. And I thank my friend for presenting it in such a clear fashion.

Mr. BRYAN. And I thank my colleague for posing the question. Securities class action suits have actually declined sharply in the last 20 years relative to both the number and the proceeds—the number and the proceeds—of initial and secondary public offerings, stock market trading volume, and every other measure of economic activity. To claim that suits by victims of financial swindles have constituted an explosion in civil litigation is patently false.

Now, we are also told, Mr. President, that so many companies are being sued that they are being distracted from other businesses. This is simply not true. According to figures from Securities Class Action Alert, only about 140 public companies were sued in securities fraud actions last year out of some 14,000 public companies reporting to the SEC. The only suits that have been going up are business suits against each other; that is, companies suing companies—companies suing companies, not suits by individuals against businesses. So if the companies who are suing each other are so troubled by litigation, why do they not just stop suing each other?

Mr. President, I think I have the answer. It is because they do not want to prevent themselves from being able to sue. They just want to prevent private individuals from being able to sue them. It is as simple as that. These companies would also have us believe that because of these suits, companies are fearful of going public, that they cannot raise the capital in the securities market.

Mr. President, there is no credible evidence that I am aware of that supports this astounding proposition. The existence of these suits has had no discernible impact on capital formation of business. The Dow Jones Industrial Average has just surpassed 4,000—an all-time high. I would invite my colleagues' attention to this chart. In terms of the initial public offerings, over the period of time that we have referenced here, they have gone up by approximately 9,000 percent in the last 20 years.

In the last 20 years, initial public offerings have risen by 9,000 percent—now, that is the number, Mr. President, of initial public offerings—while the capital raised, that is the amount raised by these initial public offerings, has increased by 58,000 percent. So both in terms of numbers and in terms of the dollars raised, they have gone up 9,000 and 58,000 percent, respectively. Let me say, I am glad to hear that, because that is important that we have the necessary capital formation to finance new enterprises. That is the essence of the free enterprise system.

The contention is invariably made that every time a stock drops to any degree, regardless of the reason, that there is a great rush to the courthouse and lawsuits are filed based solely upon the fact that the stock has declined in value. I want to address that assertion.

In examining this contention, there are three studies that have been called to my attention that reject that thesis.

One study by Prof. Baruch Lev of the University of California at Berkeley, involved public companies whose share price dropped by more than 20 percent in the 5 days following a disappointing earnings report.

Although there were 589 such cases where the stock dropped at least 20 percent from 1988 through 1990, class action suits were filed against only 20 of those firms, approximately 3.4 percent.

Moreover, Professor Lev compared those 20 firms with similar firms that were not sued and found that the firms that faced litigation tended to put out rosy projections, or forward-looking statements, just before releasing the bad earnings report, the issue that my distinguished colleague from Maryland so ably addressed that operates under the rubric of safe harbor, of which much more will be said during the course of this debate by him and, I am sure, my other colleagues.

By contrast, the firms that were not sued tended to publish more sober statements warning investors in advance that earnings would be lower than expected.

There was another study conducted by the firm of Francis, Philbrick, Schipper from the University of Chicago which searched for lawsuits against companies sustaining 20 percent declines in earnings and sales.

The author reported that, out of 51 such at-risk firms during 1988 to 1992, only 1 of the 51 was the target of a shareholder suit related to an earnings announcement.

And still a third such study performed by Princeton Venture Research shows that between 1986 and 1992, less than 3 percent of the companies whose stock dropped by more than 10 percent a day were sued.

So the claim that companies are bombarded with suits whenever their stock goes down is simply not supported by the studies I have seen. None of these studies, even using a 20-percent stock drop, found even 3.5 percent of the companies in this classification that were sued.

Even the Senate Banking Committee staff report published last year, under the able direction and support of Senator DODD and his staff, concluded, and I quote:

There is also no clear evidence of the extent to which price declines drive securities class actions to be filed.

But the proponents of S. 240 tell us, most of these suits are filed just so the plaintiffs can get a settlement. Again, the documentation does not support this conclusion.

The Senate staff report, to which I previously referred, examined sentiments of Federal judges regarding meritless litigation and found, and this again is directly from the staff report:

Seventy-five percent of the judges surveyed . . . thought that frivolous litigation was a small problem or no problem at all.

The SEC told the subcommittee that surveys had shown that ''most judges believed that frivolous litigation was not a major problem and could be dealt with through prompt dismissals.'' And I believe the enhanced provisions of the Federal Code of Civil Procedures, that deals with frivolous lawsuits, is an absolutely appropriate and responsible way to deal with errant and irresponsible lawyers who file clearly frivolous lawsuits.

I believe the strengthening of those provisions under the law, targeted and tailored, is the most effective way of curtailing lawyer abuse.

The evidence clearly shows we ought not to throw the baby out with the bathwater.

S. 240 goes well beyond what is needed to deal with the abuses that exist in today's system. Every Member has cause to be concerned, because once this bill is passed and the next fraud comes along, whether it be a derivative disaster in your State, another Keating, a Milken or a Boesky, your constituents will want to know why you supported legislation that took their rights away to recover for their losses as a result of such fraudulent activity.

Unfortunately, there are provisions in S. 240 that would effectively gut private actions under the securities laws, eliminate deterrence and hurt average Americans who depend on the system to protect their savings, their investments, and their retirements. These provisions would give free rein to the next Charles Keating and could cause incalculable damage to States and localities that suffer the same fate that Orange County has recently faced.

Among the most troublesome provisions in S. 240 is the safe harbor exemption from fraud liability for forward-looking statements that essentially allows executives to say almost anything and be immunized from liability as a result of such misstatements.

Senator SARBANES has indicated he will be offering an amendment to correct this problem, and I intend to join him as a cosponsor of that amendment. It is something that concerns the Federal and State regulators; the SEC has written, the National Association of Securities Administrators has written, government finance officers, and consumer groups all have written the committee expressing their concern.

Corporate predictions, called forward-looking statements, inherently are prone to fraud as they are an easy way to make exaggerated claims of favorable developments to attract investors to part with their cash.

In fact, the Federal securities laws were passed in large part because of the speculative stock projections that led to the stock market crash in 1929.

Recognizing the inherent potential for exaggerated claims, forward-looking statements by public companies were not even permitted until 1979.

I think that bears repeating. Until 1979, no forward-looking statements were made as a result of the experience that we had in the 1920's and the predilection of those seeking to embellish their own prospects for earnings to attract investors to invest as a result of these extravagant and flamboyant claims.

Since 1979, the SEC, recognizing some forward-looking statements may be important, has allowed limited predictions and protected them from liability if they are made in good faith and with a reasonable basis. Nevertheless, false predictions continue to be a favored tool of con artists, promoters and the illegal inside traders to pump up the price of their stock in order to profit at the expense of innocent investors.

S. 240 sponsors have not explained to my satisfaction why corporate statements that are made in bad faith with no reasonable basis or even with reckless disregard for their falsity need to be immunized from liability when fraud has occurred. I hope during the course of this debate we might have such an explanation. We are talking about statements made in bad faith with no reasonable basis and with reckless disregard for their falsity. I know of no public policy, Mr. President, that suggests that kind of conduct ought to be shielded from liability. Unhappily, S. 240 in its present form would do just that.

Moreover, the SEC is in the middle of a rulemaking process to study forward-looking statements and has asked Congress to allow it to complete its process. The original S. 240, as my colleague from Maryland has pointed out, would have done so. It is a technical area, highly complex and, frankly, it is a subject best left to the administrative agency in a rulemaking process rather than in a broad legislative enactment.

However, in committee, a virtual unlimited exemption or safe harbor—my colleague has aptly referred to this, not as a safe harbor but a pirate's cove, and I think he makes a compelling argument. Any statement either made orally or in writing that projects estimates or describes future events, so long as it is called a forward-looking statement, is immunized as a result of the legislative draft that is before us, even if that statement is made recklessly.

This is a gaping loophole through which wrongdoers or victims of fraud would be denied recovery. The effects of these changes, I think, are difficult to forecast, but I think they would have a devastating impact on the market.

I remind my colleagues that it is already extremely difficult to win a securities case. Under the 1934 Securities Act, a plaintiff must prove fraud or reckless behavior. Recklessness is defined as ''highly unreasonable conduct that involves not merely simple or even gross negligence, but an extreme departure from standards of ordinary care.''

So I think it is important for our colleagues to understand that no one under the 1934 act is liable as a result of his or her simple negligence, ordinary negligence, or even gross negligence. It requires a higher standard of misconduct—namely, reckless conduct. That seems tough enough to me. Anyone who makes a projection and meets this standard ought to pay his or her victims.

A second troublesome provision in S. 240 is the severe limits on joint and several liability, even when the primary wrongdoer is insolvent. America's legal system for fraud traditionally has been based on joint and several liability. Under this standard, if one wrongdoer is found liable but has no assets, the victim can be reimbursed fully by the other wrongdoers without whose assistance the fraud could not have succeeded. The underlying premise for this legal rationale is in that scale of justice—in the balance. Who should bear the burden of the loss? The innocent investor, who is totally without fault—no fault whatsoever—or a defendant whose conduct is at least reckless and may be subject to intentional fraud? Who ought to bear the burden? The philosophy that undergirds the American system of jurisprudence for centuries has said that under those cases, the scales of justice weigh in favor of the innocent victim, the one who had no responsibility, did not in any way contribute to the misdeed which caused the loss.

The rule has enabled swindle victims to recover full damages from accountants, brokers, bankers and lawyers who participate in securities scams when the primary wrongdoer has no assets left, has fled the jurisdiction, or may be in jail. The original S. 240 sharply limited this rule, immunizing reckless wrongdoers from joint and several liability.

If that had been the law, most investors would not have recovered their life savings in the Charles Keating/Lincoln Savings & Loan debacle. Although Keating had become bankrupt, the victims recovered their damages from the accountants, bankers, and lawyers who assisted Mr. Keating. Of the $240 million in judgments imposed in favor of class action plaintiffs, nearly 50 percent—or $100 million of those recoveries—were against accountants, bankers and lawyers—not the primary wrongdoers, but individuals who conducted and assisted Mr. Keating in perpetrating the fraud.

Despite extensive testimony, particularly by the SEC, that restricting joint and several liability will reduce recoveries for defrauded victims and encourage more fraud, the bill, as reported, restricts joint and several liability even further.

In the all-too-often cases in which a knowing violator is bankrupt, in jail, has fled, the liability of reckless violators to the uncollectible share would be capped. That is, there would be a limitation. Those who are proportionately

liable under the system that is incorporated in this print of S. 240 would be subject only to their proportionate share, even though the innocent victim is unable to recover his or her full amount.

There is one exception, as was pointed out, and that would be with respect to victims whose net worth is under $200,000 and have recoverable damages of more than 10 percent of their net worth.

May I suggest, Mr. President, that is a very narrow window of opportunity. People who own their own homes, automobiles, and have the most modest of assets frequently might have a net worth of $200,000. So we are not talking about the goliaths of business people who are extraordinary affluent; we are talking about tens of millions of Americans who would be excluded from recovery under this provision. That cap on joint and several liability means it will be virtually impossible for a great many of those victims to recover their losses.

The bill also does several other very damaging things. The bill would also turn over control of class actions to the wealthiest investors, even though their interests may not be as extensive as the small investors' that the class action device was designed to protect. It relegates small investors to a second-class status and makes the securities markets strictly a playgrounds for the big boys—the wealthy.

In committee, a new provision was added that requires courts to designate the ''most adequate plaintiff''—words of art—in a private class action. This ''most adequate plaintiff''—defined as the plaintiff with the largest financial interest in the case—is given the power to select lead counsel, control the case, and even to make settlement agreements for any amount or even dismissing the case.

This change to S. 240 makes plain the real motives behind the bill and makes hollow any protections that this is to protect meritorious fraud actions. This ''most affluent plaintiff'' requirement would simply wipe out average investors who are defrauded. The wealthiest investors may have close ties to big corporate defendants who can afford to accept less than the full recoveries. But it gives them complete control over class actions at the expense of average investors.

Aside from raising a specter of collusive intervention by large investors, and simply dismiss cases or enter into sweetheart settlements, the substitute virtually precludes small investors from being able to obtain attorneys willing to invest their time on cases over which they have no control and for which they may not be paid.

This also directly contradicts the reason why class actions were devised in the first instance, and that is to give average investors, who cannot afford to fight big corporations by their own means, the ability to band together and collectively seek a remedy for their relief. Instead, this provision gives preference to wealthy investors who can afford to seek redress for their losses on their own.

S. 240 also eliminates a principal investor protection provision that was originally part of S. 240, as the distinguished ranking member of the committee, the senior Senator from Maryland, points out. That deals with the statute of limitations issue. Currently, the statute of limitations is 1 year from the point of the discovery of the fraud on the part of the victim, but in no event for more than 3 years after the fraud. The SEC, the North American Association of Securities Administrators—every regulator that I am aware of, who offered testimony or correspondence, indicated that this period is simply too short. It provides insufficient time for meritorious, legitimate plaintiffs to bring their action. The original S. 240 extended the period to 2 years after the violation was, or should have been, discovered by the injured plaintiff, not more than 5 years after the fraud itself.

As the Senator from Maryland pointed out, we dealt with this issue back in 1991 under the Lampf case. That case will have particular relevance to a number of my colleagues, because immediately after the Lampf case, which gave a retroactive interpretation to the law, surprising most securities litigators by concluding that there was only a one to three-year statute of limitations, immediately thereafter, Charles Keating filed a motion to dismiss.

A number of my colleagues joined me in supporting an amendment to the legislation that restored the 2–5 year provision retroactively, so that those cases for dismissal would not find themselves dismissed simply because the statute of limitation provision came as a surprise.

What this provision seeks to do with respect to the prospective cases is the same 2–5 year. As the distinguished Senator from Maryland pointed out, when this proposal came to the floor to correct the retroactive abridgement or shortening of the statute of limitation from 2–5 to 1–3, there was no objection. Everyone agreed.

The only issue—and it was a legitimate question—should we not take a broader look at security litigation reform? There was no objection to the premise you need a longer period of time.

I must say that the SEC has been very clear, and their testimony has been compelling, that even with all of the resources that the SEC can command and marshal, it takes an average of 2.25 years to complete an investigation of an alleged securities fraud. That is the SEC, with immense resources.

We, by failing to provide for the statute of limitations correction which was originally part of this bill and in rejecting the advice of the SEC, the North American Association of Security Administrators, and virtually everyone that testified from a regulatory public policy point of view, we give comfort to those who perpetrate fraud on innocent investors.

I will offer an amendment that deals with that issue either later this evening or tomorrow, as our time permits.

I might just add that Senator DODD, one of the prime sponsors, indicated he, too, believes S. 240 needs to be amended to reflect that statute of limitations issues we just talked about. Obviously we will welcome his support.

S. 240 also fails to restore the aiding and abetting liability for private suits and eliminates the ability of the SEC to sue aiders and abettors for reckless behavior as opposed to fraudulent conduct.

Members will recall, Mr. President, I cited in the Keating case that recovery of $100 million was from aiders and abettors. If S. 240, as this legislation is being processed today, was the law back in 1991, that $100 million could not have been recovered. It could not have been recovered because the court, just last year, in another case that was a surprise to those who follow the securities industry issues, held that a ruling that had been in effect for 25 years, namely, that aiders and abettors were covered under the provisions of the securities law, that aiders and abettors were, in fact, not covered, and under a 5–4 Supreme Court decision, Central Bank of Denver, such liability for aiders and abettors is eliminated.

We are not talking about proportionately. We are not talking about joint and several liability. We are talking about aiders and abettors. They have a free ride. They are home free. All you need to do is get yourself in the aider and abettor category and you can have a field day. It is ''Katie bar the door,'' do whatever you wish, and insofar as a private cause of action, you are precluded from recovery.

Mr. President, no matter how anyone feels on securities litigation reform, can it possibly be in the best interest of America to insulate from liability a category of persons whose conduct has inflicted upon innocent investors enormous financial loss, maybe even wiping out everything that a retired person might have in his or her investment?

I indicated that the Supreme Court also imposed a limitation even on the SEC—even on the SEC. They can only move against aiders and abettors under a much stricter standard. The defendant must knowingly—and that is the standard which even the SEC is forced to meet now as a consequence of the decision. We will be offering an amendment on this, Mr. President.

I note that Senator DODD, who has worked for many, many years—and all who work with him on the committee and consider ourselves his friend and close colleague acknowledge Senator DODD's fine work. Last year, in an April 29, 1994, ''Dear Colleague'' letter, Senator DODD made this observation:

Allowing private actions against aiders and abettors is an indispensable part of our securities enforcement system, and I believe Congress must consider legislation to reinstate liability in this area.

Senator DODD was absolutely right on the mark in 1994. The reason is even more compelling in 1995, based upon some of the information that I shared with Members earlier from those on the SEC that tell us about the amount of fraudulent activity. In this particular instance we talked of insider trading.

Senator DODD reiterates:

Lawyers, accountants and other professionals should not get off the hook, in my view, when they assist their clients in committing fraud. . . . The Supreme Court has laid down a gauntlet for Congress. . . . In my view, we need to respond to the Supreme Court's decisions promptly and I emphasize promptly.

As Senator DODD so often does, he speaks with precision, eloquence, and cogency. He is right on the mark, Mr. President. We need to do that in the course of processing any securities legislation.

Mr. President, this bill, also as reported by the Banking Committee, deals with the Securities Act of 1933—that is another provision—not the 1934 act. The 1933 act targets fraud in initial offerings of securities to the public. Initial public offerings historically have been rife with fraud by huckster promoters peddling new securities.

The 1993 act holds such wrongdoers strictly liable. The bill as reported, however, makes it nearly impossible to hold crooks who sell phony securities strictly liable for their fraud.

S. 240 also retains some highly burdensome pleading requirements—burdens that must be met by fraud victims, plaintiffs in these class actions. By ''pleadings,'' we are talking about an illegal document that commences a lawsuit in which a plaintiff—in this instance a victim of fraud—states forth his cause of action. Those pleading requirements under S. 240 are exceedingly burdensome.

Under current law, fraud plaintiffs are not required to state specific facts establishing the defendant's intent. That is a subjective state of mind. It seems pretty reasonable. It is a pretty onerous burden to be able to allege with particularity what the subjective thought process would be of a defendant.

The reason for that is because such facts are normally only uncovered later during a deposition or discovery process when there is a chance to examine the defendant or defendants under oath.

One of the ways the original S. 240 tried to block cases was through impossible pleading standards requiring plaintiffs to state specific acts demonstrating the state of mind of each defendant. Witness after witness indicated that this would prevent, for all practical purposes, many fraud victims from recovering their money.

The bill as reported merely replaces the impossible standard with the harshest standard currently used. In my view, and in the view of those who regulate the securities market, it is not much of an improvement over the original language and would prevent legitimate plaintiffs from even asserting a cause of action.

S. 240 also contains an unfair and inflexible limit on victims for recovery. The bill contains a formula designed to limit the amount wrongdoers have to pay their victims. Basically, if the company stock goes up during a 3-month period following public exposure of the fraud, for whatever reason, the victims' recovery is reduced accordingly.

Finally, Mr. President, S. 240 would shield evidence of fraud from the public. S. 240 purports to attempt to eliminate secret settlements. The bill fails to ban the almost universal secrecy orders that are required by defendants as a condition of producing documents during discovery.

These orders remain in effect throughout litigation and generally require that, once a case is over, documents be destroyed or returned.

Such secrecy orders block significant corporate wrongdoing from public scrutiny.

Moreover, these orders allow defendants to proclaim their innocence after settlement without fear of contradiction—and permit them to claim the cases are frivolous when they visit with Members of Congress. And because the documents upon which the case was predicated are sealed, there is no effective rebuttal.

I would note one final irony of S. 240. The bill violates one of the primary tenets of Republican theory—this is, returning government functions to the private sector.

For 60 years, private attorneys general have supplemented the antifraud efforts of Federal regulators at the SEC and at the Justice Department.

Such an enforcement scheme is entirely consistent with the Republican contract.

But as CBO noted in its cost estimate on S. 240, if private rights of action are curtailed, substantial government involvement, including increased SEC efforts, will be needed to assure that the markets remain fair.

Morever, as CBO stated in its June 19 letter to the committee, the SEC will have to double or triple its resources allocated to this function—and the cost to the American taxpayer could be up to $250 million over the next 5 years.

That is to say, by reason of the restrictions placed on private causes of action, if one has a view of regulating the marketplace effectively the burden essentially now falls almost exclusively to the SEC, and they would have to up staff and the cost as estimated by CBO is $250 million; $250 million paid by the American taxpayer.

I invite my colleagues' attention to pages 30–32 of the committee report for CBO's estimate.

This confirms the view of the last Republican Chairman of the SEC, Richard Breeden, who testified that the elimination of private actions would require the Commission to hire 800–900 more lawyers to police the markets.

Even if Congress should choose to appropriate the added money—which I seriously doubt—the system will not be as effective.

I hope each Member of this body will remember that when the next financial debacle hits, average Americans, many of whom may be people who live in your district, will be unable to runner their losses.

Last week, my constituents who were victims of the Keating scandal visited Washington, along with other Keating victims from other States.

One way Jeri Mellon from Henderson, NV, a community just 10 miles out of Las Vegas. She is head of the Lincoln bondholders committee. She and Joy Delfosse came to see me.

Every Member of Congress should be standing up for the Joy Delfosses and Jeri Mellons in their States, not the Charles Keatings.

These are retirees whose life savings would have been wiped out if they had not been able to recover as a result of the Keating fraud. And that ability to recover would have been lost if aiders and abettors had not been liable. And that ability to recover may have been lost if the statute of limitations had not been extended. And that recovery may have been lost as a result of the proportionate liability proposal contained in this legislation.

Mrs. BOXER. Will the Senator yield for a question?

Mr. BRYAN. I will be pleased to do so.

Mrs. BOXER. The Senator is right to bring up real people in this conversation. Because oftentimes we get into the legalese and we forget what we are doing here. So I appreciate the fact that the Senator from Nevada brings up the people that he met. I was with him at that occasion. We met people from Florida. We met people from Arizona. We met people from Nevada and California.

I want to ask the Senator a question, because I think anyone watching this debate ought to listen to the response of the Senator. My friend from Nevada who is addressing this Chamber is a learned attorney. He has great experience in seeking justice for people.

Is it the Senator's opinion that the people who were bilked by Charles Keating would have recovered as much as they have recovered, which as I understand it is between 40 percent and 60 percent of their losses, if S. 240 had been the law of the land?

Mr. BRYAN. The answer to the question of the Senator is unequivocally clear. They would have been unable to recover as much as they did. I would simply point out to my distinguished colleague from California, these are innocent people. These are not people who in any way participated in any scam. They are not lawyers. They are ordinary folks whose retirement was on the line. These were retirees.

It is interesting. As I know the distinguished Senator knows, they went to what they describe kind of as a neighborhood bank, Lincoln Savings and Loan. They knew everybody and they would come in and say, ''How are you Suzy?'' And, ''How are you John?'' And, ''How is the golf game and how are you enjoying retirement?''

And they would say, ''Look, what is this stock offering you have, American Continental Corp.?''

And they were told, ''You know, you would be crazy not to put money in that, absolutely crazy. There is a much larger return than you would get just if you put this in a regular savings account in the bank.''

These are the people, I tell my distinguished colleague from California, real Americans from every State of all political persuasions, of all political philosophies—real people, and the impact upon them is what this debate is all about this evening.

Mrs. BOXER. I have one last question for my friend. As we saw these people tell their stories, it was very moving. They are older. They were targeted by Charles Keating. And what they told us is—and this is the question for my friend—they went to file their suits, because they were clearly led to believe that their investments were protected, and the salespeople for Charles Keating were told to lead them down this primrose path. They called them the meek and the ignorant. They sought out ''the meek, the weak and the ignorant.'' That is a quote from Charles Keating's brochures to their salesmen.

We know that Charles Keating put his whole family on the payroll and drained all this money that he stole. And is it not true, I say to my friend, that he went bankrupt?

Mr. BRYAN. He went bankrupt.

Mrs. BOXER. I say to my friend, he could not be touched by these people because he had a lot of lawyers who protected him. And he went bankrupt.

Is it not true that these good, decent senior citizens had to go to the aiders and abettors?

Mr. BRYAN. That is precisely the case.

As the distinguished California Senator knows, having read the provisions of the print before us, the thing that is particularly alarming is that there are several provisions in this law that is being proposed in its current form, as to the pleading standard, safe harbor, the ability to stay or to prevent discovery—that is ascertaining what the facts are—so long as there is a motion to dismiss; all of those were tactics that were used by Mr. Keating and his lawyers. All of those.

If the law in 1991 was the same as it will be if this is passed, together with the Supreme Court decisions that S. 240 fails to correct, those people might never have gotten into the courthouse door.

Mrs. BOXER. Let me thank my friend again for bringing this down to what happens to people when we act here in this body, and to say to my friend that we ought to make any bill pass the Keating test.

We ought to look at any bill when we are done amending it. I hope we amend this bill and make it better, and put it to the Keating test. Would those good people, those innocent senior citizens, be able to recover when we are ''done with reforming,'' I put in quotes, the securities law? Yes. We should go after those frivolous lawsuits. We all want to do that. But there are an awful lot of good companies out there that need to have the frivolous lawsuit aspect of this bill looked at. But, my goodness, let us not forget the real people, the retirees, the people who are the targets. Let us not forget them because it reminds me of the S&L scandal. We made one mistake once. I do not want to see us make another one.

I thank my friend for yielding.

Mr. BRYAN. Mr. President, I thank my distinguished colleague from California. I know some of my colleagues have waited for a while. I will finish, and yield the floor in a couple of minutes.

The Senator from California speaks with such clarity and conviction. She is absolutely right to remind us that a little more than a decade ago a big mistake was made with respect to the savings and loan industry. We spent billions and billions of dollars as a result. If we do not correct this legislation, as my distinguished colleague from Maryland, the distinguished colleague from California, and others will point out, we are opening the door to every charlatan and con artist in America to prey on innocent investors with impunity, and there almost a sense of deja vu. It may not happen tomorrow. But it will happen, and the consequences will be frightening. I do not think we want to make that mistake. America's securities markets have served as the world's finest. The Lincoln Savings & Loan in Orange County could be in my State. It could be in your State. I do not want to have to explain to the good citizens of my State why I allowed this happen, and why my failure to take action precluded them from being recovered as a result of frauds perpetrated upon them. Each and every one of us share that concern.

I have a number of letters from State and local officials. I am not going to belabor my colleagues this evening with all of those. But let me point out as this issue has been framed that it is the lawyers. Frankly, the lawyers do bear some responsibility here.

We talked about rule 11. And I am in favor of banging the lawyers that file frivolous lawsuits over the head and hit them in the pocketbook. Count me at the head of the line for them. But under the guise of getting the lawyers, unpopular since Shakespeare's time. ''Kill the lawyers first''—every student of Shakespeare recalls that quote. Let us try to give here a more objective view.

You have people such as the Association of Governing Boards of Universities and Colleges who have expressed their concern and support the kinds of amendments that we are going to be offering, and oppose the legislation in its current form; the Association of Jesuit Colleges and Universities; the Council of Independent Colleges; the Government Finance Officers Association. These are not closet groups of trial lawyers. The Association of Clerks and Recorders; Election Officials and Treasurers; the Municipal Treasurers Association of the United States and Canada; the National Association of College and University Business Officers; the National Association of County Treasurers and Finance Officers; the National Association of State Universities and Land Grant Colleges; the North American Security Administrators.

Mr. President, I do not believe that one can make the case that these are simply closet advocates for trial lawyers, who I understand are the most disdained group of professionals in America. I understand that. I am not unmindful of that.

But we ought not with the antipathy that we feel toward them for whatever reason wipe out the right of innocent investors to sue. And the bill before us in its current print will do precisely that unless we accept the amendments that the Senator from Maryland, the Senator from California, and I believe the Senator from Florida as well maybe have.

I thank my colleagues for yielding.

Ms. MOSELEY-BRAUN. Mr. President, I would like to speak on the bill.

Mr. President, the United States has the largest and the best capital markets in the world. In no small part that is because markets in the United States are seen as open and fair. And it is one important reason over 50 million Americans are able to participate in our securities markets. Every investor can be confident that our markets are honest, and it is very clear that private securities litigation has played an important role in keeping them honest.

At the same time, there is real need for reform. One study conducted in the 1980's that was cited in the Banking Committee's report on S. 240 found that every single American corporation that suffered a market loss of $20 million or more in its capitalization had been sued. In other words, every corporation whose stock at one time declined in value by $20 million or more was sued for securities fraud during the period covered by the study.

Another study included in the committee report stated that one out of every six companies less than 10 years old that received venture capital had been sued at least once and that such lawsuits consumed an average of over 1,000 hours of time of the management of these companies and an average of $692,000 in legal fees.

What these statistics demonstrate is that either our capital markets are literally overrun with fraud or that there are at least some unsupportable lawsuits being filed. The clear consensus of the Banking Committee was that the evidence did not and does not support the conclusion that our markets are suffering an epidemic of fraud. Rather, the committee's conclusion was very clear that there are abusive security lawsuits being filed, that these suits result in significant adverse consequences for our capital markets and for our economy generally and that, therefore, the reform is necessary. The fact is that securities fraud litigation can be very lucrative, even in cases where there is no fraud. Some would say particularly in cases where there is no fraud.

The Supreme Court made that point very clear in the case of Blue Chip Stamps versus Manor Drug Store. The Court in dictum stated that in securities fraud cases ''even a complaint which by objective standards may have very little success at trial has a settlement value to the plaintiff out of proportion to its prospect of success * * *.''

The Court's opinion was, of course, stated in the driest possible language. In the language of my hometown of Chicago what the Court was really saying was in this area of the law plaintiffs and lawyers who are willing to game the system have all the clout. These few people, and they are a few people, know that they have the corporations and other ancillary parties over a barrel, and they are taking advantage of that fact. They win settlements in all too many cases because of that leverage rather than because of the merits of the case.

What is more, Mr. President, under current law, small investors in a class action case do not really control the case, their lawyers do. One plaintiff lawyer demonstrated the temptation that a few lawyers have succumbed to all too clearly. He said:

I have the greatest practice of law in the world; I have no clients.

The opportunity for coercive settlements is not the only problem in this area. The Supreme Court made it clear again in the Blue Chip case that ''the very pendency of the lawsuit may frustrate or delay normal business activity of the defendant which is totally unrelated to the lawsuit.''

The reason for that is not just the cost of defending against litigation, it is the cost and disruption that flow from the company's attempts to respond to plaintiff's request for discovery, and discovery is not a minor matter. The committee report again stated:

According to the general counsel of an investment bank, ''discovery costs account for roughly 80 percent of the total litigation costs in security fraud cases.''

Companies have had to produce over 1,500 boxes of documents and to spend well over $1 million just to comply with the costs of fact-finding, of discovery. It is not just a matter of documents. The time the key employees of the company may have to spend responding to requests for information may keep them and, often does keep them, from tending to the business of the company and, therefore, that also works to coerce settlements.

Some might argue that this is a technical legal issue and one that is not important to the general American public. However, I would suggest that just the opposite is true. Every American, whether he or she invests in our capital markets or not, has an interest in seeing to it that reform is enacted.

The Director of Enforcement of the Securities and Exchange Commission made that point very well. Testifying before the Senate Banking Committee in the last Congress, he stated that:

There is a strong public interest in eliminating frivolous cases because, to the extent that baseless claims are settled solely to avoid the costs of litigation, the system imposes what may be viewed as a tax on capital formation.

Chairman Arthur Levitt of the SEC reinforced the point in his testimony before the Banking Committee. He stated that:

There is no denying that there are real problems in the current system—problems that need to be addressed not just because of abstract rights and responsibilities, but because investors and markets are being hurt by litigation excesses.

Mr. President, these excesses and the tax they impose on our capital markets and on our economic growth are particularly onerous because they do not even achieve what they are ostensibly designed to achieve—the protection of investors who suffer losses. All too often, under the current system, investors receive settlements that amount to only about 10 percent, or even less, of their damages, and that is another whole set of problems, to hold out false hopes to people in which they may receive less than 10 percent recovery.

The direct legal expenses in settlements paid are, again, only part of the tax. There are also a variety of indirect costs, costs that fall particularly heavy on the entrepreneurial and high-tech companies on which our future economy depends.

Of course, investors want to be protected from fraud, but they also want to be able to get as much information as possible, and they also want to be sure that their companies are focused on their business instead of on potential lawsuits and litigation.

Mr. President, it is important for us all to remember that investors are not just investors. Investors are also employees who want their companies to do well. There are also parents who want to see expanded economic opportunity for their children. They are also participants in the United States economy, and they want to see the kind of strong growth and job creation that goes along with a strong economy.

Our world economy is more and more competitive. Our future prosperity depends on our ability to meet and beat that international competition, and that means we need a continuing supply of new ideas, new products, and new companies that can produce the jobs for tomorrow. These major issues may seem a long way from the arcane securities law issues we are debating and discussing this evening. But, Mr. President, the connection is both strong and direct.

A recent book by Hendrick Smith entitled ''Rethinking America,'' I think, illustrates the connection. That book has chapter after chapter recounting the challenges facing American business in this new global economy. It talks about how some American businesses are succeeding and how some are not.

One of the points it makes in some detail is the short-term focus that afflicts so many American corporations, an affliction that is not shared by our major international competition.

American corporations are all too often intensely focused on the short-term price of their stock instead of the long-term growth and prosperity of the business. This short-term focus, which the current state of our securities laws helps to foster, distracts senior management, makes too many of our businesses less creative, and undermines the ability of American businesses to make the investments that have the best long-term payoff.

Our securities laws have also rendered many of our businesses mute, virtually unable to talk to their investors and owners because of the fear of lawsuits. And that fear not only disadvantages the companies and investors, it also hurts all of us because it is an impediment to the smooth functioning of our capital markets. It makes it less likely that capital is allocated in a way that produces the most and best new jobs and new products.

Let me emphasize that point. New jobs and new products. The engine of our economy depends in large part on the vitality of our capital markets and, in the final analysis, Mr. President, that is what this debate is all about.

I cosponsored S. 240, along with Senator DODD and other members of the committee because this bill has been based on the recognition of all of these facts. S. 240 acknowledges the multiple rolls and multiple interests that we all have in this area, and it is based, I think, on an understanding that we are all in this together. We must maintain strong investor protection while making it more difficult to file frivolous or abusive lawsuits.

We must create a climate where new businesses that create new jobs and new products can get the capital they need while ensuring that defrauded investors have the right to recover their damages.

S. 240, as introduced by Senators DODD and DOMENICI, went a long way toward achieving all of those objectives. The bill attempted to reduce transaction costs so that investors who

are harmed see a smaller portion of their recoveries consumed by attorney's fees and other miscellaneous costs. It was designed to help our capital markets create more jobs and create greater long-term economic growth, something that is also very good for investors.

The original bill has been modified in a number of important ways. Some of these changes represent improvements in the original bill, others represent new concepts. The bill before us is not perfect. In some areas, quite frankly, I would have written it differently and I suspect everybody in the Senate almost always feels the same way about major legislation.

I think it is clear, however, that this bill is a good-faith attempt to balance the competing public objectives in this area and that looking at the overall legislation it successfully achieves balance and that, I think, is a very important notion as we address this issue. Achieving balance is important to keeping our capital markets vital, and it is important to our economic prosperity.

It is important, Mr. President, again to keep in mind what this area of the law is all about and what the bill does and does not do. This may get a little technical, but I guess a lot of the conversation here has gone into the particular aspects of the bill that are the most controversial.

What we are talking about has to do with private rights of action for fraud under section 10(b) of the Securities Exchange Act and rule 10b–5 of the Securities and Exchange Commission. Those laws did not expressly provide private parties with a right to sue corporations or other parties involved in the issuance and sale of securities. However, this area of law has evolved out of a long series of judicial decisions, not legislative actions.

S. 240 will help reduce frivolous and abusive security suits, and it achieves that objective without encouraging fraud and without undermining the rights of investors, and particularly small investors, to recover where there actually is fraud.

Some argue that the bill is somehow unbalanced because it limits joint and several liability and because it does not extend the statute of limitations in private section 10(b) cases. The bill, however, holds everyone—I emphasize that—everyone who commits ''knowing'' securities fraud jointly and severally liable. Other defendants may be only ''proportionately'' liable; that is, they may be only responsible for the share of the harm that they cause. That ensures that parties who may be only 1 percent or 2 percent responsible for the fraud are not added defendants in cases simply because they have deep pockets.

Proportionate liability is far from a new concept. We have had it in the tort area in my own State of Illinois for a number of years. It is an important and necessary change. Without it, many people will not deal with the small entrepreneurial, startup companies that are the most likely to be sued—and I point out that are most likely to create jobs—because the potential liability is so much greater than the profit that can be earned from doing business with these companies. Many companies are increasingly unable to find accounting firms and law firms willing to do business with them and are having increasing difficulty in attracting the best people to sit on their boards of directors. And the result of that is, again, less information and less protection for investors and greater hurdles for the new companies on which our economic future depends.

Of course, in some cases, the parties most responsible for fraud are judgment proof; that is, they have no assets at all that can be found. In those situations, this bill provides, I think, substantial protection for small investors. First, it says that defendants that are proportionately liable have their share of responsibility increased up to 50 percent of their proportionate share, so that all investors are better compensated for the losses they have suffered. For small investors, those with a net worth of under $200,000, who suffer a loss of at least 10 percent of their net worth, every defendant is jointly and severally liable for paying those damages—a provision in this bill that I think ensures that small investors get that extra protection.

The proportionate liability provisions are not the only provisions, however, that have been the subject of criticism. Some argue that S. 240 is flawed because of a provision that it does not include, and that is the provision that has to do with an extension of the statute of limitations.

Mr. President, it is true that S. 240 is silent on the issue of the statute of limitations. But this is not to disadvantage small investors or any other investors. Four years ago, in a case known as the Lampf decision, the Supreme Court of the United States decided that the implied rights of action for private parties under section 10(b) were subject to the same statute of limitations that applied more generally in other areas of the securities law—1 year from the date of discovery of the fraud, or 3 years from the date of the fraud.

It is worth noting that the court did not disadvantage section 10(b) cases relative to other security cases; it simply said that the same statute of limitations applies, which is hardly a revolutionary idea. In the 4 years since the Lampf decision was rendered, there has been no substantial evidence presented that investors are being harmed by that decision.

Statutes of limitation, by their very nature, have some degree of arbitrariness to them. In this area, the evidence is that the overwhelming number of cases are being brought within a year of the time the alleged fraud occurs, which tends to indicate that a longer statute may not be needed. Most cases are not filed just before the statute of limitations expires, so the 1-year/3-year statute of limitations does not seem to be making it difficult for plaintiffs to prepare their complaints.

My own conclusion is that, in light of the evidence, a case has not been made for giving section 10(b) implied private rights of action in fraud cases a longer statute of limitations than other Federal securities law related cases.

Mr. President, one of the provisions of this bill that has been the subject of some attention has to do with the issue of whether or not it includes something that has been called the English rule or losers pay. That has been a rule that never frankly has been applied in American jurisprudence. It is the English rule that says if you file the lawsuit and you lose, then you have to pay the cost of litigation. However, this bill does not have loser pay in it. The bill simply requires the judge to look at rule 11 of the Federal Rules of Civil Procedure, a rule that already exists and pertains to all kinds of civil litigation and which calls for sanctions for frivolous lawsuits to determine in these securities cases whether or not any party has violated rule 11 and, if so, to impose sanctions.

That is a far cry, Mr. President, from the English rule, from what has been called ''loser pays.''

The bill also establishes what is called a ''safe harbor.'' This provision in some ways offers more protection for investors and less, frankly, for issuers of security than do some of the leading court decisions in this area today.

And so what is at issue here with the safe harbor question has to do with what are known as forward-looking statements, statements by issuers of securities that describe future events or that estimate the likelihood of selected future events occurring.

SEC rule 175 states that forward-looking statements made with a reasonable basis and in good faith cannot be used as a basis for a fraud action. That is already law.

However, Mr. President, as a practical matter, the safe harbor that it provides turned out to be not very safe at all. What added real protection was a third circuit case that recognized what is called the bespeaks caution doctrine, a doctrine that is now recognized in at least five circuits. Under this doctrine, under the bespeaks caution doctrine, forward-looking statements accompanied by meaningful cautionary statements, that is, statements that indicate the risks the forward-looking statements will not come true, are as a matter of law immaterial and therefore cannot be used as a basis for fraud action.

Under this bill, however, the bespeaks caution doctrine would not apply to issuers who made statements with the actual intent of misleading investors even if they were accompanied by meaningful cautionary statements.

To that extent, Mr. President, this legislation is more protective of investor's interests in that regard than the evolving state of the law in at least five circuits in this country.

Again, these are all highly technical areas, and there is a lot more that I can say about the issues and other issues raised by this legislation. However, I instead want to make one final point.

A simplistic analysis of this bill says this is a fight between the lawyers and the corporations and that the proponents of the bill, the people who support the bill, are somehow engaged in lawyer bashing. I cannot speak for every supporter of this bill, but I wanted to make it as clear as I can that as a lawyer myself, I care very much about the profession, and my view is that lawyer bashing has no place in this debate. The great bulk of the work of lawyers in the securities litigation area has been of enormous benefit to investors and to the public generally. The securities plaintiffs bar, frankly, has been particularly helpful in helping small investors, and it has played an instrumental role in keeping our capital markets respected worldwide. They have provided a necessary check in a system that, again, presumes honesty.

I would not have agreed to cosponsor this bill if I concluded that it would limit their important and legitimate role of the trial bar, of the securities bar, or if I believed this bill would take away from investors opportunities to recover damages from those who, in fact, had defrauded them.

What makes this bill necessary, however, are the abuses by a relatively small number of people who have thrown the system out of balance. S. 240 does nothing more than restore that balance, Mr. President.

I want to conclude by congratulating again Senator DODD and Senator DOMENICI and the leadership of the Banking Committee for all the hard work that has been put into this legislation and for the way everyone has worked together in a bipartisan fashion and in good faith to resolve some of the complicated issues in this area as they have arisen.

This bill may be a bill that leaves none of us fully satisfied, everybody is going to have another idea. But the compromises represented in S. 240 are good ones. They will be good for our capital markets. This bill will be good for economy. This bill will be good for job creation, and it will be good for the American people, generally, in all their roles.

On that basis, I support this legislation and I urge its passage by the Senate. I yield the floor.

Mr. SPECTER addressed the Chair.

The PRESIDING OFFICER. The Senator from Pennsylvania.

Mr. SPECTER. Mr. President, I thank the Chair.

Mr. President, I have sought recognition to comment briefly on the pending legislation and to offer a motion on behalf of Senator BIDEN, Senator SHELBY, Senator FEINGOLD, and myself to refer the bill to the Committee on the Judiciary in order to consider some very important issues which have not had a hearing in the Banking Committee, because the Banking Committee under its own procedures does not customarily take up questions on the Federal Rules of Civil Procedure regarding which the pending legislation makes a great number of very significant changes.

The rules which govern court procedure are customarily fashioned by judges, and they are established by the Supreme Court of the United States with an advisory committee which considers the details of these provisions. They are complicated on matters such as how pleadings are formulated, how specific you have to be, and what to say to get in court before you are entitled to discovery; what rules govern when you take depositions, for example; that is, when questions are asked by one side of the parties on the other side. What happens with respect to sanctions when lawyers do not operate in good faith or bring frivolous lawsuits, or what happens on class representation.

These are the kinds of questions which I have had some experience with, although not recently. But I had experience when I practiced civil law before coming to the U.S. Senate. And on the Judiciary Committee, having been a member there for 14½ years, I have had some continuing familiarity with these issues, but nothing compared to the individuals who are in the courts every day.

On that subject, I discussed some of the issues raised by this bill with a longstanding friend of mine going back to college days at the University of Pennsylvania, Judge Edward R. Becker, who is now a very distinguished jurist on the U.S. Court of Appeals for the Third Circuit, and one of the premier Federal judges in the country.

Judge Becker was appointed to the Federal Court in 1971. He served for 10 years as a trial judge day in and day out, and for the past 14 years he has been on the court of appeals and is a recognized expert on Federal procedure, lectures in the field, and is highly regarded as one of the most knowledgeable of the Federal judges.

Some of the comments which Judge Becker has made to me in a relatively brief letter illustrate to some extent the problems which are present in the current legislation.

I compliment the Senator from California, the Senator from Nevada, and the Senator from Maryland, the ranking member of the committee, the chairman of the committee, and also the Senator from New Mexico, Senator DOMENICI, and the Senator from Connecticut, Senator DODD, who have drafted this legislation, for the very constructive work which they have done. But there are many very, very important provisions which have not been subjected to the kind of analysis which comes only with real experience in the courts on a day-in and day-out basis.

Having had that experience, I know the difference between the legislative process and the judicial interpretive process. Those judges see these matters day in and day out. They know what happens in a very practical sense. They have a much deeper familiarity with the way they work out than we do in the Congress.

As the Presiding Officer knows, and as my colleagues know, frequently in our hearings in the Senate, only one or two Senators are present. When markup occurs it is done as carefully as we can, but not with the kind of craftsmanship which judges employ day in and day out.

These are some of the comments which Judge Becker has made which I think are worthy of consideration. They are not dispositive of all of the issues but are illustrative of the kinds of complex matters which we think require a great deal more consideration than we have had so far.

This legislation is enormously important. It is enormously important as it governs the securities field where capital is formed so that the free enterprise system can function, so that when representations are made in the prospectuses that sufficient information is given to investors to know what is happening, to see to it that the representations are honest, and that the millions and millions of people who invest in securities are protected—and not that there is any absolute guarantee that they will earn dividends or make money on capital gains because there is a certain amount of risk, but that there are representations honestly made, that they are protected against fraud, and that the procedures balance the concerns of the companies, not subjecting them to frivolous litigation but balance the concerns of the investors.

Judge Becker has made this comment, for example, on the rule of procedure which governs the designation of lead counsel:

> Most of the provisions prescribe things the courts already do—for example, designating lead counsel—or at least can do within the exercise of their discretion. Section 102 constitutes congressional micromanagement with the untoward effect of depriving judges of the flexibility which is indispensable for effective case management.

One of the bill's important provisions relates to sanctions, which are important in litigation to ensure that the court has the flexibility to manage the case and that lawyers do not abuse the process, that is, they do not bring frivolous lawsuits, and frivolous lawsuits are brought. We know that as a matter of fact. Really no one contests that. Or no one contests the need for limiting frivolous lawsuits. And there is a generally recognized need that we ought to have reform in this field.

Some of the provisions of current law, for example on joint and several

liability, have imposed very extensive liability on accountants who do not know the inner workings of the representations but are held under the concept of joint liability. There needs to be a close look at the kind of liability imposed.

So that when you talk about frivolous lawsuits and how to deter them, we do need to have very substantial review of that issue. But I have found that the provision of the bill regarding the rule which requires mandatory sanctions by the court perhaps goes too far, and we do not know that for sure really until we analyze it in some detail. But this is what Judge Becker had to say about that:

Mandatory sanctions are a mistake and will only generate satellite litigation.

And by satellite litigation, Judge Becker was referring to the situation where, after the case is over, then a whole new litigation process starts as to whether sanctions are really required.

Under present law, the judge has discretion to award sanctions, and there has to be a motion made by the party that thinks that the other party has acted inappropriately. Before a party can ask for sanctions, the party must give notice to the other party of its view that something wrong has been done in order to give the allegedly offending party an opportunity to correct it.

That is done in litigation to try to have the parties work it out. If somebody does not like what the other party is doing, they say, ''Wait a minute; you ought to stop that.'' It gives that party a chance to reflect on the reasons. If it does not stop, then the party can make a motion for sanctions. But under this legislation, the judge has the obligation on his own to review the record and to impose sanctions. That is contrary to the American system of adversarial litigation where the judge does not have the responsibility for making that determination on his own; one of the parties who feels aggrieved says to the court: Something wrong has been done here, and I make a motion to have it corrected. This is more like the inquisitorial system which the French have where the judge is the moving party.

Judge Becker has this to say after commenting on the satellite litigation.

The flexibility afforded by the current regime enables judges to use the threat of sanctions to manage cases effectively. Well managed cases almost never result in sanctions. The provision for mandatory review—

That is, without prompting by the parties—

will impose a substantial burden on the courts and prove completely useless in the vast majority of cases. Requiring courts to impose sanctions without a motion by a party also places the judge in an inquisitorial rule which is foreign to our legal culture, which is based on the judge as a neutral arbiter model.

The judge then refers to a rule drafted by a very distinguished judge, Judge Patrick Higginbotham of the Court of Appeals for the Fifth Circuit, who is chairman of the Judicial Conference of the Advisory Committee on Civil Rules. And this is what Judge Higginbotham says ought to be done:

In any private action arising under this title, when an abusive litigation practice is brought to the District Court's attention by motion or otherwise, the Court should promptly decide, with written findings of fact and conclusions of law, whether to impose sanctions under rule 11 or rule 26(g)(3) of the Federal Rules of Civil Procedure or its inherent power.

And that is really giving discretion to the court. Perhaps on analysis the provision in the bill on mandatory would be retained. But I think it is indispensable, Mr. President, that that kind of careful analysis be made.

Other provisions set out in the current bill make very substantial changes to the Federal rules. There is a requirement that the potential outcome of the suit be disclosed, and there are special disclosures relating to settlement terms. These provisions have an impact on rule 23, the class action rule. The bill also contains certain unique provisions governing the appointment of lead counsel in class actions, none of which have been given a hearing.

I discussed with the chairman of the committee, the Senator from New York, Senator D'AMATO, the procedures used by the committee, and I think I am accurate in stating—and he can comment on this if the truth is to the contrary—that this is a provision added very late, and there had not been hearings.

There are also changes in the rules relating to discovery under rule 26, and there are differences in rules relating to the specificity of allegations of pleadings, affecting rule 9.

Without going into any great detail, these are all matters which really ought to be reviewed by the Judiciary Committee, which has the expertise under our Senate rules for handling matters of this sort. It is not the kind of a matter which is customarily brought before the Banking Committee.

This same issue was raised by the Chairman of the Securities and Exchange Commission, Arthur Levitt, in a letter dated May 25, 1995, to Senator D'AMATO. Chairman Levitt commented as follows:

I also wish to call your attention to a potential problem with the provision relating to rule 11 of the Federal Rules of Civil Procedure. I worry that the standard employed in their draft may have the unintended effect of imposing a loser-pays scheme. The greater the discretion afforded the court, the less likely this unintended consequence may appear.

The loser-pays scheme, Mr. President, is one which Great Britain has where the loser has to pay the costs of litigation, and that is a very, very abrupt and drastic change in our litigation procedure.

The bill currently provides for mandatory sanctions and contains a presumption that the loser will pay sanctions and that the appropriate sanction is the other party's attorneys' fees. This would have a very major, chilling effect on bringing any litigation. And that presumption can be overcome but it starts off on an unequal footing where the same requirement is not imposed on the defense, on the other side in the litigation. I am sure that there will be consideration of this substantive revision in the course of the analysis of this bill. But this again is something which really ought to have the benefit of a hearing in the Judiciary Committee.

Mr. President, I had advised the chairman, the Senator from New York [Mr. D'AMATO], that I would not be in the position to vote on this matter until others had a chance to come to the floor, specifically Senator BIDEN. I know that there are other Senators on the floor who wish to speak at this time. And it would be my hope that we can move to a vote this evening. I do not want to keep Senators here unnecessarily but I believe that Senators are present with the expectation of having a vote on final passage on the highway bill where there is still one matter which is left to be worked out.

But I do want to make that stressed statement that until Senator BIDEN returns we have an opportunity to have debate on this subject. There are some matters I want to discuss with the Senator, the chairman, the Senator from New York, who is necessarily absent at this time.

Before yielding the floor—I shall not hold the floor very much longer—there will not be more than one final statement that I will make, as I see my colleague from Utah, rising. I do want to make a brief comment about the bill generally as to information provided to me by the chairman of the Pennsylvania Securities Commission who has raised very substantial problems with the bill. I want to call those to the attention of my colleagues. This is a letter to me from Chairman Robert Lam, dated April 19, 1995, in which Chairman Lam makes this statement. ''I have considered the major elements of both'' Senate bill 240, which is the one currently being considered, and Senate bill 667, which is a different bill introduced by Senators SHELBY and BRYAN. It is the conclusion of Chairman Lam of the Pennsylvania Securities Commission that the other bill, the one not on the floor, is much preferable. Chairman Lam concludes by saying, Senate bill ''240, on the other hand, tilts the balance too far in favor of corporate interests and would have the practical effect of depriving many defrauded investors the ability to cover their losses.''

In a letter dated June 20, 1995—I shall include both of these letters for the record, so I do not have to take much time. Chairman Lam writes as follows,

As presently constituted, S.240 not only would affect negatively Pennsylvania investors but also Pennsylvania taxpayers should the Commonwealth Treasury Department

again become a potential victim of wrongdoing in securities transactions undertaken on behalf of the Commonwealth. The importance of the potential negative effects of this Bill on the Commonwealth is reflected by the Treasury Department's recent suit against Salomon Brothers for damages resulting from alleged wrongful conduct engaged in by Salomon in connection with its bidding on government bonds.

And Chairman Lam of the Pennsylvania Securities Commission concludes with this statement.

As a participant in the capital formation process, I would like to emphasize that our financial markets run most efficiently when there is a high degree of public confidence in the integrity of the marketplace. Money is merely the medium of exchange between this confidence and the honest entrepreneur. As written, S.240 will not advance the goal of making capital available to growing U.S. companies. It will result in small investors avoiding participation in our capital markets when they discover that they are unable to bring suit against the perpetrators of aiders and abettors of a securities fraud or, upon winning such a suit, fail to be made whole because the Bill adopts the concept of ''caps'' on total defendant liability.

I do ask unanimous consent, Mr. President, that the full text of these two letters from Chairman Lam be made a part of the record at the conclusion of my speech.

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

(See exhibit 1)

Mr. SPECTER. In conclusion, Mr. President—the favorite words of any speech, and with finality—I will pursue this motion as the evening progresses and do believe that it is very important that the full range of considerations raised by Chairman Lam be considered, issues that have otherwise been raised, but especially these procedural questions be considered by the Judiciary Committee which under our rules has the jurisdiction to consider them.

MOTION TO COMMIT

Mr. SPECTER. On behalf of Senator BIDEN, Senator SHELBY, Senator FEINGOLD, and myself, I do move to commit the pending bill, Senate 240, to the Committee of the Judiciary.

I thank the Chair and yield the floor.

EXHIBIT 1.

PENNSYLVANIA SECURITIES, COMMISSION,
April 19, 1995.

Hon. ARLEN SPECTER,
U.S. Senate, Hart Senate Office Building, Washington, DC.

RE: Pending Securities Litigation Reform Bills S. 240 and S. 667

DEAR ARLEN: In my capacity as the Chairman of the Pennsylvania Securities Commission, I am writing to express my views on the two major securities litigation reform bills now before the Senate. The Pennsylvania Securities Commission is responsible for investor protection and overseeing the capital formation process in the Commonwealth.

It is my view that any securities litigation reform legislation must be carefully balanced so that it provides relief to companies and professionals who may be the subject of frivolous lawsuits while preserving a meaningful private remedy for defrauded investors. While much of the debate in Washington has focused on how to protect honest companies and professionals from vexatious lawsuits, I believe there is an equally compelling need to maintain the ability to deter and detect wrongdoing in the financial marketplace.

From my vantage point, there continues to be an unacceptably high level of fraud and abuse in today's capital markets, particularly with respect to small investors. As the limited resources of government are insufficient to pursue every case of wrongdoing, the ability of defrauding investors to maintain a private cause of action to recover their investment without fear of financial ruin remains critically important to the overall successful enforcement of the securities laws.

It is against this backdrop that I have considered the major elements of both S. 240, the ''Private Securities Litigation Reform Act,'' introduced by Senators DOMENICI and DODD, and S. 667, the ''Private Securities Enforcement Improvements Act,'' introduced by Senators SHELBY and BRYAN. It is my conclusion that S. 667 is very much the preferable legislative vehicle for resolving the securities litigation reform debate. S. 667 achieves the critical balance between making the litigation system more fair and more efficient, while preserving the critical role that private actions play in maintaining the integrity of our financial markets. S. 240, on the other hand, tilts the balance too far in favor of corporate interests and would have the practical effect of depriving many defrauded investors the ability to recover their losses.

Among the provisions of S. 667 that I support are: (1) an innovative early evaluation procedure designed to weed out clearly frivolous cases; (2) a more rational system of determining liability among defendants; (3) certification of complaints and improved case management procedures; (4) curbs on potentially abusive attorney practices; (5) improved disclosure of settlement terms; (6) a reasonable safe harbor for forward looking statements; (7) restoration of aiding and abetting liability; (8) a reasonable extension of the statute of limitations for securities fraud suits; (9) codification of the recklessness standard of liability as adopted by virtually every U.S. Circuit Court of Appeals; and (10) rulemaking authority to the SEC with respect to fraud-on-the-market cases. A detailed comparative analysis between S. 667 and S. 240 is enclosed.

S. 667 proves that it is possible to craft securities litigation reform measures that target abusive practices without sacrificing the opportunity for recovery by defrauding investors. Therefore, I strongly encourage you to become a co-sponsor of S. 667.

Securities litigation reform is one of the most important issues for small investors that will be considered by the 104th Congress. It is my hope that the Senate will give serious consideration to S. 667 as the appropriate response for constructive improvement in the federal securities litigation process. If you have any questions about my position on securities litigation reform, please do not hesitate to contact me at (215) 635–6262 or Deputy Chief Counsel G. Philip Rutledge at (717) 783–5130. I would be pleased to provide you or your staff with any additional information you may require on this most important issue to individual Pennsylvania investors.

Very truly yours,

ROBERT M. LAM,
Chairman

PENNSYLVANIA
SECURITIES COMMISSION,
COMMONWEALTH OF PENNSYLVANIA,
June 20, 1995.

Re: amendments to Senate bill 240, ''Private Securities Litigation Reform Act''

Hon. ARLEN SPECTER,
U.S. Senate, 530 Hart Senate Office Building, Washington, DC.

DEAR ARLEN: It is my understanding that Senate Bill 240 is now before the full U.S. Senate for consideration.

The Pennsylvania Securities Commission is charged under the Pennsylvania Securities Act of 1972 with the protection of investors. While the Commission has stated its position in previous correspondence (April 17, 1995) that it favors certain securities litigation reforms (as contained in S.667), it believes that S.240, as currently constituted, does not achieve the appropriate balance between protecting investors and discouraging frivolous lawsuits against honest companies and professionals. Instead, the practical effect of S.240 would be the elimination of private actions under federal law for Pennsylvanians who found themselves to be a victim of securities fraud.

It is my understanding that amendments to S.240 will be offered on the Senate floor to strengthen its investor protection provisions, i.e. extending the statute of limitations for civil securities fraud actions (Pennsylvania recently extended its statute of limitations period for securities fraud to four years); fully restoring liability for aiding and abetting securities fraud; restoring joint and several liability so defrauded investors can be made whole; and peeling back the immunity for companies to make outrageous claims of future profits or performance.

The Commission asks you to support adoption of these amendments. If, however, all these vital investor protection amendments are not adopted, the Commission, on behalf of Pennsylvania investors, strongly urges you to vote against S.240.

As presently constituted, S. 240 not only would affect negatively Pennsylvania investors but also Pennsylvania taxpayers should the Commonwealth Treasury Department again become a potential victim of wrongdoing in securities transactions undertaken on behalf of the Commonwealth. The importance of the potential negative effects of this Bill on the Commonwealth is reflected by the Treasury Department's recent suit against Salomon Brothers for damages resulting from alleged wrongful conduct engaged in by Salomon in connection with its bidding on government bonds.

As a participant in the capital formation process, I would like to emphasize that our financial markets run most efficiently when there is a high degree of public confidence in the integrity of the marketplace. Money is merely the medium of exchange between this confidence and the honest entrepreneur. As written, S. 240 will not advance the goal of making capital available to growing U.S. companies. It will result in small investors avoiding participation in our capital markets when they discover that they are unable to bring suit against the perpetrators or aiders and abettors of a securities fraud or, upon winning such a suit, fail to be made whole because of the Bill adopts the concept of ''caps'' on total defendant liability.

Thank you for considering our views. If you or your staff have any questions concerning how this Bill negatively affects Pennsylvania and Pennsylvania investors, please contact G. Philip Rutledge or K. Robert Bertram of the Commission staff at (717) 783–5130.

Very truly yours,

ROBERT M. LAM,
Chairman.

Mr. BENNETT addressed the Chair.

The PRESIDING OFFICER. The Senator from Utah.

Mr. BENNETT. Mr. President, the Senator from Illinois has been patient and is scheduled to be the next speaker.

Before we hear from her, I have been asked to perform a few housekeeping details. Senator HATCH, the chairman of the Judiciary Committee, has asked me to announce on his behalf that he cannot come here at the moment. I am sure the Senator from Illinois is delighted that that means she will not be delayed further. But he did ask that the statement be made on his behalf that as chairman of the Judiciary Committee he opposes the referral contained within this motion.

I ask unanimous consent that at 8:30 this evening Senator D'AMATO be recognized to make a motion to table the motion to commit the bill.

The PRESIDING OFFICER. Is there objection?

Mr. SPECTER. Reserving the right to object, there are issues, and I need to discuss them with the chairman which I talked to him about earlier. And also my principal cosponsor, Senator BIDEN, is not available yet to make an argument.

Mr. BENNETT. Mr. President, I renew the unanimous consent request that at 8:30 this evening Senator D'AMATO be recognized to make a motion to table the motion to commit the bill.

The PRESIDING OFFICER. Is there objection?

Mr. SPECTER. I object.

The PRESIDING OFFICER. Objection is heard.

Mr. SARBANES. Mr. President, parliamentary inquiry? What is the parliamentary situation here?

The PRESIDING OFFICER. There is a motion to commit the bill to the Judiciary Committee pending.

Mr. SARBANES. Is there further debate in order?

The PRESIDING OFFICER. There is.

Mr. SARBANES. On the motion or on the bill? Either?

The PRESIDING OFFICER. The motion is pending. You can debate either.

Mr. D'AMATO. At the conclusion of Senator BIDEN's remarks, I ask unanimous consent that he yield the floor back to me for the purpose of making a tabling motion. I would like to simply state that Senator HATCH has indicated that he is not in favor of the motion for sequential referral, and that this is not a new matter. This matter has legislatively been on an agenda now for some four years. That is the only comment I will make.

I will yield the floor.

Mr. BIDEN addressed the Chair.

The PRESIDING OFFICER. The Senator from Delaware is recognized.

Mr. BIDEN. Mr. President, I thank the Senator from New York. What I am about to say, I say standing next to my good friend from Connecticut, Senator DODD, who has worked tirelessly on this bill, with which I disagree, but I want to make a very brief statement.

I strongly support the position taken by the Senator from Pennsylvania. This litigation makes numerous precedent-setting changes in the country's judicial system. While my colleagues in the Banking Committee had a chance to examine the changes the bill would make to our Nation's security laws, it seems to me that we may have skipped a very important step. The so-called Securities Reform Act makes significant revisions to the Federal rules of evidence relating to mandatory rule 11 sanctions and rule 26 discovery proceedings, and yet, it has not been referred to the Judiciary Committee.

I hold myself partially responsible for that. In truth, I say to my friend from Connecticut, I should have been hollering for this in my committee before this time. I was mildly preoccupied with other things before the committee. To tell you the truth, it was called to my attention by my friend from Pennsylvania, and I realize this is a serious mistake, in my view, and that we have not had this before the Judiciary Committee.

In the past, bills that have made changes to the Federal rules of evidence were referred to the Judiciary Committee to enable the committee with expertise to review the work on this legislation. This bills is no different. Similarly, limiting joint and several liability, restricting the statute of limitations, changing the rules of class action suits in favor of large investors, are all judiciary-related issues. Yet, the Judiciary Committee never had a day of hearing on any of these specific issues.

If the bill becomes law, companies could potentially get away with making misleading, even fraudulent, statements about their earnings. Yet, to win a class action suit, you would have to prove a falsehood was made with a clear intent to deceive. That is an incredibly tough standard. I will admit some frivolous lawsuits are filed. Some lawyers do make too much from a suit, leaving defrauded investors with little. But I do not believe this massive bill is the answer.

So in order to protect the small investors, it seems to me that we should at least look at the significant changes in the rules of evidence. If this bill passes, I make the prediction to us all here, we will be back in two, three, four years undoing it, after another Orange County or another insider trading scandal, or after millions of people are defrauded with some other scam that occurs.

Quite frankly, I think we would be wise to take a close look, with a specific time for referral, if need be, to the Judiciary Committee, to look at these changes in the rule of ethics.

I do not profess to have expertise in the securities industry, but we do know something about the rules of evidence and the shifting burden of truth.

I thank my colleague for his indulgence, and I thank the Senator from Illinois. I thank the Senator from Connecticut for not getting up and saying, ''Why, JOE, did you not do this earlier?''

I yield the floor.

Mr. D'AMATO. Mr. President, I intend to make a motion to table.

Mr. DODD. Mr. President, will my colleague yield?

Mr. D'AMATO. I am happy to yield.

Mr. DODD. Just to say, Mr. President, this has been about 4 years on this matter.

This hour, we are now under consideration of the bill—I say this with all due respect to my good friends on the Judiciary Committee; it has been no secret that this legislation has been pending—at this particular hour to secure sequential referral, in effect, would kill the legislation.

I think all of our colleagues ought to be aware of that at this juncture. This is our opportunity in a moment to move on this. We have had extensive hearings, heard from lawyers and others on all sides, and worked closely with them.

With all due respect to our colleagues on the Judiciary Committee, I would hope this motion to table would be approved.

Mr. D'AMATO. Mr. President, I move to table the motion. I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second?

There is a sufficient second.

The yeas and nays were ordered.

The PRESIDING OFFICER. The question is on agreeing to the motion to table the motion to commit. The clerk will call the roll.

The legislative clerk called the roll.

Mr. DOLE. I announce that the Senator from Texas [Mr. GRAMM], the Senator from North Carolina [Mr. HELMS], the Senator from Idaho [Mr. [KEMPTHORNE], and the Senator from Mississippi [Mr. LOTT] are necessarily absent.

Mr. FORD. I announce that the Senator from New Mexico [Mr. BINGAMAN], the Senator from New Jersey [Mr. BRADLEY], the Senator from Arkansas [Mr. BUMPERS], the Senator from Hawaii [Mr. INOUYE], the Senator from Nebraska [Mr. KERRY], the Senator from New Jersey [Mr. LAUTENBERG], and the Senator from Arkansas [Mr. PRYOR] are necessarily absent.

The PRESIDING OFFICER. Are there any other Senators in the Chamber desiring to vote?

The result was announced—yeas 69, nays 19, as follows:

[Rollcall Vote No. 281 Leg.]

YEAS—69

Abraham	Coverdell	Frist
Ashcroft	Craig	Glenn
Baucus	D'Amato	Gorton
Bennett	DeWine	Grams
Brown	Dodd	Grassley
Burns	Dole	Gregg
Campbell	Domenici	Harkin
Chafee	Dorgan	Hatch
Coats	Exon	Hatfield
Cochran	Faircloth	Hutchison
Cohen	Feinstein	Inhofe
Conrad	Ford	Jeffords

Johnston	Moseley-Braun	Rockefeller
Kassebaum	Moynihan	Roth
Kerry	Murkowski	Santorum
Kohl	Murray	Simpson
Kyl	Nickles	Smith
Levin	Nunn	Snowe
Lieberman	Packwood	Stevens
Lugar	Pell	Thomas
Mack	Pressler	Thompson
McConnell	Reid	Thurmond
Mikulski	Robb	Warner

NAYS—19

Akaka	Feingold	Sarbanes
Biden	Graham	Shelby
Boxer	Heflin	Simon
Breaux	Hollings	Specter
Bryan	Kennedy	Wellstone
Byrd	Leahy	
Daschle	McCain	

ANSWERED 'PRESENT'—1

Bond

NOT VOTING—11

Bingaman	Helms	Lautenberg
Bradley	Inouye	Lott
Bumpers	Kempthorne	Pryor
Gramm	Kerrey	

So the motion to lay on the table the motion to commit was agreed to.

Mr. DOMENICI. Mr. President, I move to reconsider the vote by which the motion was agreed to.

Mr. FORD. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

CHANGE OF VOTE

Mr. REID. Mr. President, on rollcall vote 281, I was recorded as voting ''no.'' It was my intention to vote ''aye.'' Therefore, I ask unanimous consent that I be permitted to change my vote. This will in no way change the outcome of the vote.

This request has been cleared by both the majority and the minority.

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

(The foregoing tally has been changed to reflect the above order.)

Mr. STEVENS. Regular order.

NATIONAL HIGHWAY SYSTEM DESIGNATION ACT

The Senate continued with the consideration of the bill.

Mr. DOLE addressed the Chair.

The PRESIDING OFFICER. The majority leader.

Mr. DOLE. Mr. President, let me explain that under our previous agreement, when I call for the regular order, the highway bill comes back. I understand they have agreed to the Stevens-Murkowski amendment with Senator BUMPERS. That would be adopted. There would be speeches for the record; very short. Then we would proceed to final passage of the highway bill.

Mr. CHAFEE. Right, by voice vote.

Mr. DOLE. Does anybody request a rollcall on final passage?

I ask unanimous consent that once the amendment is agreed to, and the committee substitute, as amended, is agreed to, the bill will be advanced to third reading, the bill passed, and the motion to reconsider be laid on the table, with the above occurring without any intervening action.

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

ORDER OF PROCEDURE

Mr. DOLE. There will be no more votes tonight. There will be a vote at 10:55 tomorrow morning. The first vote will be at 10:55. It will be on the amendment by the Senator from Alabama, Senator SHELBY, and Senator BRYAN.

Mr. STEVENS addressed the Chair.

The PRESIDING OFFICER. The Senator from Alaska.

AMENDMENT NO. 1467

Mr. STEVENS. Mr. President, I have an amendment at the desk, and I ask for its immediate consideration.

The PRESIDING OFFICER. At the request of the majority leader, S. 440 is now the pending business.

The clerk will report.

The legislative clerk read as follows:

The Senator from Alaska [Mr. STEVENS], for himself, Mr. MURKOWSKI, Mrs. HUTCHISON, and Mr. BENNETT, proposes an amendment numbered 1467.

At the appropriate place in title I of the bill insert the following new section:

SEC. . MORATORIUM.

(a) IN GENERAL.—Notwithstanding any other provision of law, no agency of the Federal government may take any action to prepare, promulgate, or implement any rule or regulation addressing rights of way authorized pursuant to Revised Statutes 2477 (43 U.S.C. 932), as such law was in effect prior to October 21, 1976.

(b) This section shall cease to have any force or effect after December 1, 1995.

Mr. STEVENS. Mr. President, in response to the request, we have agreed to this amendment which is a moratorium on proceeding with the regulations as proposed by the Department of the Interior that have not been issued in final form yet, but we know they are under consideration.

Let me state that this amendment does not affect any judicial action or decision instituted since 1976, any pending judicial action or any future judicial action. It is not intended to affect any case law with respect to rights of way granted pursuant to Revised Statutes 2477. This deals simply with the proposal to issue regulations to, in effect, determine through sovereign power that the rights of the States would be invaded as those States rights were known under Revised Statutes 2477, which was repealed in 1976.

I have offered this on behalf of my colleague Senator MURKOWSKI and the two Senators from Utah, Senator HATCH and Senator BENNETT. I do believe it will achieve the goal of just having a moratorium on the preparation of regulations so that the committees involved and the States involved may try to work this out without very expensive litigation that would ensue, and in the case of our State it would be just a disastrous prospect of litigating some 600 or more separate rights-of-way.

I am grateful to the Senate for having delayed the action until this time to enable us to have a proposal go to the House, which I hope the House will agree with, to establish this moratorium. It will simply delay the process as far as the administrative regulations that were proposed by the Department of the Interior.

Mr. MURKOWSKI addressed the Chair.

The PRESIDING OFFICER. The Senator Alaska.

Mr. MURKOWSKI. I thank the Chair.

Mr. President, I am glad we could come to an agreement on an amendment to restrict the Department of the Interior or any other Federal agency from taking any action on finalizing a rule or regulation with respect to Revised Statute 2477 until December 1, 1995. This will allow some of my colleagues, including my colleague from Arkansas, to take a careful look at this issue. I want to make it clear that we will be offering legislation in the future to resolve this problem for Alaska.

R.S. 2477 simply states: The right-of-way for the construction of highways over public lands, not reserved for public uses, is hereby granted. The 1866 law was repealed by FLPMA in 1976. But between 1866 and 1976, R.S. 2477 allowed the creation of property rights across Federal lands for rights-of-way. These rights-of-way have provided essential access through the Western States—and especially in Alaska. Recognizing this, Congress intentionally protected the R.S. 2477 rights-of-way in FLPMA. However, the Department of the Interior proposed regulations in August of 1994 to make it much more difficult to establish right-of-way claims across Federal lands established under the Revised Statutes 2477.

DOI claims the reason they are doing the regulations is to make a logical process to get R.S. 2477 rights-of-way recognized. BUT the regulations would actually:

Override State law with restrictive new definitions of highway and construction;

Put a cloud on the title to R.S. 2477 roads, treating them as invalid until proven valid;

Prevent any future expansion of scope of an R.S. 2477 right-of-way, preventing making the right-of-way any wider, so a dogsled trail will remain a dog sled trail;

Set a sunset on administrative and court action on validity of R.S. 2477 by extinguishing claims not filed within 2 years and 30 days after final rule is issued;

Although a claimant could still turn to the courts, DOI states that the regulations serve as notice to claimants for purpose of the Quiet Title Act, which provides a 12-year statute of limitations—but true to form, DOI did not put a time limit on themselves to process the claims;

Construction and maintenance will not be permitted without approval of DOI with 3 days notice, preventing the fixing of washed out roads until DOI approval.

The draft R.S. 2477 regulations from the Department of the Interior are nothing more than an attempt to prevent legal access across our public

lands. It would impose an impossible task on State and local governments to make all claims for rights-of-way on Federal lands and then have to validate each one of the claims. Nowhere would this be more burdensome than in my State which is one-fifth the size of the United States and more than twice the size of Texas—yet has less roads than Vermont.

There regulations are clearly an effort to make sure Alaska and other Western States cannot have access across Federal lands. This amendment to stop the Department of the Interior from taking any action to implement the final rules and will provide us time to look at the best approach to finally resolving the R.S. 2477 issue.

I want to thank the Senator from Arkansas for his cooperation on the Steven's R.S. 2477 amendment. As chairman of the Energy and National Resources Committee I intend to have hearings on this matter soon and will be working on a legislative or administrative solution. The Senator from Arkansas has expressed interest in working with me on this issue, and I appreciate that offer. However, if we work in good faith, but fail to find a solution by the December date in the Steven's amendment, the Senator from Arkansas has assured me that there will be a further extension.

I want to join with the senior Senator from Alaska and also thank our colleagues: Senator WARNER, Senator BUMPERS, Senator CHAFEE, and Senator BAUCUS, and as a consequence of their willingness to acknowledge the concerns expressed by the Western States, I would like for the RECORD to submit a list of States that currently have an interest in R.S. 2477. There are 16 States, and I might add for the RECORD that the Eastern States are included but they are taken collectively and not listed by name. So clearly this is a western issue.

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

USDI DRAFT REPORT TO CONGRESS—R.S. 2477, THE HISTORY AND MANAGEMENT OF R.S. 2477 RIGHTS-OF-WAY CLAIMS ON FEDERAL AND OTHER LANDS, MARCH 1993

Existing public land records indicate that approximately 1,453 R.S. 2477 rights-of-way have been recognized to date across BLM lands. At least two R.S. 2477 highways have been recognized in National Park Units—the Burr Trail located in both Capitol Reef National Park and Glen Canyon National Recreation Area in Utah and the Glade Park Road in the Colorado National Monument.

Information regarding other Federal land management agencies was not available for this draft report. Few recognized claims are thought to exist across other agency lands.

PENDING CLAIMS

Currently, there are approximately 3,947 pending claims on file with the BLM nationwide. Utah has the greatest number pending, with claims to 3,815 roads. Most other BLM States have very few claims pending. Some new assertions, that are not reflected on the table below, have been filed with various Federal agencies since the initiation of this study. However, the table below does reflect the general situation regarding filed claims. Few assertions are pending with Federal land management agency offices overall except for Utah BLM.

CURRENT R.S. 2477 CLAIMS ON BLM PUBLIC LANDS, MARCH 1993

States	Recognized claims	Pending claims
Alaska	2	10
Arizona	173	50
California	17	36
Colorado	53	8
Eastern States	1	10
Idaho	55	2
Montana	12	11
Nebraska	2	0
Nevada	137	4
New Mexico	171	0
North Dakota	0	0
Oklahoma	0	0
Oregon	450	1
South Dakota	0	0
Utah	10	3,815
Washington	17	0
Wyoming	353	0
Total	1,453	3,947

Mr. MURKOWSKI. I also want to assure my colleagues that such an effort to accommodate us is deeply appreciated, and I assure them as chairman of the Energy Committee I will hold hearings at the first opportunity on this matter to address the necessity of moving along under the stipulation for R.S. 2477 to the States that were affected, and that we do this in an expeditious manner. And the fact that we can have this input prior to the Department of Interior promulgating regulations is the interest that we share.

The PRESIDING OFFICER. Is there further debate on the amendment?

Mr. WARNER. Mr. President, I know of no further debate. I urge its adoption.

The PRESIDING OFFICER. The question is on agreeing to the amendment.

So the amendment (No. 1467) was agreed to.

Mr. STEVENS. Mr. President, I move to reconsider the vote.

Mr. WARNER. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

The PRESIDING OFFICER. Under the previous order, the committee substitute, as amended, is agreed to. The bill is considered read the third time.

The question is, Shall the bill pass?

So the bill (S. 440), as amended, was passed, as follows:

S. 440

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

(a) SHORT TITLE.—This Act may be cited as the ''National Highway System Designation Act of 1995''.

(b) TABLE OF CONTENTS.—The table of contents of this Act is as follows:

TITLE I—HIGHWAY PROVISIONS

SEC. 101. NATIONAL HIGHWAY SYSTEM DESIGNATION.

(a) IN GENERAL.—Section 103 of title 23, United States Code, is amended by inserting after subsection (b) the following:

''(c) NATIONAL HIGHWAY SYSTEM DESIGNATION.—

''(1) DESIGNATION.—The most recent National Highway System (as of the date of enactment of this Act) as submitted by the Secretary of Transportation pursuant to this section is designated as the National Highway System.

''(2) MODIFICATIONS.—

''(A) IN GENERAL.—At the request of a State, the Secretary may—

''(i) add a new route segment to the National Highway System, including a new intermodal connection; or

''(ii) delete a route segment in existence on the date of the request and any connection to the route segment;

if the total mileage of the National Highway System (including any route segment or connection proposed to be added under this subparagraph) does not exceed 165,000 miles (265,542 kilometers).

''(B) PROCEDURES FOR CHANGES REQUESTED BY STATES.—Each State that makes a request for a change in the National Highway System pursuant to subparagraph (A) shall establish that each change in a route segment or connection referred to in the subparagraph has been identified by the State, in cooperation with local officials, pursuant to applicable transportation planning activities for metropolitan areas carried out under section 134 and statewide planning processes carried out under section 135.

''(3) APPROVAL BY THE SECRETARY.—The Secretary may approve a request made by a State for a change in the National Highway System pursuant to paragraph (2) if the Secretary determines that the change—

''(A) meets the criteria established for the National Highway System under this title; and

''(B) enhances the national transportation characteristics of the National Highway System.''.

(b) ROUTE SEGMENTS IN WYOMING.—

(1) IN GENERAL.—The Secretary of Transportation shall cooperate with the State of Wyoming in monitoring the changes in growth along, and traffic patterns of, the route segments in Wyoming described in paragraph (2), for the purpose of future consideration of the addition of the route segments to the National Highway System in accordance with paragraphs (2) and (3) of section 103(c) of title 23, United States Code (as added by subsection (a)).

(2) ROUTE SEGMENTS.—The route segments referred to in paragraph (1) are—

(A) United States Route 191 from Rock Springs to Hoback Junction;

(B) United States Route 16 from Worland to Interstate Route 90; and

(C) Wyoming Route 59 from Douglas to Gillette.

SEC. 102. ELIGIBLE PROJECTS FOR THE NATIONAL HIGHWAY SYSTEM.

(a) IN GENERAL.—Section 103(i) of title 23, United States Code, is amended—

(1) by striking paragraph (8) and inserting the following:

''(8) Capital and operating costs for traffic monitoring, management, and control facilities and programs.''; and

(2) by adding at the end the following:

''(14) Construction, reconstruction, resurfacing, restoration, and rehabilitation of, and operational improvements for, public highways connecting the National Highway System to—

''(A) ports, airports, and rail, truck, and other intermodal freight transportation facilities; and

''(B) public transportation facilities.

''(15) Construction of, and operational improvements for, the Alameda Transportation Corridor along Alameda Street from the entrance to the ports of Los Angeles and Long Beach to Interstate 10, Los Angeles, California. The Federal share of the cost of the construction and improvements shall be determined in accordance with section 120(b).''.

(b) DEFINITION.—Section 101(a) of title 23, United States Code, is amended by striking the undesignated paragraph defining ''start-up costs for traffic management and control'' and inserting the following:

''The term 'operating costs for traffic monitoring, management, and control' includes labor costs, administrative costs, costs of utilities and rent, and other costs associated with the continuous operation of traffic control activities, such as integrated traffic control systems, incident management programs, and traffic control centers.''.

SEC. 103. TRANSFERABILITY OF APPORTIONMENTS.

The third sentence of section 104(g) of title 23, United States Code, is amended by striking ''40 percent'' and inserting ''60 percent''.

SEC. 104. DESIGN CRITERIA FOR THE NATIONAL HIGHWAY SYSTEM.

Section 109 of title 23, United States Code, is amended—

(1) by striking subsection (a) and inserting the following:

''(a) IN GENERAL.—The Secretary shall ensure that the plans and specifications for each proposed highway project under this chapter provide for a facility that will—

''(1) adequately serve the existing and planned future traffic of the highway in a manner that is conducive to safety, durability, and economy of maintenance; and

''(2) be designed and constructed in accordance with criteria best suited to accomplish the objectives described in paragraph (1) and to conform to the particular needs of each locality.'';

(2) by striking subsection (c) and inserting the following:

''(c) DESIGN CRITERIA FOR THE NATIONAL HIGHWAY SYSTEM.—

''(1) IN GENERAL.—A design for new construction, reconstruction, resurfacing (except for maintenance resurfacing), restoration, or rehabilitation of a highway on the National Highway System (other than a highway also on the Interstate System) shall take into account, in addition to the criteria described in subsection (a)—

''(A) the constructed and natural environment of the area;

''(B) the environmental, scenic, aesthetic, historic, community, and preservation impacts of the activity; and

''(C) as appropriate, access for other modes of transportation.

''(2) DEVELOPMENT OF CRITERIA.—The Secretary, in cooperation with State highway agencies, shall develop criteria to implement paragraph (1). In developing the criteria, the Secretary shall consider the results of the committee process of the American Association of State Highway and Transportation Officials as adopted and published in 'A Policy on Geometric Design of Highways and Streets', after adequate opportunity for input by interested parties.''; and

(3) by striking subsection (q) and inserting the following:

''(q) ENVIRONMENTAL, SCENIC, AND HISTORIC VALUES.—Notwithstanding subsections (b) and (c), the Secretary may approve a project for the National Highway System if the project is designed to—

''(1) allow for the preservation of environmental, scenic, or historic values;

''(2) ensure safe use of the facility; and

''(3) comply with subsection (a).''.

SEC. 105. APPLICABILITY OF TRANSPORTATION CONFORMITY REQUIREMENTS.

(a) HIGHWAY CONSTRUCTION.—Section 109(j) of title 23, United States Code, is amended by striking ''plan for the implementation of any ambient air quality standard for any air quality control region designated pursuant to the Clean Air Act, as amended.'' and inserting the following: ''plan for—

''(1) the implementation of a national ambient air quality standard for which an area is designated as a nonattainment area under section 107(d) of the Clean Air Act (42 U.S.C. 7407(d)); or

''(2) the maintenance of a national ambient air quality standard in an area that was designated as a nonattainment area but that was later redesignated by the Administrator as an attainment area for the standard and that is required to develop a maintenance plan under section 175A of the Clean Air Act (42 U.S.C. 7505a).''.

(b) CLEAN AIR ACT REQUIREMENTS.—Section 176(c) of the Clean Air Act (42 U.S.C. 7506(c)) is amended by adding at the end the following:

''(5) APPLICABILITY.—This subsection shall apply only with respect to—

''(A) a nonattainment area and each specific pollutant for which the area is designated as a nonattainment area; and

''(B) an area that was designated as a nonattainment area but that was later redesignated by the Administrator as an attainment area and that is required to develop a maintenance plan under section 175A with respect to the specific pollutant for which the area was designated nonattainment.''.

SEC. 106. USE OF RECYCLED PAVING MATERIAL.

(a) IN GENERAL.—Section 1038 of the Intermodal Surface Transportation Efficiency Act of 1991 (Public Law 102–240; 23 U.S.C. 109 note) is amended—

(1) by striking subsection (d) and inserting the following:

''(d) ASPHALT PAVEMENT CONTAINING RECYCLED RUBBER.—

''(1) CRUMB RUBBER MODIFIER RESEARCH.—Not later than 180 days after the date of enactment of the National Highway System Designation Act of 1995, the Administrator of the Federal Highway Administration shall develop testing procedures and conduct research to develop performance grade classifications, in accordance with the strategic highway research program carried out under section 307(d) of title 23, United States Code, for crumb rubber modifier binders. The testing procedures and performance grade classifications should be developed in consultation with representatives of the crumb rubber modifier industry and other interested parties (including the asphalt paving industry) with experience in the development of the procedures and classifications.

''(2) CRUMB RUBBER MODIFIER PROGRAM DEVELOPMENT.—

''(A) IN GENERAL.—The Administrator of the Federal Highway Administration shall make grants to States to develop programs to use crumb rubber from scrap tires to modify asphalt pavements. Each State may receive not more than $500,000 under this paragraph.

''(B) USE OF GRANT FUNDS.—Grant funds made available to States under this paragraph may be used—

''(i) to develop mix designs for crumb rubber modified asphalt pavements;

''(ii) for the placement and evaluation of crumb rubber modified asphalt pavement field tests; and

''(iii) for the expansion of State crumb rubber modifier programs in existence on the date the grant is made available.''; and

(2) in subsection (e), by striking paragraph (1) and inserting the following:

''(1) the term 'asphalt pavement containing recycled rubber' means any mixture of asphalt and crumb rubber derived from whole scrap tires, such that the physical properties of the asphalt are modified through the mixture, for use in pavement maintenance, rehabilitation, or construction applications; and''.

(b) FUNDING.—Section 307(e)(13) of title 23, United States Code, is amended by inserting after the second sentence the following: ''Of the amounts authorized to be expended under this paragraph, $500,000 shall be expended in fiscal year 1996 to carry out section 1038(d)(1) of the Intermodal Surface Transportation Efficiency Act of 1991 (Public Law 102–240; 23 U.S.C. 109 note) and $10,000,000 shall be expended in each of fiscal years 1996 and 1997 to carry out section 1038(d)(2) of the Act.''.

SEC. 107. LIMITATION ON ADVANCE CONSTRUCTION.

Section 115(d) of title 23, United States Code, is amended to read as follows:

''(d) REQUIREMENT OF INCLUSION IN TRANSPORTATION IMPROVEMENT PROGRAM.—The Secretary may not approve an application under this section unless the project is included in the transportation improvement program of the State developed under section 135(f).''.

SEC. 108. PREVENTIVE MAINTENANCE.

Section 116 of title 23, United States Code, is amended by adding at the end the following:

''(d) PREVENTIVE MAINTENANCE.—A preventive maintenance activity shall be eligible for Federal assistance under this title if the State demonstrates to the satisfaction of the Secretary that the activity is a cost-effective means of extending the life of a Federal-aid highway.''.

SEC. 109. ELIGIBILITY OF BOND AND OTHER DEBT INSTRUMENT FINANCING FOR REIMBURSEMENT AS CONSTRUCTION EXPENSES.

(a) IN GENERAL.—Section 122 of title 23, United States Code, is amended to read as follows:

''SEC. 122. PAYMENTS TO STATES FOR BOND AND OTHER DEBT INSTRUMENT FINANCING.

''(a) DEFINITION OF ELIGIBLE DEBT FINANCING INSTRUMENT.—In this section, the term 'eligible debt financing instrument' means a bond or other debt financing instrument, including a note, certificate, mortgage, or lease agreement, issued by a State or political subdivision of a State, the proceeds of which are used for an eligible Federal-aid project under this title.

''(b) FEDERAL REIMBURSEMENT.—Subject to subsections (c) and (d), the Secretary may reimburse a State for expenses and costs incurred by the State or a political subdivision of the State, for—

''(1) interest payments under an eligible debt financing instrument;

''(2) the retirement of principal of an eligible debt financing instrument;

''(3) the cost of the issuance of an eligible debt financing instrument;

''(4) the cost of insurance for an eligible debt financing instrument; and

''(5) any other cost incidental to the sale of an eligible debt financing instrument (as determined by the Secretary).

''(c) CONDITIONS ON PAYMENT.—The Secretary may reimburse a State under subsection (b) with respect to a project funded by an eligible debt financing instrument after the State has complied with this title to the extent and in the manner that would be required if payment were to be made under section 121.

''(d) FEDERAL SHARE.—The Federal share of the cost of a project payable under this section shall not exceed the pro-rata basis of payment authorized in section 120.

''(e) STATUTORY CONSTRUCTION.—Notwithstanding any other law, the eligibility of an eligible debt financing instrument for reimbursement under subsection (a) shall not—

''(1) constitute a commitment, guarantee, or obligation on the part of the United States to provide for payment of principal or interest on the eligible debt financing instrument; or

''(2) create any right of a third party against the United States for payment under the eligible debt financing instrument.''.

(b) DEFINITION OF CONSTRUCTION.—The first sentence of the undesignated paragraph defining ''construction'' of section 101(a) of title 23, United States Code, is amended by inserting ''bond costs and other costs relating to the issuance of bonds or other debt instrument financing in accordance with section 122,'' after ''highway, including''.

(c) CONFORMING AMENDMENT.—The analysis for chapter 1 of title 23, United States Code, is amended by striking the item relating to section 122 and inserting the following:

''122. Payments to States for bond and other debt instrument financing.''.

SEC. 110. FEDERAL SHARE FOR HIGHWAYS, BRIDGES, AND TUNNELS.

Section 129(a) of title 23, United States Code, is amended by striking paragraph (5) and inserting the following:

''(5) LIMITATION ON FEDERAL SHARE.—The Federal share payable for an activity described in paragraph (1) shall be a percentage determined by the State, but not to exceed 80 percent.''.

SEC. 111. APPLICABILITY OF CERTAIN REQUIREMENTS TO THIRD PARTY SELLERS.

Section 133(d) of title 23, United States Code, is amended by adding at the end the following:

''(5) APPLICABILITY OF CERTAIN REQUIREMENTS TO THIRD PARTY SELLERS.—

''(A) IN GENERAL.—Except as provided in subparagraphs (B) and (C), in the case of a transportation enhancement activity funded from the allocation required under paragraph (2), if real property or an interest in real property is to be acquired from a qualified organization exclusively for conservation purposes (as determined under section 170(h) of the Internal Revenue Code of 1986), the organization shall be considered to be the owner of the property for the purpose of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (42 U.S.C. 4601 et seq.).

''(B) FEDERAL APPROVAL PRIOR TO INVOLVEMENT OF QUALIFIED ORGANIZATION.—If Federal approval of the acquisition of the real property or interest predates the involvement of a qualified organization described in subparagraph (A) in the acquisition of the property, the organization shall be considered to be an acquiring agency or person as described in section 24.101(a)(2) of title 49, Code of Federal Regulations, for the purpose of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (42 U.S.C. 4601 et seq.).

''(C) ACQUISITIONS ON BEHALF OF RECIPIENTS OF FEDERAL FUNDS.—If a qualified organization described in subparagraph (A) has contracted with a State highway administration or other recipient of Federal funds to acquire the real property or interest on behalf of the recipient, the organization shall be considered to be an agent of the recipient for the purpose of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (42 U.S.C. 4601 et seq.).''.

SEC. 112. STREAMLINING FOR TRANSPORTATION ENHANCEMENT PROJECTS.

Section 133(e) of title 23, United States Code, is amended—

(1) in paragraph (3)—

(A) by striking ''(3) PAYMENTS.—The'' and inserting the following:

''(3) PAYMENTS.—

''(A) IN GENERAL.—Except as provided in subparagraph (B), the''; and

(B) by adding at the end the following:

''(B) ADVANCE PAYMENT OPTION FOR TRANSPORTATION ENHANCEMENT ACTIVITIES.—

''(i) IN GENERAL.—The Secretary may advance funds to the State for transportation enhancement activities funded from the allocation required by subsection (d)(2) for a fiscal year if the Secretary certifies for the fiscal year that the State has authorized and uses a process for the selection of transportation enhancement projects that involves representatives of affected public entities, and private citizens, with expertise related to transportation enhancement activities.

''(ii) LIMITATION ON AMOUNTS.—Amounts advanced under this subparagraph shall be limited to such amounts as are necessary to make prompt payments for project costs.

''(iii) EFFECT ON OTHER REQUIREMENTS.—This subparagraph shall not exempt a State from other requirements of this title relating to the surface transportation program.''; and

(2) by adding at the end the following:

''(5) TRANSPORTATION ENHANCEMENT ACTIVITIES.—

''(A) CATEGORICAL EXCLUSIONS.—To the extent appropriate, the Secretary shall develop

categorical exclusions from the requirement that an environmental assessment or an environmental impact statement under section 102 of the National Environmental Policy Act of 1969 (42 U.S.C. 4332) be prepared for transportation enhancement activities funded from the allocation required by subsection (d)(2).

''(B) NATIONWIDE PROGRAMMATIC AGREEMENT.—The Administrator of the Federal Highway Administration, in consultation with the National Conference of State Historic Preservation Officers and the Advisory Council on Historic Preservation established under title II of the National Historic Preservation Act (16 U.S.C. 470i et seq.), shall develop a nationwide programmatic agreement governing the review of transportation enhancement activities funded from the allocation required by subsection (d)(2), in accordance with—

''(i) section 106 of the National Historic Preservation Act (16 U.S.C. 470f); and

''(ii) the regulations of the Advisory Council on Historic Preservation.''.

SEC. 113. NON-FEDERAL SHARE FOR CERTAIN TOLL BRIDGE PROJECTS.

Section 144(l) of title 23, United States Code, is amended by adding at the end the following: ''Any non-Federal funds expended for the seismic retrofit of the bridge may be credited toward the non-Federal share required as a condition of receipt of any Federal funds for seismic retrofit of the bridge made available after the date of the expenditure.''.

SEC. 114. CONGESTION MITIGATION AND AIR QUALITY IMPROVEMENT PROGRAM.

(a) AREAS ELIGIBLE FOR FUNDS.—

(1) IN GENERAL.—The first sentence of section 149(b) of title 23, United States Code, is amended—

(A) by inserting ''for areas in the State that were designated as nonattainment areas under section 107(d) of the Clean Air Act (42 U.S.C. 7407(d))'' after ''may obligate funds''; and

(B) in paragraph (1)(A)—

(i) by striking ''contribute to the'' and inserting the following: ''contribute to—

''(i) the''; and

(ii) by adding at the end the following:

''(ii) the maintenance of a national ambient air quality standard in an area that was designated as a nonattainment area but that was later redesignated by the Administrator of the Environmental Protection Agency as an attainment area under section 107(d) of the Clean Air Act (42 U.S.C. 7407(d)); or''.

(2) APPORTIONMENT.—Section 104(b)(2) of title 23, United States Code, is amended—

(A) in the second sentence, by striking ''is a nonattainment area (as defined in the Clean Air Act) for ozone'' and inserting ''was a nonattainment area (as defined in section 171(2) of the Clean Air Act (42 U.S.C. 7501(2))) for ozone during any part of fiscal year 1994''; and

(B) in the third sentence—

(i) by striking ''is also'' and inserting ''was also''; and

(ii) by inserting ''during any part of fiscal year 1994'' after ''monoxide''.

(3) ORANGE STREET BRIDGE, MISSOULA, MONTANA.—Notwithstanding section 149 of title 23, United States Code, or any other law, a project to construct new capacity for the Orange Street Bridge in Missoula, Montana, shall be eligible for funding under the congestion mitigation and air quality improvement program established under the section.

(b) REMOVAL OF CERTAIN FUNDING LIMITATIONS.—Section 149(b)(1)(A) of title 23, United States Code, is amended by striking ''(other than clauses (xii) and (xvi) of such section), that the project or program'' and inserting '', that the publicly sponsored project or program''.

(c) EFFECT OF LIMITATION ON APPORTIONMENT.—Notwithstanding any other law, for each of fiscal years 1996 and 1997, any limitation under this section or an amendment made by this section on an apportionment otherwise authorized under section 1003(a)(4) of the Intermodal Surface Transportation Efficiency Act of 1991 (Public Law 102–240; 105 Stat. 1919) shall not affect any hold harmless apportionment adjustment under section 1015(a) of the Act (Public Law 102–240; 105 Stat. 1943).

(d) TRAFFIC MONITORING, MANAGEMENT, AND CONTROL FACILITIES AND PROGRAMS.—The first sentence of section 149(b) of title 23, United States Code, is amended—

(1) in paragraph (2), by striking ''or'' at the end;

(2) in paragraph (3), by striking the period at the end and inserting ''; or''; and

(3) by adding at the end the following:

''(4) to establish or operate a traffic monitoring, management, and control facility or program if the Secretary, after consultation with the Administrator of the Environmental Protection Agency, determines that the facility or program is likely to contribute to the attainment of a national ambient air quality standard.''.

SEC. 115. LIMITATION OF NATIONAL MAXIMUM SPEED LIMIT TO CERTAIN COMMERCIAL MOTOR VEHICLES.

(a) IN GENERAL.—Section 154 of title 23, United States Code, is amended—

(1) by striking the section heading and inserting the following:

''§ 154. National maximum speed limit for certain commercial motor vehicles'';

(2) in subsection (a)—

(A) by inserting '', with respect to motor vehicles'' before ''(1)''; and

(B) in paragraph (4), by striking ''motor vehicles using it'' and inserting ''vehicles driven or drawn by mechanical power manufactured primarily for use on public highways (except any vehicle operated exclusively on a rail or rails) using it'';

(3) by striking subsection (b) and inserting the following:

''(b) MOTOR VEHICLE.—In this section, the term 'motor vehicle' has the meaning provided for 'commercial motor vehicle' in section 31301(4) of title 49, United States Code, except that the term does not include any vehicle operated exclusively on a rail or rails.'';

(4) in the first sentence of subsection (e), by striking ''all vehicles'' and inserting ''all motor vehicles''; and

(5) by redesignating subsection (i) as subsection (f).

(b) CONFORMING AMENDMENTS.—

(1) The analysis for chapter 1 of title 23, United States Code, is amended by striking the item relating to section 154 and inserting the following:

''154. National maximum speed limit for certain commercial motor vehicles.''.

(2) Section 153(i)(2) of title 23, United States Code, is amended to read as follows:

''(2) MOTOR VEHICLE.—The term 'motor vehicle' means any vehicle driven or drawn by mechanical power manufactured primarily for use on public highways, except any vehicle operated exclusively on a rail or rails.''.

(3) Section 157(d) of title 23, United States Code, is amended by striking ''154(f) or''.

(4) Section 410(i)(3) of title 23, United States Code, is amended to read as follows:

''(3) MOTOR VEHICLE.—The term 'motor vehicle' means any vehicle driven or drawn by mechanical power manufactured primarily for use on public highways, except any vehicle operated exclusively on a rail or rails.''.

SEC. 116. FEDERAL SHARE FOR BICYCLE TRANSPORTATION FACILITIES AND PEDESTRIAN WALKWAYS.

Section 217(f) of title 23, United States Code, is amended by striking ''80 percent'' and inserting ''determined in accordance with section 120(b)''.

SEC. 117. SUSPENSION OF MANAGEMENT SYSTEMS.

Section 303 of title 23, United States Code, is amended—

(1) by striking subsection (c) and inserting the following:

''(c) STATE ELECTION.—A State may, at the option of the State, elect, at any time, not to implement, in whole or in part, 1 or more of the management systems required under this section. The Secretary may not impose any sanction on, or withhold any benefit from, a State on the basis of such an election.''; and

(2) in subsection (f)—

(A) by striking ''(f) ANNUAL REPORT.—Not'' and inserting the following:

''(f) REPORTS.—

''(1) ANNUAL REPORTS.—Not''; and

(B) by adding at the end the following:

''(2) REPORT ON IMPLEMENTATION.—Not later than October 1, 1996, the Secretary, in consultation with States, shall transmit to Congress a report on the management systems required under this section that makes recommendations as to whether, to what extent, and how the management systems should be implemented.''.

SEC. 118. INTELLIGENT TRANSPORTATION SYSTEMS.

(a) IMPROVED COLLABORATION IN INTELLIGENT TRANSPORTATION SYSTEMS RESEARCH AND DEVELOPMENT.—Section 6054 of the Intermodal Surface Transportation Efficiency Act of 1991 (Public Law 102–240; 23 U.S.C. 307 note) is amended by adding at the end the following:

''(e) COLLABORATIVE RESEARCH AND DEVELOPMENT.—In carrying out this part, the Secretary may carry out collaborative research and development in accordance with section 307(a)(2) of title 23, United States Code.''.

(b) TIME LIMIT FOR OBLIGATION OF FUNDS FOR INTELLIGENT TRANSPORTATION SYSTEMS PROJECTS.—Section 6058 of the Intermodal Surface Transportation Efficiency Act of 1991 (Public Law 102–240; 23 U.S.C. 307 note) is amended by adding at the end the following:

''(f) OBLIGATION OF FUNDS.—

''(1) IN GENERAL.—Funds made available pursuant to subsections (a) and (b) after the date of enactment of this subsection, and other funds made available after that date to carry out specific intelligent transportation systems projects, shall be obligated not later than the last day of the fiscal year following the fiscal year with respect to which the funds are made available.

''(2) REALLOCATION OF FUNDS.—If funds described in paragraph (1) are not obligated by the date described in the paragraph, the Secretary may make the funds available to carry out any other activity with respect to which funds may be made available under subsection (a) or (b).''.

(c) CONFORMING AMENDMENTS.—

(1) The table in section 1107(b) of the Intermodal Surface Transportation Efficiency Act of 1991 (Public Law 102–240; 105 Stat. 2048) is amended—

(A) in item 10, by striking ''(IVHS)'' and inserting ''(ITS)''; and

(B) in item 29, by striking ''intelligent/vehicle highway systems'' and inserting ''intelligent transportation systems''.

(2) Section 6009(a)(6) of the Intermodal Surface Transportation Efficiency Act of 1991 (Public Law 102–240; 105 Stat. 2176) is amended by striking ''intelligent vehicle highway systems'' and inserting ''intelligent transportation systems''.

(3) Part B of title VI of the Intermodal Surface Transportation Efficiency Act of 1991 (Public Law 102–240; 23 U.S.C. 307 note) is amended—

(A) by striking the part heading and inserting the following:

"PART B—INTELLIGENT TRANSPORTATION SYSTEMS";

(B) in section 6051, by striking ''Intelligent Vehicle-Highway Systems'' and inserting ''Intelligent Transportation Systems'';

(C) by striking ''intelligent vehicle-highway systems'' each place it appears and inserting ''intelligent transportation systems'';

(D) in section 6054—

(i) in subsection (a)(2)(A), by striking ''intelligent vehicle-highway'' and inserting ''intelligent transportation systems''; and

(ii) in the subsection heading of subsection (b), by striking ''INTELLIGENT VEHICLE-HIGHWAY SYSTEMS'' and inserting ''INTELLIGENT TRANSPORTATION SYSTEMS'';

(E) in the subsection heading of section 6056(a), by striking ''IVHS'' and inserting ''ITS'';

(F) in the subsection heading of each of subsections (a) and (b) of section 6058, by striking ''IVHS'' and inserting ''ITS''; and

(G) in the paragraph heading of section 6059(1), by striking ''IVHS'' and inserting ''ITS''.

(4) Section 310(c)(3) of the Department of Transportation and Related Agencies Appropriations Act, 1995 (Public Law 103–331; 23 U.S.C. 104 note), is amended by striking ''intelligent vehicle highway systems'' and inserting ''intelligent transportation systems''.

(5) Section 109(a) of the Hazardous Materials Transportation Authorization Act of 1994 (Public Law 103–311; 23 U.S.C. 307 note) is amended—

(A) by striking ''Intelligent Vehicle-Highway Systems'' each place it appears and inserting ''Intelligent Transportation Systems''; and

(B) by striking ''intelligent vehicle-highway system'' and inserting ''intelligent transportation system''.

(6) Section 5316(d) of title 49, United States Code, is amended—

(A) in the subsection heading, by striking ''INTELLIGENT VEHICLE-HIGHWAY'' and inserting ''INTELLIGENT TRANSPORTATION''; and

(B) by striking ''intelligent vehicle-highway'' each place it appears and inserting ''intelligent transportation''.

SEC. 119. DONATIONS OF FUNDS, MATERIALS, OR SERVICES FOR FEDERALLY ASSISTED ACTIVITIES.

Section 323 of title 23, United States Code, is amended—

(1) by redesignating subsection (c) as subsection (d); and

(2) by inserting after subsection (b) the following:

''(c) CREDIT FOR DONATIONS OF FUNDS, MATERIALS, OR SERVICES.—Nothing in this title or any other law shall prevent a person from offering to donate funds, materials, or services in connection with an activity eligible for Federal assistance under this title. In the case of such an activity with respect to which the Federal Government and the State share in paying the cost, any donated funds, or the fair market value of any donated materials or services, that are accepted and incorporated into the activity by the State highway agency shall be credited against the State share.''.

SEC. 120. METRIC CONVERSION OF TRAFFIC CONTROL SIGNS.

(a) Notwithstanding section 3(2) of the Metric Conversion Act of 1975 (15 U.S.C. 205b(2)) or any other law, no State shall be required to—

(1) erect any highway sign that establishes any speed limit, distance, or other measurement using the metric system; or

(2) modify any highway sign that establishes any speed limit, distance, or other measurement so that the sign uses the metric system.

(b) Upon receipt of a written notification by a State, referring to its right to provide notification under this subsection, the Secretary of Transportation shall waive, with respect to such State, any requirement that such State use or plan to use the metric system with respect to designing, preparing plans, specifications and estimates, advertising, or taking any other action with respect to Federal-aid highway projects or activities utilizing funds authorized pursuant to title 23, United States Code. Such waiver shall remain effective for the State until the State notifies the Secretary to the contrary: *Provided*, That a waiver granted by the Secretary will be in effect until September 30, 2000.

SEC. 121. IDENTIFICATION OF HIGH PRIORITY CORRIDORS.

Section 1105(c) of the Intermodal Surface Transportation Efficiency Act of 1991 (Pub. L. 102–240; 105 Stat. 2032) is amended—

(1) by striking paragraph (5) and inserting the following:

''(5)(A) I–73/74 North-South Corridor from Charleston, South Carolina, through Winston-Salem, North Carolina, to Portsmouth, Ohio, to Cincinnati, Ohio, to termini at Detroit, Michigan and Sault Ste. Marie, Michigan.

''(B)(i) In the Commonwealth of Virginia, the Corridor shall generally follow—

''(I) United States Route 220 from the Virginia-North Carolina border to I–581 south of Roanoke;

''(II) I–581 to I–81 in the vicinity of Roanoke;

''(III) I–81 to the proposed highway to demonstrate intelligent transportation systems authorized by item 29 of the table in section 1107(b) in the vicinity of Christiansburg to United States Route 460 in the vicinity of Blacksburg; and

''(IV) United States Route 460 to the West Virginia State line.

''(ii) In the States of West Virginia, Kentucky, and Ohio, the Corridor shall generally follow—

''(I) United States Route 460 from the West Virginia State line to United States Route 52 at Bluefield, West Virginia; and

''(II) United States Route 52 to United States Route 23 at Portsmouth, Ohio.

''(iii) In the States of North Carolina and South Carolina, the Corridor shall generally follow—

''(I) in the case of I–73—

''(aa) United States Route 220 from the Virginia State line to State Route 68 in the vicinity of Greensboro;

''(bb) State Route 68 to I–40;

''(cc) I–40 to United States Route 220 in Greensboro;

''(dd) United States Route 220 to United States Route 1 near Rockingham;

''(ee) United States Route 1 to the South Carolina State line; and

''(ff) South Carolina State line to Charleston, South Carolina; and

''(II) in the case of I–74—

''(aa) I–77 from Bluefield, West Virginia, to the junction of I–77 and the United States Route 52 connector in Surry County, North Carolina;

''(bb) the I–77/United States Route 52 connector to United States Route 52 south of Mount Airy, North Carolina;

''(cc) United States Route 52 to United States Route 311 in Winston-Salem, North Carolina;

''(dd) United States Route 311 to United States Route 220 in the vicinity of Randleman, North Carolina.

''(ee) United States Route 220 to United States Route 74 near Rockingham;

''(ff) United States Route 74 to United States Route 76 near Whiteville;

''(gg) United States Route 74/76 to the South Carolina State line in Brunswick County; and

''(hh) South Carolina State line to Charleston, South Carolina.

''(iv) Each route segment referred to in clause (i), (ii), or (iii) that is not a part of the Interstate System shall be designated as a route included in the Interstate System, at such time as the Secretary determines that the route segment—

''(I) meets Interstate System design standards approved by the Secretary under section 109(b) of title 23, United States Code; and

''(II) meets the criteria for designation pursuant to section 139 of title 23, United States Code, except that the determination shall be made without regard to whether the route segment is a logical addition or connection to the Interstate System.'';

(2) in paragraph (18)—

(A) by striking ''and''; and

(B) by inserting before the period at the end the following: '', and to the Lower Rio Grande Valley at the border between the United States and Mexico''; and

(3) by adding at the end the following:

''(22) The Alameda Transportation Corridor along Alameda Street from the entrance to the ports of Los Angeles and Long Beach to Interstate 10, Los Angeles, California.

''(23) The Interstate Route 35 Corridor from Laredo, Texas, through Oklahoma City, Oklahoma, to Wichita, Kansas, to Kansas City, Kansas/Missouri, to Des Moines, Iowa, to Minneapolis, Minnesota, to Duluth, Minnesota.

''(24) The Dalton Highway from Deadhorse, Alaska to Fairbanks, Alaska.

''(25) State Route 168 (South Battlefield Boulevard), Virginia, from the Great Bridge Bypass to the North Carolina State line.''.

SEC. 122. REVISION OF AUTHORITY FOR INNOVATIVE PROJECT IN FLORIDA.

Item 196 of the table in section 1107(b) of the Intermodal Surface Transportation Efficiency Act of 1991 (Public Law 102–240; 105 Stat. 2058) is amended—

(1) by striking ''Orlando,''; and

(2) by striking ''Land & right-of-way acquisition & guideway construction for magnetic limitation project'' and inserting ''1 or more regionally significant, intercity ground transportation projects''.

SEC. 123. REVISION OF AUTHORITY FOR PRIORITY INTERMODAL PROJECT IN CALIFORNIA.

Item 31 of the table in section 1108(b) of the Intermodal Surface Transportation Efficiency Act of 1991 (Public Law 102–240; 105 Stat. 2062) is amended by striking ''To improve ground access from Sepulveda Blvd. to Los Angeles, California'' and inserting the following: ''For the Los Angeles International Airport central terminal ramp access project, $3,500,000; for the widening of Aviation Boulevard south of Imperial Highway, $3,500,000; for the widening of Aviation Boulevard north of Imperial Highway, $1,000,000; and for transportation systems management improvements in the vicinity of the Sepulveda Boulevard/Los Angeles International Airport tunnel, $950,000''.

SEC. 124. NATIONAL RECREATIONAL TRAILS FUNDING PROGRAM.

(a) CONTRACT AUTHORITY.—Section 1302 of the Intermodal Surface Transportation Efficiency Act of 1991 (16 U.S.C. 1261) is amended—

(1) by redesignating subsection (g) as subsection (i); and

(2) by inserting after subsection (f) the following:

''(g) CONTRACT AUTHORITY.—Funds authorized to be appropriated under this section shall be available for obligation in the manner as if the funds were apportioned under title 23, United States Code, except that the Federal share of any project under this section shall be determined in accordance with this section.

''(h) FEDERAL SHARE.—The Federal share of the cost of a project under this section shall be 50 percent.''.

(b) TECHNICAL AND CONFORMING AMENDMENTS.—

(1) IN GENERAL.—Section 1302 of the Intermodal Surface Transportation Efficiency Act of 1991 (16 U.S.C. 1261) is amended—

(A) by striking subsection (c) and inserting the following:

''(c) STATE ELIGIBILITY.—A State shall be eligible to receive moneys under this part if—

''(1) the Governor of the State has designated the State agency responsible for administering allocations under this section;

''(2) the State proposes to obligate and ultimately obligates any allocations received in accordance with subsection (e); and

''(3) a recreational trail advisory board on which both motorized and nonmotorized recreational trail users are represented exists in the State.'';

(B) in subsection (d), by striking paragraph (3);

(C) in subsection (e)—

(i) in paragraphs (3)(A), (5)(B), and (8)(B), by striking ''(c)(2)(A) of this section'' and inserting ''(c)(3)''; and

(ii) in paragraph (5)(A)(i), by striking ''(g)(5)'' and inserting ''(i)(5)''; and

(D) in subsection (i) (as redesignated by subsection (a)(1)), by striking paragraph (1) and inserting the following:

''(1) ELIGIBLE STATE.—The term 'eligible State' means a State (as defined in section 101 of title 23, United States Code) that meets the requirements of subsection (c).''.

(2) Section 104 of title 23, United States Code, is amended—

(A) by redesignating subsection (h) as subsection (i); and

(B) by inserting after subsection (g) the following:

''(h) NATIONAL RECREATIONAL TRAILS FUNDING.—The Secretary shall expend, from administrative funds deducted under subsection (a), to carry out section 1302 of the Intermodal Surface Transportation Efficiency Act of 1991 (16 U.S.C. 1261) $15,000,000 for each of fiscal years 1996 and 1997.''.

SEC. 125. INTERMODAL FACILITY IN NEW YORK.

(a) IN GENERAL.—The Secretary of Transportation shall make grants to the National Railroad Passenger Corporation for—

(1) engineering, design, and construction activities to permit the James A. Farley Post Office in New York, New York, to be used as an intermodal transportation facility and commercial center; and

(2) necessary improvements to and redevelopment of Pennsylvania Station and associated service buildings in New York, New York.

(b) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to carry out this section a total of $69,500,000 for fiscal years following fiscal year 1995, to remain available until expended.

SEC. 126. CLARIFICATION OF ELIGIBILITY.

The improvements to, or adjacent to, the main line of the National Railroad Passenger Corporation between milepost 190.23 at Central Falls, Rhode Island, and milepost 168.53 at Davisville, Rhode Island, that are necessary to support the rail movement of freight shall be eligible for funding under sections 103(e)(4), 104(b), and 144 of title 23, United States Code.

SEC. 127. BRISTOL, RHODE ISLAND, STREET MARKING.

Notwithstanding any other law, a red, white, and blue center line in the Main Street of Bristol, Rhode Island, shall be deemed to comply with the requirements of section 3B–1 of the Manual on Uniform Traffic Control Devices of the Department of Transportation.

SEC. 128. PUBLIC USE OF REST AREAS.

Notwithstanding section 111 of title 23, United States Code, or any project agreement under the section, the Secretary of Transportation shall permit the conversion of any safety rest area adjacent to Interstate Route 95 within the State of Rhode Island that was closed as of May 1, 1995, to use as a motor vehicle emissions testing facility. At the option of the State, vehicles shall be permitted to gain access to and from any such testing facility directly from Interstate Route 95.

SEC. 129. COLLECTION OF TOLLS TO FINANCE CERTAIN ENVIRONMENTAL PROJECTS IN FLORIDA.

Notwithstanding section 129(a) of title 23, United States Code, on request of the Governor of the State of Florida, the Secretary of Transportation shall modify the agreement entered into with the transportation department of the State and described in section 129(a)(3) of the title to permit the collection of tolls to liquidate such indebtedness as may be incurred to finance any cost associated with a feature of an environmental project that is carried out under State law and approved by the Secretary of the Interior.

SEC. 130. HOURS OF SERVICE OF DRIVERS OF GROUND WATER WELL DRILLING RIGS.

(a) DEFINITIONS.—In this section:

(1) 8 CONSECUTIVE DAYS.—The term ''8 consecutive days'' means the period of 8 consecutive days beginning on any day at the time designated by the motor carrier for a 24-hour period.

(2) 24-HOUR PERIOD.—The term ''24-hour period'' means any 24-consecutive-hour period beginning at the time designated by the motor carrier for the terminal from which the driver is normally dispatched.

(3) GROUND WATER WELL DRILLING RIG.—The term ''ground water well drilling rig'' means any vehicle, machine, tractor, trailer, semitrailer, or specialized mobile equipment propelled or drawn by mechanical power and used on highways to transport water well field operating equipment, including water well drilling and pump service rigs equipped to access ground water.

(b) GENERAL RULE.—In the case of a driver of a commercial motor vehicle subject to regulations prescribed by the Secretary of Transportation under sections 31136 and 31502 of title 49, United States Code, who is used primarily in the transportation and operation of a ground water well drilling rig, for the purpose of the regulations, any period of 8 consecutive days may end with the beginning of an off-duty period of 24 or more consecutive hours.

(c) REPORT.—The Secretary of Transportation shall monitor the commercial motor vehicle safety performance of drivers of ground water well drilling rigs. If the Secretary determines that public safety has been adversely affected by the general rule established by subsection (b), the Secretary shall report to Congress on the determination.

SEC. 131. RURAL ACCESS PROJECTS.

Item 111 of the table in section 1106(a)(2) of the Intermodal Surface Transportation Efficiency Act of 1991 (Public Law 102–240; 105 Stat. 2042) is amended—

(1) by striking ''Parker County'' and inserting ''Parker and Tarrant Counties''; and

(2) by striking ''to four-lane'' and inserting ''in Tarrant County to freeway standards and in Parker County to a 4-lane''.

SEC. 132. INCLUSION OF HIGH PRIORITY CORRIDORS.

Section 1105(d) of the Intermodal Surface Transportation Efficiency Act of 1991 (Pub. L. 102–240; 105 Stat. 2033) is amended by adding at the end the following: ''The Secretary of Transportation shall include High Priority Corridor 18 as identified in section 1105(c) of this Act, as amended, on the approved National Highway System after completion of the feasibility study by the States as provided by such Act.''.

SEC. 133. SENSE OF THE SENATE REGARDING THE FEDERAL–STATE FUNDING RELATIONSHIP FOR TRANSPORTATION.

(a) FINDINGS.—

(1) The designation of high priority roads through the National Highway System is required by the Intermodal Surface Transportation Efficiency Act (ISTEA) and will ensure the continuation of funding which would otherwise be withheld from the States.

(2) The Budget Resolution supported the re-evaluation of all Federal programs to determine which programs are more appropriately a responsibility of the States.

(3) Debate on the appropriate role of the Federal Government in transportation will occur in the re-authorization of ISTEA.

(b) SENSE OF SENATE.—Therefore, it is the sense of the Senate that the designation of the NHS does not assume the continuation or the elimination of the current Federal-State relationship nor preclude a re-evaluation of the Federal-State relationship in transportation.

SEC. 134. QUALITY THROUGH COMPETITION.

(a) CONTRACTING FOR ENGINEERING AND DESIGN SERVICES.—Section 112(b)(2) of title 23, United States Code, is amended by adding at the end the following new subparagraphs:

''(C) PERFORMANCE AND AUDITS.—Any contract or subcontract awarded in accordance with subparagraph (A), whether funded in whole or in part with Federal-aid highway funds, shall be performed and audited in compliance with cost principles contained in the Federal acquisition regulations of part 31 of title 48 of the Code of Federal Regulations.

''(D) INDIRECT COST RATES.—In lieu of performing its own audits, a recipient of funds under a contract or subcontract awarded in accordance with subparagraph (A) shall accept indirect cost rates established in accordance with the Federal acquisition regulations for 1-year applicable accounting periods by a cognizant Federal or State government agency, if such rates are not currently under dispute. Once a firm's indirect cost rates are accepted, the recipient of such funds shall apply such rates for the purposes of contract estimation, negotiation, administration, reporting, and contract payment and shall not be limited by administrative or de facto ceilings of any kind. A recipient of such funds requesting or using the cost and rate data described in this subparagraph shall notify any affected firm before such request or use. Such data shall be confidential and shall not be accessible or provided, in whole or in part, to another firm or to any government agency which is not part of the group of agencies sharing cost data under this subparagraph, except by written permission of the audited firm. If prohibited by law, such cost and rate data shall not be disclosed under any circumstances.

''(E) EFFECTIVE DATE/STATE OPTION.—Subparagraphs (C) and (D) shall take effect upon the date of enactment of this Act: *Provided*

however, That if a State, during the first regular session of the State legislature convening after the date of enactment of this Act, adopts by statute an alternative process intended to promote engineering and design quality, reduce life-cycle costs, and ensure maximum competition by professional companies of all sizes providing engineering and design services. Such subparagraphs shall not apply in that State.''.

SEC. 135. FEDERAL SHARE FOR ECONOMIC GROWTH CENTER DEVELOPMENT HIGHWAYS.

Section 1021(c) of the Intermodal Surface Transportation Efficiency Act of 1991 (Public Law 102–240) (as amended by section 417 of the Department of Transportation and Related Agencies Appropriations Act, 1993 (Public Law 102–388; 106 Stat. 1565)) is amended—

(1) in paragraph (2), by striking ''and'' at the end and inserting ''or''; and

(2) in paragraph (3), by striking ''section 143 of title 23'' and inserting ''a project for the construction, reconstruction, or improvement of a development highway on a Federal-aid system, as described in section 103 of such title (as in effect on the day before the date of enactment of this Act) (other than the Interstate System), under section 143 of such title''.

SEC. 136. VEHICLE WEIGHT AND LONGER COMBINATION VEHICLES EXEMPTION FOR SIOUX CITY, IOWA.

(a) VEHICLE WEIGHT LIMITATIONS.—The proviso in the second sentence of section 127(a) of title 23, United States Code, is amended by striking ''except for those'' and inserting the following: ''except for vehicles using Interstate 29 between Sioux City, Iowa, and the border between Iowa and South Dakota and vehicles using Interstate Route 129 between Sioux City, Iowa, and the border between Iowa and Nebraska, and except for''.

(b) LONGER COMBINATION VEHICLES.—Section 127(d)(1) of title 23, United States Code, is amended by adding at the end the following:

''(F) IOWA.—In addition to vehicles that the State of Iowa may continue to allow to be operated under subparagraph (A), the State of Iowa may allow longer combination vehicles that were not in actual operation on June 1, 1991, to be operated on Interstate Route 29 between Sioux City, Iowa, and the border between Iowa and South Dakota and Interstate 129 between Sioux City, Iowa, and the border between Iowa and Nebraska.''.

SEC. 137. REVISION OF AUTHORITY FOR CONGESTION RELIEF PROJECT IN CALIFORNIA.

Item 1 of the table in section 1104(b) of the Intermodal Surface Transportation Efficiency Act of 1991 (Public Law 102–240; 105 Stat. 2029) is amended by striking ''Construction of HOV Lanes on I–710'' and inserting ''Construction of automobile and truck separation lanes at the southern terminus of I–710''.

SEC. 138. APPLICABILITY OF CERTAIN VEHICLE WEIGHT LIMITATIONS IN WISCONSIN.

Section 127 of title 23, United States Code, is amended by adding at the end the following:

''(f) OPERATION OF CERTAIN SPECIALIZED HAULING VEHICLES ON CERTAIN WISCONSIN HIGHWAYS.—If the 104-mile portion of Wisconsin State Route 78 and United States Route 51 between Interstate Route 94 near Portage, Wisconsin, and Wisconsin State Route 29 south of Wausau, Wisconsin, is designated as part of the Interstate System under section 139(a), the single axle weight, tandem axle weight, gross vehicle weight, and bridge formula limits set forth in subsection (a) shall not apply to the 104-mile portion with respect to the operation of any vehicle that could legally operate on the 104-mile portion before the date of enactment of this subsection.''.

SEC. 139. PROHIBITION ON NEW HIGHWAY DEMONSTRATION PROJECTS.

(a) IN GENERAL.—Notwithstanding any other law, neither the Secretary of Transportation nor any other officer or employee of the United States may make funds available for obligation to carry out any demonstration project described in subsection (b) that has not been authorized, or for which no funds have been made available, as of the date of enactment of this Act.

(b) PROJECTS.—Subsection (a) applies to a demonstration project or program that the Secretary of Transportation determines—

(1)(A) concerns a State-specific highway project or research or development in a specific State; or

(B) is otherwise comparable to a demonstration project or project of national significance authorized under any of sections 1103 through 1108 of the Intermodal Surface Transportation Efficiency Act of 1991 (Public Law 102–240; 105 Stat. 2027); and

(2) does not concern a federally owned highway.

SEC. 140. TREATMENT OF CENTENNIAL BRIDGE, ROCK ISLAND, ILLINOIS, AGREEMENT.

For purposes of section 129(a)(6) of title 23, United States Code, the agreement concerning the Centennial Bridge, Rock Island, Illinois, entered into under the Act entitled ''An Act authorizing the city of Rock Island, Illinois, or its assigns, to construct, maintain, and operate a toll bridge across the Mississippi River at or near Rock Island, Illinois, and to a place at or near the city of Davenport, Iowa'', approved March 18, 1938 (52 Stat. 110, chapter 48), shall be treated as if the agreement had been entered into under section 129 of title 23, United States Code, as in effect on December 17, 1991, and may be modified in accordance with section 129(a)(6) of the title.

SEC. 141. MORATORIUM ON CERTAIN EMISSIONS TESTING REQUIREMENTS.

(a) MORATORIUM.—

(1) IN GENERAL.—The Administrator of the Environmental Protection Agency (referred to in this subsection as the ''Administrator'') shall not require adoption or implementation by a State of a test-only or I/M240 enhanced vehicle inspection and maintenance program as a means of compliance with section 182 of the Clean Air Act (42 U.S.C. 7511a), but the Administrator may approve such a program if a State chooses to adopt the program as a means of compliance.

(2) REPEAL.—Paragraph (1) is repealed effective as of the date that is 1 year after the date of enactment of this Act.

(b) PLAN APPROVAL.—

(1) IN GENERAL.—The Administrator of the Environmental Protection Agency (referred to in this subsection as the ''Administrator'') shall not disapprove a State implementation plan revision under section 182 of the Clean Air Act (42 U.S.C. 7511a) on the basis of a regulation providing for a 50-percent discount for alternative test-and-repair inspection and maintenance programs.

(2) CREDIT.—If a State provides data for a proposed inspection and maintenance system for which credits are appropriate under section 182 of the Clean Air Act (42 U.S.C. 7511a), the Administrator shall allow the full amount of credit for the system that is appropriate without regard to any regulation that implements that section by requiring centralized emissions testing.

(3) DEADLINE.—The Administrator shall complete and present a technical assessment of data for a proposed inspection and maintenance system submitted by a State not later than 45 days after the date of submission.

SEC. 142. ELIMINATION OF PENALTIES FOR NONCOMPLIANCE WITH MOTORCYCLE HELMET USE REQUIREMENT.

Section 153(h) of title 23, United States Code, is amended by striking ''a law described in subsection (a)(1) and'' each place it appears.

SEC. 143. CLARIFICATION OF ELIGIBILITY.

The improvements to the former Pocono Northeast Railway Company freight rail line by the Luzerne County Redevelopment Authority that are necessary to support the rail movement of freight, shall be eligible for funding under sections 130, 144, and 149 of title 23, United States Code.

SEC. 144. TOLL ROADS, BRIDGES, TUNNELS, NONTOLL ROADS THAT HAVE A DEDICATED REVENUE SOURCE, AND FERRIES.

Section 129 of title 23, United States Code, is amended—

(1) by revising the title to read as follows:

''§ 129. Toll roads, bridges, tunnels, non-toll roads that have a dedicated revenue source, and ferries''; and

(2) by revising paragraph 129(a)(7) to read as follows:

''(7) LOANS.—

''(A) IN GENERAL.—A State may loan an amount equal to all or part of the Federal share of a toll project or a non-toll project that has a dedicated revenue source, specifically dedicated to such project or projects under this section, to a public entity constructing or proposing to construct a toll facility or non-toll facility with a dedicated revenue source. Dedicated revenue sources for non-toll facilities include: excise taxes, sales taxes, motor vehicle use fees, tax on real property, tax increment financing, or such other dedicated revenue source as the Secretary deems appropriate.''.

SEC. 145. TRANSFER OF FUNDS BETWEEN CERTAIN DEMONSTRATION PROJECTS IN LOUISIANA.

Notwithstanding any other law, the funds available for obligation to carry out the project in West Calcasieu Parish, Louisiana, authorized by section 149(a)(87) of the Surface Transportation and Uniform Relocation Assistance Act of 1987 (Public Law 100–17; 101 Stat. 194) shall be made available for obligation to carry out the project for Lake Charles, Louisiana, authorized by item 17 of the table in section 1106(a)(2) of the Intermodal Surface Transportation Efficiency Act of 1991 (Public Law 102–240; 105 Stat. 2038).

SEC. 146. NORTHWEST ARKANSAS REGIONAL AIRPORT CONNECTOR.

Notwithstanding any other provision of law, the Federal share for the intermodal connecter to the Northwest Arkansas Regional Airport from U.S. Highway 71 in Arkansas shall be 95 percent.

SEC. 147. INTERCITY RAIL INFRASTRUCTURE INVESTMENT.

(a) INTERSTATE RAIL COMPACTS.—

(1) CONSENT TO COMPACTS.—Congress grants consent to States with an interest in a specific form, route, or corridor of intercity passenger rail service (including high speed rail service) to enter into interstate compacts to promote the provision of the service, including—

(A) retaining an existing service or commencing a new service;

(B) assembling rights-of-way; and

(C) performing capital improvements, including—

(i) the construction and rehabilitation of maintenance facilities;

(ii) the purchase of locomotives; and

(iii) operational improvements, including communications, signals, and other systems.

(2) FINANCING.—An interstate compact established by States under paragraph (1) may provide that, in order to carry out the compact, the States may—

(A) accept contributions from a unit of State or local government or a person;

(B) use any Federal or State funds made available for intercity passenger rail service (except funds made available for the National Railroad Passenger Corporation);

(C) on such terms and conditions as the States consider advisable—

(i) borrow money on a short-term basis and issue notes for the borrowing; and

(ii) issue bonds; and

(D) obtain financing by other means permitted under Federal or State law.

(b) ELIGIBILITY OF PASSENGER RAIL AS SURFACE TRANSPORTATION PROGRAM PROJECT.—Section 133(b) of title 23, United States Code, is amended—

(1) in paragraph (1), by inserting '', railroads,'' after ''highways)'';

(2) in paragraph (2)—

(A) by inserting '', all eligible activities under section 5311 of title 49, United States Code,'' before ''and publicly owned'';

(B) by inserting ''or rail passenger'' after ''intercity bus''; and

(C) by inserting before the period at the end the following: '', including terminals and facilities owned by the National Railroad Passenger Corporation''; and

(3) in paragraph (6), by inserting '', and for passenger rail services,'' after ''programs''.

(c) ELIGIBILITY OF PASSENGER RAIL UNDER CONGESTION MITIGATION AND AIR QUALITY IMPROVEMENT PROGRAM.—The first sentence of section 149(b) of title 23, United States Code, is amended—

(1) in paragraph (2), by striking ''or'' at the end;

(2) in paragraph (3), by striking the period at the end and inserting ''; or''; and

(3) by adding at the end the following:

''(4) if the project or program will have air quality benefits through construction of and operational improvements for intercity passenger rail facilities, operation of intercity passenger rail trains, and acquisition of rolling stock for intercity passenger rail service, except that not more than 50 percent of the amount received by a State for a fiscal year under this paragraph may be obligated for operating support.''.

SEC. 148. OPERATION OF MOTOR VEHICLES BY INTOXICATED MINORS.

Section 158(a) of title 23, United States Code, is amended—

(1) by striking paragraph (1) and inserting the following:

''(1) OPERATION OF MOTOR VEHICLES BY INTOXICATED MINORS.—

''(A) FISCAL YEAR 1998.—If the condition described in subparagraph (C) exists in a State as of October 1, 1998, the Secretary shall withhold, on October 1, 1998, 5 percent of the amount required to be apportioned to the State under each of paragraphs (1), (2), (5), and (6) of section 104(b) for fiscal year 1998.

''(B) FISCAL YEARS THEREAFTER.—If the condition described in subparagraph (C) exists in a State as of October 1, 1999, or any October 1 thereafter, the Secretary shall withhold, on that October 1, 10 percent of the amount required to be apportioned to the State under each of paragraphs (1), (2), (5), and (6) of section 104(b) for the fiscal year beginning on that October 1.

''(C) CONDITION.—The condition referred to in subparagraphs (A) and (B) is that an individual under the age of 21 who has a blood alcohol concentration of 0.02 percent or greater when operating a motor vehicle in the State is not considered to be driving while intoxicated or driving under the influence of alcohol.''; and

(2) in paragraph (2), by striking ''AFTER THE FIRST YEAR'' and inserting ''PURCHASE AND POSSESSION OF ALCOHOLIC BEVERAGES BY MINORS''.

SEC. 149. CONTINGENT COMMITMENTS.

At the end of section 5309(g)(4) of title 49, United States Code, add the following new sentence: ''The Secretary may enter future obligations in excess of 50 percent of said uncommitted cash balance for the purpose of contingent commitments for projects authorized under section 3032 of Public Law 102–240.''.

SEC. 150. AVAILABILITY OF CERTAIN FUNDS FOR BOSTON-TO-PORTLAND RAIL CORRIDOR.

Section 5309 of title 49, United States Code, is amended by adding at the end the following new subsection:

''(p) BOSTON-TO-PORTLAND RAIL CORRIDOR.—Notwithstanding any other provision of law, up to $3,600,000 of the funds made available under this section for the rail corridor between Boston, Massachusetts and Portland, Maine may be used to pay for operating costs arising in connection with such rail corridor under section 5333(b).''.

SEC. 151. REVISION OF AUTHORITY OF MULTIYEAR CONTRACTS.

Section 3035(ww) of the Intermodal Surface Transportation Efficiency Act of 1991 (Public Law 102–240; 105 Stat. 2136) is amended by adding at the end the following: ''Of the funds provided by this subsection, $100,000,000 is authorized to be appropriated for regionally significant ground transportation projects in the State of Hawaii.''.

SEC. 152. FEASIBILITY STUDY OF EVACUATION ROUTES FOR LOUISIANA COASTAL AREAS.

Notwithstanding any other provisions of law, section 1105(e)(2) of Public Law 102–240 is amended by adding at the end the following new sentence: ''A feasibility study may be conducted under this subsection to identify routes that will expedite future emergency evacuations of coastal areas of Louisiana.''.

SEC. 153. 34TH STREET CORRIDOR PROJECT IN MOORHEAD, MINNESOTA.

Section 149(a)(5)(A) of the Surface Transportation and Uniform Relocation Assistance Act of 1987 (Public Law 100–17; 101 Stat. 181) is amended—

(1) in clause (i), by striking ''and'' at the end; and

(2) by inserting ''and (iii) a safety overpass,'' after ''interchange,''.

SEC. 154. SAFETY BELT USE LAW REQUIREMENTS FOR NEW HAMPSHIRE AND MAINE.

The State of New Hampshire and the State of Maine shall be deemed as having met the safety belt use law requirements of section 153 of title 23, United States Code, upon certification by the Secretary of Transportation that the State has achieved—

(1) a safety belt use rate in each of fiscal years ending September 30, 1995 and September 30, 1996, of not less than 50 percent; and

(2) a safety belt use rate in each succeeding fiscal year thereafter of not less than the national average safety belt use rate, as determined by the Secretary of Transportation.

SEC. 155. REPORT ON ACCELERATED VEHICLE RETIREMENT PROGRAMS.

Not later than 180 days after the date of enactment of this Act, the Administrator of the Environmental Protection Agency shall transmit to Congress a report evaluating the effectiveness of all accelerated vehicle retirement programs described in section 108(f)(1)(A)(xvi) of the Clean Air Act (42 U.S.C. 7408(f)(1)(A)(xvi)) in existence on the date of enactment of this Act. The report shall evaluate—

(1) the certainties of emissions reductions gained from each program;

(2) the variability of emissions of retired vehicles;

(3) the reduction in the number of vehicle miles traveled by the vehicles retired as a result of each program;

(4) the subsequent actions of vehicle owners participating in each program concerning the purchase of a new or used vehicle or the use of such a vehicle;

(5) the length of the credit given to a purchaser of a retired vehicle under each program;

(6) equity impacts of the programs on the used car market for buyers and sellers; and

(7) such other factors as the Administrator determines appropriate.

SEC. 156. INTERCITY RAIL INFRASTRUCTURE INVESTMENT FROM MASS TRANSIT ACCOUNT OF HIGHWAY TRUST FUND.

Section 5323 of title 49, United States Code, is amended by adding at the end the following new subsection:

''(m) INTERCITY RAIL INFRASTRUCTURE INVESTMENT.—Any assistance provided to a State that does not have Amtrak service as of date of enactment of this Act from the Mass Transit Account of the Highway Trust Fund may be used for capital improvements to, and operating support for, intercity passenger rail service.''.

SEC. 157. MORATORIUM.

(a) IN GENERAL.—Notwithstanding any other provision of law, no agency of the Federal Government may take any action to prepare, promulgate, or implement any rule or regulation addressing rights-of-way authorized pursuant to Revised Statutes 2477 (43 U.S.C. 932), as such law was in effect prior to October 21, 1976.

(b) SUNSET.—This section shall cease to have any force or effect after December 1, 1995.

TITLE II—NATIONAL CAPITAL REGION INTERSTATE TRANSPORTATION AUTHORITY

SEC. 201. SHORT TITLE.

This title may be cited as the ''National Capital Region Interstate Transportation Authority Act of 1995''.

SEC. 202. FINDINGS.

Congress finds that—

(1) traffic congestion imposes serious economic burdens on the metropolitan Washington, D.C., area, costing each commuter an estimated $1,000 per year;

(2) the volume of traffic in the metropolitan Washington, D.C., area is expected to increase by more than 70 percent between 1990 and 2020;

(3) the deterioration of the Woodrow Wilson Memorial Bridge and the growing population of the metropolitan Washington, D.C., area contribute significantly to traffic congestion;

(4) the Bridge serves as a vital link in the Interstate System and in the Northeast corridor;

(5) identifying alternative methods for maintaining this vital link of the Interstate System is critical to addressing the traffic congestion of the area;

(6) the Bridge is—

(A) the only drawbridge in the metropolitan Washington, D.C., area on the Interstate System;

(B) the only segment of the Capital Beltway with only 6 lanes; and

(C) the only segment of the Capital Beltway with a remaining expected life of less than 10 years;

(7) the Bridge is the only part of the Interstate System owned by the Federal Government;

(8)(A) the Bridge was constructed by the Federal Government;

(B) prior to the date of enactment of this Act, the Federal Government has contributed 100 percent of the cost of building and rehabilitating the Bridge; and

(C) the Federal Government has a continuing responsibility to fund future costs associated with the upgrading of the Interstate

Route 95 crossing, including the rehabilitation and reconstruction of the Bridge;

(9) the Woodrow Wilson Bridge Coordination Committee, established by the Federal Highway Administration and comprised of representatives of Federal, State, and local governments, is undertaking planning studies pertaining to the Bridge, consistent with the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.) and other applicable Federal laws;

(10) the transfer of ownership of the Bridge to a regional entity under the terms and conditions described in this title would foster regional transportation planning efforts to identify solutions to the growing problem of traffic congestion on and around the Bridge;

(11) any material change to the Bridge must take into account the interests of nearby communities, the commuting public, Federal, State, and local government organizations, and other affected groups; and

(12) a commission of congressional, State, and local officials and transportation representatives has recommended to the Secretary of Transportation that the Bridge be transferred to an independent authority to be established by the Capital Region jurisdictions.

SEC. 203. PURPOSES.

The purposes of this title are—

(1) to grant consent to the Commonwealth of Virginia, the State of Maryland, and the District of Columbia to establish the National Capital Region Interstate Transportation Authority; and

(2) to authorize the transfer of ownership of the Bridge to the Authority for the purposes of owning, constructing, maintaining, and operating a bridge or tunnel or a bridge and tunnel project across the Potomac River.

SEC. 204. DEFINITIONS.

In this title:

(1) AUTHORITY.—The term ''Authority'' means the National Capital Region Interstate Transportation Authority authorized by this title and by similar enactment by each of the Capital Region jurisdictions.

(2) AUTHORITY FACILITY.—The term ''Authority facility'' means—

(A) the Bridge (as in existence on the date of enactment of this Act);

(B) any southern Capital Beltway crossing of the Potomac River constructed in the vicinity of the Bridge after the date of enactment of this Act; or

(C) any building, improvement, addition, extension, replacement, appurtenance, land, interest in land, water right, air right, franchise, machinery, equipment, furnishing, landscaping, easement, utility, approach, roadway, or other facility necessary or desirable in connection with or incidental to a facility described in subparagraph (A) or (B).

(3) BOARD.—The term ''Board'' means the board of directors of the Authority established under section 206.

(4) BRIDGE.—The term ''Bridge'' means the Woodrow Wilson Memorial Bridge across the Potomac River.

(5) CAPITAL REGION JURISDICTION.—The term ''Capital Region jurisdiction'' means—

(A) the Commonwealth of Virginia;

(B) the State of Maryland; or

(C) the District of Columbia.

(6) INTERSTATE SYSTEM.—The term ''Interstate System'' means the Dwight D. Eisenhower National System of Interstate and Defense Highways designated under section 103(e) of title 23, United States Code.

(7) NATIONAL CAPITAL REGION.—The term ''National Capital Region'' means the region consisting of the metropolitan areas of—

(A)(i) the cities of Alexandria, Fairfax, and Falls Church, Virginia; and

(ii) the counties of Arlington and Fairfax, Virginia, and the political subdivisions of the Commonwealth of Virginia located in the counties;

(B) the counties of Montgomery and Prince Georges, Maryland, and the political subdivisions of the State of Maryland located in the counties; and

(C) the District of Columbia.

(8) SECRETARY.—The term ''Secretary'' means the Secretary of Transportation.

SEC. 205. ESTABLISHMENT OF AUTHORITY.

(a) CONSENT TO AGREEMENT.—Congress grants consent to the Commonwealth of Virginia, the State of Maryland, and the District of Columbia to enter into an interstate agreement or compact to establish the National Capital Region Interstate Transportation Authority in accordance with this title.

(b) ESTABLISHMENT OF AUTHORITY.—

(1) IN GENERAL.—On execution of the interstate agreement or compact described in subsection (a), the Authority shall be considered to be established.

(2) GENERAL POWERS.—The Authority shall be a body corporate and politic, independent of all other bodies and jurisdictions, having the powers and jurisdiction described in this title and such additional powers as are conferred on the Authority by the Capital Region jurisdictions, to the extent that the additional powers are consistent with this title.

SEC. 206. GOVERNMENT OF AUTHORITY.

(a) IN GENERAL.—The Authority shall be governed in accordance with this section and with the terms of any interstate agreement or compact relating to the Authority that is consistent with this title.

(b) BOARD.—The Authority shall be governed by a board of directors consisting of 12 members appointed by the Capital Region jurisdictions and 1 member appointed by the Secretary.

(c) QUALIFICATIONS.—One member of the Board shall have an appropriate background in finance, construction lending, or infrastructure policy.

(d) CHAIRPERSON.—The chairperson of the Board shall be elected biennially by the members of the Board.

(e) SECRETARY AND TREASURER.—The Board may—

(1) biennially elect a secretary and a treasurer, or a secretary-treasurer, without regard to whether the individual is a member of the Board; and

(2) prescribe the powers and duties of the secretary and treasurer, or the secretary-treasurer.

(f) TERMS.—

(1) IN GENERAL.—Except as provided in paragraph (2), a member of the Board shall serve for a 6-year term, and shall continue to serve until the successor of the member has been appointed in accordance with this subsection.

(2) INITIAL APPOINTMENTS.—

(A) BY CAPITAL REGION JURISDICTIONS.—Members initially appointed to the Board by a Capital Region jurisdiction shall be appointed for the following terms:

(i) 1 member shall be appointed for a 6-year term.

(ii) 1 member shall be appointed for a 4-year term.

(iii) 2 members shall each be appointed for a 2-year term.

(B) BY SECRETARY.—The member of the Board appointed by the Secretary shall be appointed for a 6-year term.

(3) FAILURE TO APPOINT.—The failure of a Capital Region jurisdiction to appoint 1 or more members of the Board, as provided in this subsection, shall not impair the establishment of the Authority if the condition of the establishment described in section 205(b)(1) has been met.

(4) VACANCIES.—Subject to paragraph (5), a person appointed to fill a vacancy on the Board shall serve for the unexpired term.

(5) REAPPOINTMENTS.—A member of the Board shall be eligible for reappointment for 1 additional term.

(6) PERSONAL LIABILITY OF MEMBERS.—A member of the Board, including any nonvoting member, shall not be personally liable for—

(A) any action taken in the capacity of the member as a member of the Board; or

(B) any note, bond, or other financial obligation of the Authority.

(7) QUORUM.—

(A) IN GENERAL.—Subject to subparagraph (B), for the purpose of carrying out the business of the Authority, 7 members of the Board shall constitute a quorum.

(B) APPROVAL OF BOND ISSUES AND BUDGET.—Eight affirmative votes of the members of the Board shall be required to approve bond issues and the annual budget of the Authority.

(8) COMPENSATION.—A member of the Board shall serve without compensation and shall reside within a Capital Region jurisdiction.

(9) EXPENSES.—A member of the Board shall be entitled to reimbursement for the expenses of the member incurred in attending a meeting of the Board or while otherwise engaged in carrying out the duties of the Board.

SEC. 207. OWNERSHIP OF BRIDGE.

(a) CONVEYANCE BY SECRETARY.—

(1) IN GENERAL.—After the Capital Region jurisdictions enter into the agreement described in subsection (c), the Secretary shall convey all right, title, and interest of the Department of Transportation in and to the Bridge to the Authority. Except as provided in paragraph (2), upon conveyance by the Secretary, the Authority shall accept the right, title, and interest in and to the Bridge, and all duties and responsibilities associated with the Bridge.

(2) INTERIM RESPONSIBILITIES.—Until such time as a new crossing of the Potomac River described in section 208 is constructed and operational, the conveyance under paragraph (1) shall in no way—

(A) relieve the Capital Region jurisdictions of the sole and exclusive responsibility to maintain and operate the Bridge; or

(B) relieve the Secretary of the responsibility to rehabilitate the Bridge or to comply with the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.) and all other requirements applicable with respect to the Bridge.

(b) CONVEYANCE BY THE SECRETARY OF THE INTERIOR.—At the same time as the conveyance of the Bridge by the Secretary under subsection (a), the Secretary of the Interior shall transfer to the Authority all right, title, and interest of the Department of the Interior in and to such land under or adjacent to the Bridge as is necessary to carry out section 208. Upon conveyance by the Secretary of the Interior, the Authority shall accept the right, title, and interest in and to the land.

(c) AGREEMENT.—The agreement referred to in subsection (a) is an agreement among the Secretary, the Governors of the Commonwealth of Virginia and the State of Maryland, and the Mayor of the District of Columbia as to the Federal share of the cost of the activities carried out under section 208.

SEC. 208. CAPITAL IMPROVEMENTS AND CONSTRUCTION.

The Authority shall take such action as is necessary to address the need of the National Capital Region for an enhanced southern Capital Beltway crossing of the Potomac River that serves the traffic corridor of the

Bridge (as in existence on the date of enactment of this Act), in accordance with the recommendations in the final environmental impact statement prepared by the Secretary. The Authority shall have the sole responsibility for the ownership, construction, operation, and maintenance of a new crossing of the Potomac River.

SEC. 209. ADDITIONAL POWERS AND RESPONSIBILITIES OF AUTHORITY.

In addition to the powers and responsibilities of the Authority under the other provisions of this title and under any interstate agreement or compact relating to the Authority that is consistent with this title, the Authority shall have all powers necessary and appropriate to carry out the duties of the Authority, including the power—

(1) to adopt and amend any bylaw that is necessary for the regulation of the affairs of the Authority and the conduct of the business of the Authority;

(2) to adopt and amend any regulation that is necessary to carry out the powers of the Authority;

(3) subject to section 207(a)(2), to plan, establish, finance, operate, develop, construct, enlarge, maintain, equip, or protect the Bridge or a new crossing of the Potomac River described in section 208;

(4) to employ, in the discretion of the Authority, a consulting engineer, attorney, accountant, construction or financial expert, superintendent, or manager, or such other employee or agent as is necessary, and to fix the compensation and benefits of the employee or agent, except that—

(A) an employee of the Authority shall not engage in an activity described in section 7116(b)(7) of title 5, United States Code, with respect to the Authority; and

(B) an employment agreement entered into by the Authority shall contain an explicit prohibition against an activity described in subparagraph (A) with respect to the Authority by an employee covered by the agreement;

(5) to—

(A) acquire personal and real property (including land lying under water and riparian rights), or any easement or other interest in real property, by purchase, lease, gift, transfer, or exchange; and

(B) exercise such powers of eminent domain in the Capital Region jurisdictions as are conferred on the Authority by the Capital Region jurisdictions, in the exercise of the powers and the performance of the duties of the Authority;

(6) to apply for and accept any property, material, service, payment, appropriation, grant, gift, loan, advance, or other fund that is transferred or made available to the Authority by the Federal Government or by any other public or private entity or individual;

(7) to borrow money on a short-term basis and issue notes of the Authority for the borrowing payable on such terms and conditions as the Board considers advisable, and to issue bonds in the discretion of the Authority for any purpose consistent with this title, which notes and bonds—

(A) shall not constitute a debt of the United States, a Capital Region jurisdiction, or any political subdivision of the United States or a Capital Region jurisdiction; and

(B) may be secured solely by the general revenues of the Authority, or solely by the income and revenues of the Bridge or a new crossing of the Potomac River described in section 208;

(8) to fix, revise, charge, and collect any reasonable toll or other charge;

(9) to enter into any contract or agreement necessary or appropriate to the performance of the duties of the Authority or the proper operation of the Bridge or a new crossing of the Potomac River described in section 208;

(10) to make any payment necessary to reimburse a local political subdivision having jurisdiction over an area where the Bridge or a new crossing of the Potomac River is situated for any extraordinary law enforcement cost incurred by the subdivision in connection with the Authority facility;

(11) to enter into partnerships or grant concessions between the public and private sectors for the purpose of—

(A) financing, constructing, maintaining, improving, or operating the Bridge or a new crossing of the Potomac River described in section 208; or

(B) fostering development of a new transportation technology;

(12) to obtain any necessary Federal authorization, permit, or approval for the construction, repair, maintenance, or operation of the Bridge or a new crossing of the Potomac River described in section 208;

(13) to adopt an official seal and alter the seal, as the Board considers appropriate;

(14) to appoint 1 or more advisory committees;

(15) to sue and be sued in the name of the Authority; and

(16) to carry out any activity necessary or appropriate to the exercise of the powers or performance of the duties of the Authority under this title and under any interstate agreement or compact relating to the Authority that is consistent with this title, if the activity is coordinated and consistent with the transportation planning process implemented by the metropolitan planning organization for the Washington, District of Columbia, metropolitan area under section 134 of title 23, United States Code, and section 5303 of title 49, United States Code.

SEC. 210. FUNDING.

(a) SET-ASIDE.—Section 104 of title 23, United States Code (as amended by section 125(b)(2)(A)), is further amended—

(1) in the first sentence of subsection (b), by striking ''subsection (f) of this section'' and inserting ''subsections (f) and (i)'';

(2) by redesignating subsection (i) as subsection (j); and

(3) by inserting before subsection (j) the following:

''(i) WOODROW WILSON MEMORIAL BRIDGE.—Before making an apportionment of funds under subsection (b), the Secretary shall set aside $17,550,000 for fiscal year 1996 and $80,050,000 for fiscal year 1997 for the rehabilitation of the Woodrow Wilson Memorial Bridge and for the planning, preliminary design, engineering, and acquisition of a right-of-way for, and construction of, a new crossing of the Potomac River.''.

(b) APPLICABILITY OF TITLE 23.—Funds made available under this section shall be available for obligation in the manner provided for funds apportioned under chapter 1 of title 23, United States Code, except that—

(1) the Federal share of the cost of any project funded under this section shall be 100 percent; and

(2) the funds made available under this section shall remain available until expended.

(c) STUDY.—Not later than May 31, 1997, the Secretary, in consultation with each of the Capital Region jurisdictions, shall prepare and submit to Congress a report identifying the necessary Federal share of the cost of the activities to be carried out under section 208.

(d) DISTRIBUTION OF OBLIGATION AUTHORITY.—Section 1002(e)(3) of the Intermodal Surface Transportation Efficiency Act of 1991 (Public Law 102–240; 23 U.S.C. 104 note) is amended by inserting before the period at the end the following: ''and the National Capital Region Interstate Transportation Authority Act of 1995''.

(e) REMOVAL OF ISTEA AUTHORIZATION FOR BRIDGE REHABILITATION.—Section 1069 of the Intermodal Surface Transportation Efficiency Act of 1991 (Public Law 102–240; 105 Stat. 2009) is amended by striking subsection (i).

SEC. 211. AVAILABILITY OF PRIOR AUTHORIZATIONS.

In addition to the funds made available under section 210, any funds made available for the rehabilitation of the Bridge under sections 1069(i) and 1103(b) of the Intermodal Surface Transportation Efficiency Act of 1991 (Public Law 102–240; 105 Stat. 2009 and 2028) (as in effect prior to the amendment made by section 210(e)) shall continue to be available after the conveyance of the Bridge to the Authority under section 207(a), in accordance with the terms under which the funds were made available under the Act.

TITLE III—FEDERAL HIGHWAY AND RAILROAD GRADE CROSSING SAFETY

SEC. 301. SHORT TITLE.

This title may be cited as the ''Federal Highway and Railroad Grade Crossing Safety Act of 1995''.

SEC. 302. INTELLIGENT VEHICLE-HIGHWAY SYSTEMS.

In implementing the Intelligent Vehicle-Highway Systems Act of 1991 (23 U.S.C. 307 note), the Secretary of Transportation shall ensure that the National Intelligent Vehicle-Highway Systems Program addresses, in a comprehensive and coordinated manner, the use of intelligent vehicle-highway technologies to promote safety at railroad-highway grade crossings. The Secretary of Transportation shall ensure that two or more operational tests funded under such Act shall promote highway traffic safety and railroad safety.

SEC. 303. STATE HIGHWAY SAFETY MANAGEMENT SYSTEMS.

(a) AMENDMENT OF REGULATIONS.—The Secretary of Transportation shall conduct a rulemaking proceeding to amend the regulations under section 500.407 of title 23, Code of Federal Regulations, to require that each highway safety management system developed, established, and implemented by a State shall, among countermeasures and priorities established under subsection (b)(2) of that section—

(1) include public railroad-highway grade-crossing closure plans that are aimed at eliminating high-risk or redundant crossings (as defined by the Secretary);

(2) include railroad-highway grade-crossing policies that limit the creation of new at-grade crossings for vehicle or pedestrian traffic, recreational use, or any other purpose; and

(3) include plans for State policies, programs, and resources to further reduce death and injury at high-risk railroad-highway grade crossings.

(b) DEADLINE.—The Secretary of Transportation shall complete the rulemaking proceeding described in subsection (a) and prescribe the required amended regulations, not later than one year after the date of enactment of this Act.

SEC. 304. VIOLATION OF GRADE-CROSSING LAWS AND REGULATIONS.

(a) FEDERAL REGULATIONS.—Section 31311 of title 49, United States Code, is amended by adding at the end the following new subsection:

''(h) GRADE-CROSSING VIOLATIONS.—

''(1) SANCTIONS.—The Secretary shall issue regulations establishing sanctions and penalties relating to violations, by persons operating commercial motor vehicles, of laws and regulations pertaining to railroad-highway grade crossings.

''(2) MINIMUM REQUIREMENTS.—Regulations issued under paragraph (1) shall, at a minimum, require that—

''(A) the penalty for a single violation shall not be less than a 60-day disqualification of the driver's commercial driver's license; and

''(B) any employer that knowingly allows, permits, authorizes, or requires an employee to operate a commercial motor vehicle in violation of such a law or regulation shall be subject to a civil penalty of not more than $10,000.''.

(b) DEADLINE.—The initial regulations required under section 31310(h) of title 49, United States Code, shall be issued not later than one year after the date of enactment of this Act.

(c) STATE REGULATIONS.—Section 31311(a) of title 49, United States Code, is amended by adding at the end the following new paragraph:

''(18) GRADE-CROSSING REGULATIONS.—The State shall adopt and enforce regulations prescribed by the Secretary under section 31310(h) of this title.''.

SEC. 305. SAFETY ENFORCEMENT.

(a) COOPERATION BETWEEN FEDERAL AND STATE AGENCIES.—The National Highway Traffic Safety Administration, and the Office of Motor Carriers within the Federal Highway Administration, shall on a continuing basis cooperate and work with the National Association of Governors' Highway Safety Representatives, the Commercial Vehicle Safety Alliance, and Operation Lifesaver, Inc., to improve compliance with and enforcement of laws and regulations pertaining to railroad-highway grade crossings.

(b) REPORT.—The Secretary of Transportation shall submit a report to Congress by January 1, 1996, indicating (1) how the Department worked with the above mentioned entities to improve the awareness of the highway and commercial vehicle safety and law enforcement communities of regulations and safety challenges at railroad-highway grade crossings, and (2) how resources are being allocated to better address these challenges and enforce such regulations.

SEC. 306. CROSSING ELIMINATION; STATEWIDE CROSSING FREEZE.

(a) STATEMENT OF POLICY.—

(1) Railroad-highway grade crossings present inherent hazards to the safety of railroad operations and to the safety of persons using those crossings. It is in the public interest—

(A) to eliminate redundant and high risk railroad-highway grade crossings; and

(B) to limit the creation of new crossings to the minimum necessary to provide for the reasonable mobility of the American people and their property, including emergency access.

(2) Elimination of redundant and high-risk railroad-highway grade crossings is necessary to permit optimum use of available funds to improve the safety of remaining crossings, including funds provided under Federal law.

(3) Effective programs to reduce the number of unneeded railroad-highway grade crossings, and to close those crossings that cannot be made reasonably safe (due to reasons of topography, angles of intersection, etc.), require the partnership of Federal, State, and local officials and agencies, and affected railroads.

(4) Promotion of a balanced national transportation system requires that highway planning specifically take into consideration the interface between highways and the national railroad system.

(b) PARTNERSHIP AND OVERSIGHT.—The Secretary shall foster a partnership among Federal, State, and local transportation officials and agencies to reduce the number of railroad-highway grade crossings and to improve safety at remaining crossings. The Secretary shall make provisions for periodic review to ensure that each State (including State subdivisions and local governments) is making substantial, continued progress toward achievement of the purposes of this section.

(c) CROSSING FREEZE.—If, upon review, and after opportunity for a hearing, the Secretary determines that a State or political subdivision thereof has failed to make substantial, continued progress toward achievement of the purposes of this section, then the Secretary shall impose a limit on the maximum number of public railroad-highway grade crossings in that State. The limitation imposed by the Secretary under this subsection shall remain in effect until the State demonstrates compliance with the requirements of this section. In addition, the Secretary may, for a period of not more than 3 years after such a determination, require compliance with specific numeric targets for net reductions in the number of railroad-highway grade crossings (including specification of hazard categories with which such crossings are associated).

(d) REGULATIONS.—The Secretary shall issue such regulations as may be necessary to carry out this section.

Mr. CHAFEE. Mr. President, I move to reconsider the vote.

Mr. WARNER. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

PRIVATE SECURITIES LITIGATION REFORM ACT

The Senate continued with the consideration of the bill.

The PRESIDING OFFICER. The Senator from New York.

Mr. D'AMATO. Mr. President, I now propound a unanimous consent request that Senator GRAMS, who has been waiting for several hours now, be permitted to put in his opening statement, Senator BOXER her opening statement, and that then we go to Senator SHELBY for the purposes of submitting his amendment on proportional liability that we have already agreed to vote on at 10:55. So I propound that as a unanimous consent request.

The PRESIDING OFFICER. Is there objection? The Chair hears none, and it is so ordered.

Mr. D'AMATO. I thank the Chair.

Mr. GRAMS addressed the Chair.

The PRESIDING OFFICER. The Senator from Minnesota.

Mr. GRAMS. Mr. President, I rise in support of S. 240, the Private Securities Litigation Reform Act of 1995.

As we all know, the United States is facing a litigation crisis. Piles of new and often frivolous lawsuits are being filed every day in our Nation's courtrooms, bottling up our judicial system and crowding out those suits which have merit and demand justice.

Already, the Senate has addressed the problems in our product liability laws and debated the issue of medical malpractice reform.

But few areas of our tort system deserve and require as comprehensive a review as the field of securities litigation.

Let me briefly describe the problem. For years, a small number of attorneys have made it their life's work to bring class-action lawsuits against companies whose stock values—for one reason or another—have fallen.

These so-called strike suits are rarely filed with any evidence of fraud or wrongdoing—in fact, they are often filed simply with the knowledge that the value of a stock has dropped.

This is possible because of the implied right of action developed by the courts under rule 10(b)–5 of the Securities Act of 1934. Because Congress has failed to limit this right of action through statute, it is relatively simple for attorneys to file frivolous cases and harass defendants under these judge-made rules.

Even worse, these attorneys rarely serve any real injured class of investors. Instead, they use professional plaintiffs who buy nominal amounts of stock, simply to serve as the pawns of an expensive chess match.

Due to the costly array of litigation expenses, such as extensive discovery, defendants will often choose to settle cases, rather than bring them to a final judgment in court.

In addition, under joint and several liability, plaintiffs' attorneys can bring secondary defendants, such as accountants, directors, and others, into these cases and force them to settle as well.

These settlements are often too small to benefit the alleged class of injured investors. But they are not too small to make a healthy living for an attorney who is motivated solely by profit, not justice.

To call this the practice of law would be inaccurate. It is more appropriately called legal blackmail or extortion, and it is happening every day, at the expense of job providers, workers, and consumers.

S. 240 addresses this problem by placing some important limitations on the implied right of action in rule 10(b)–5.

By helping put the brakes on the attorneys' race to the courthouse, this legislation would make it easier for defendants to protect themselves from frivolous ''strike'' suits, encourage voluntary disclosure of information from issuers of stock to potential investors, and reduce the cost of raising capital which is so necessary for jobs creation.

It includes a number of important provisions, including tougher pleading requirements for securities fraud actions, mandatory sanctions for attorneys who file needless litigation, and restrictions on windfall recoveries for plaintiffs who profit from a rebound in the market after an alleged fraud.

I am also pleased that S. 240 reforms the rules governing secondary defendants. This measure establishes a two-tiered system which allows most parties to be held proportionately liable only for the percentage of damages attributable to their actions; in other words, it puts an end to the practice of ''deep pockets'' litigation.

Mr. President, this legislation is not a perfect bill. There are many of us who believe it should do more.

We could, for example, have a stronger safe harbor protection for forward-looking statements or a ''loser pays'' provisions similar to the bill passed by the House. Today, however, we cannot let the perfect be the envy of the good.

Likewise, there will be attempts made to weaken this bill—efforts which I urge my colleagues to reject. In particular, I hope this body will resist any attempt to extend the statute of limitations already found in law. If our purpose is to reduce frivolous litigation and protect consumers from higher prices, any such effort must be rejected.

There are some critics of the bill who suggest that this legislation is bad for the average American.

Well, Mr. President, tell that to the innocent defendant who's forced to settle for millions of dollars simply because of one crafty lawyer, tell it to the worker who was laid off because his employer had to pay attorneys' fees instead of his salary, tell it to the consumer who has to pay higher prices for everyday products simply because of the cost of frivolous litigation.

And most importantly, tell it to the hard-working, honest attorneys who watch the public image of their profession being stomped into the ground by a few quick change artists. They are the ones who suffer because of the abuses in our current system. They are the ones who need our help.

By voting for this legislation, we will take an important step forward in helping reduce the cost of frivolous litigation, litigation which robs job providers the opportunity to buy new equipment for plant safety, provide higher pay and better benefits for employees, and to create new jobs.

And that hurts average, hard-working, middle-class Americans—my kids and yours.

For their sake—in the name of justice—we must pass this important measure to fix our badly broken tort system. I, tonight, urge my colleagues to join me in this effort and to vote for S. 240.

Mr. President, I yield the floor.

The PRESIDING OFFICER. The Senator from California.

Mrs. BOXER. Thank you very much, Mr. President. I know it has been a very long and hard day for many of us. Some of us felt very strongly about Dr. Foster, and we had a tough day on that one. Some of us had our bases closed, and it has been awfully difficult sometimes to face disappointments like this.

But here we are, it is 9:20 and we have a bill before us that is very important. I want to speak to this bill and as I told the chairman, my friend, I will do it as quickly as I can, but I wanted to cover some of the important issues that we face.

I speak to this bill not only as a Senator from California but as a former stockbroker, a former stockbroker will understand the sacred responsibility of recommending investments to people who need those investments to be sound. I can tell you, in those days, if I invested in a stock for an elderly person, I literally worried a lot about them, and if things turned around, I was very quick to get on the phone and talk with them about it. I took this responsibility very seriously, and most stockbrokers do.

But there are those broker-dealers, investment advisers, and others who do not take their responsibilities as seriously as they should. So I think it is very important, in light of Orange County—and those were my constituents who were left holding the bag because there were some broker-dealers who were more than dishonest, unscrupulous, and they had done it before and they continued to do it. I want to make sure that investors are protected.

When the debate opened on S. 240, we heard a great deal of discussion by its proponents about companies who were being sued unfairly. No one, Mr. President, should be sued unfairly. The vast majority of businesses are decent, are good, and they do not deserve frivolous lawsuits. Those frivolous lawsuits should be stopped. I am ready to stop them. They do happen. But as my friend from Nevada, Senator BRYAN, said, let us not use the issue of frivolous lawsuits to take this legislation so far that it hurts legitimate plaintiffs, legitimate lawyers. We do not want to stop decent people in their tracks, innocent investors. We do not want them to be stuck or ruined. We do not want them, in some cases, frankly, to be financially destroyed because we are writing a law that perhaps goes too far.

Our colleague from Nevada showed us very clearly that there is no explosion of these investor lawsuits. Indeed, it is extraordinary. They have remained very level—the same number now as we saw 20 years ago. That does not mean they are all perfect lawsuits. Some of them are frivolous. But the fact is we have no explosion here, and that has been clearly stated by my friend from Nevada.

We need to approach this bill from our own experience. I want to say that this is a very complicated issue. I want to say to those who may be watching this debate, it may be complicated, but it could easily affect you. It is just like the S&L crisis, when the Congress acted to deregulate and walked away. It was a complicated bill. People did not follow it, and then they got burned. So we have to be very careful.

I have met the victims of Charles Keating. I talked about that with my friend from Nevada. I met the victims from the Orange County bankruptcy, and I say to them that I do not intend to forget them as we go through this bill. I want to try to make this bill better. I will support it and perhaps offer amendments to do that. I want to make sure investors are not shut out of the courtroom. That is not the American way. That is what motivates me.

I want to tell a little bit about this bill by way of some charts that I have. I want to show you what newspapers have been saying about this bill, S. 240. There are many people who take it to the floor and they have extolled this bill in its current form. They like it. Many of them have worked very hard on it and they are very close to it. I want you to see what some of the newspapers are saying about S. 240.

The Palm Beach Post of June 5, 1995:

Congress has set out to help stop market con artists. Congress is creating legislation that would virtually strip the rights of defrauded investors—the bill installs heat shields around white collar crooks and brokers or accountants who aid and abet their scams. Investors who know the legislation do not like it.

This is Jane BRYANt Quinn from Newsweek. She is an advocate for investors, and she says:

S. 240 makes it easier for corporations and stockbrokers to mislead investors. Class action suits against deceivers would be costly for small investors to file and incredibly difficult to win.

How about the Seattle Times, May 29, 1995, a month ago. They say this, and so many colleagues have embraced this, and some say it does not go far enough:

This legislation has proceeded almost unnoticed because it is hideously complicated, and there may be a feeling it does not touch many lives. Wrong. Taxpayers have a vital stake in these changes. Longstanding protections are in jeopardy.

The Raleigh, NC, News and Observer:

S. 240 is bad news for investors, private and public. It would tie victims in legal knots while immunizing white-collar crooks against having to pay for their misdeeds.

The Philadelphia Inquirer, in June 1995:

A crook is a crook, and S. 240 would relax penalties for many stock crooks.

The St. Louis Post Dispatch, May 1995:

Don't protect securities fraud.

The Contra Costa Times in my home State:

Why would any Member of Congress vote to protect those involved in fraud at the expense of investors?

That is a reasonable question.

The Seattle Post Intelligencer:

The legislation is opposed by the U.S. Conference of Mayors, the Government Finance Officers Association, the American Association of Retired Persons, and the North American Securities Administrators Association.

Mr. SARBANES. Will the Senator yield?

Mrs. BOXER. Yes, I am happy to.

Mr. SARBANES. Not only is that a diverse group from which you just cited, the U.S. Conference of Mayors, the Government Finance Officers Association, the American Association of Retired Persons, and the North American Securities Administrators Association. Now, none of those groups has a vested interest, so to speak, in this conflict.

I understand that you have the trial lawyers who have a vested interest and the corporations who have a vested interest, and they are at one another,

and they are at sort of loggerheads over this thing. One makes one set of assertions and the other makes another set of assertions.

Everyone whom you cited there—as did the Senator from Nevada earlier in the debate, who listed additional organizations as well—all of whom are sort of outside the fray, they are coming and taking an outside, objective look at this thing. They have reached the judgment that this legislation is deficient. We are not getting outside groups reaching the judgment that the legislation, as is, is OK. The outside groups that say it is OK are players in the legislation. There are groups that say it is bad who are also players. But these are all organizations, in effect, that represent the public interest, the consumer. We have a whole list of consumer organizations as well. I think it is very important. I think Members really have to stop and think about this, because we are getting the same thing out of the editorial boards of the newspapers around the country. Overwhelmingly, those editorial boards are critical of this legislation.

They see it goes too far. Most write editorials and say there are some bad practices that need to be corrected, but this legislation goes well beyond that and overreaches.

I appreciate the Senator yielding. I think it is a very important point. None of those organizations have a vested interest in this conflict, unlike many other groups that do have such an interest.

Mrs. BOXER. I thank my colleague, the ranking member of the full committee, for his statements.

I would say what we are doing here is just showing what the one newspaper is quoted as saying. There is a list of many, many pages, and I will at some point in this debate go further into it.

My friend is so right. So many consumer groups oppose this: Consumer Federation of America, Consumers for Civil Justice, Consumers Union, the Fraternal Order of Police oppose this. Why? Because they are worried about their retirement. They do not want some scam artist to get away with it.

As this debate moves forward, we will go more and more into the groups who oppose this legislation.

I am going to ask for the next series of charts which show who are the main targets of investor fraud. We talk about the companies, and believe me, I want to help the good companies. I do not want to help the companies that defraud investors. I think we need to look at who the targets are.

This is an article that appeared in the New York Times in May of this year, a month ago. ''If the Hair is Gray, Con Artists See Green, the Elderly are Prime Targets.''

When we talk about changing security laws that protect investors, we need to step back and look at who the targets are, who are the ones most likely to get hurt if we weaken these laws too much.

Let me read a little bit:

Betty Norman was no match for the telephone con men who emptied her pockets of more than $40,000.

A plain-talking widow who runs a small motel in Michigan, a town of State prisons and apple orchards, Mrs. Norman, born and raised here, was taught to believe that people are essentially honest. So she trusted salespeople who picked up details about her life in seemingly casual telephone chats while pitching her pens, costume jewelry and other trinkets. After being swindled out of thousands of dollars, she lost even more to people promising to recover her original investments.

Now, this is what Mrs. Norman says:

''It makes you feel like taking your life, to think you you've been skinned,'' said Mrs. Norman, 68, who for months was too mortified to reveal it to her grown children. ''I've been struggling along. People here have lent me money and I'm trying to get it paid back.''

So, we are seeing that—whether it is selling goods to the elderly or selling them investments—clearly, the elderly are the prime targets.

Now, I want to show something that I think is extraordinary. It is really something that ought to go to the Smithsonian. It is actually one Charles Keating gave to his salespeople when they were trying to con innocent senior citizens. I know that every single Senator, from both parties, would be sick if they took a look at this.

You are now a trainee for Charles Keating, and they blow up this paper. Here is what it says. They want to get someone to write a check for $20,000 to Charles Keating's company, American Continental Corp., in care of Lincoln Savings & Loan. You remember Lincoln Savings & Loan, right?

Here is the training document for the salespeople. To show how cruel these people are, how awful they are, this is the name they put, the fictitious name: Edna Gert Snidlip, 1 Geriatric Way, Retiredville, California, account number. And they are trying to get this sample elderly person to write a check for $20,000. This is the way they think of senior citizens.

I will show what they said on another piece of paper that we have blown up, another document that shows what they handed out.

At the very end, number 13, and these are all the things they have to think about, ''Always remember, the weak, meek, and ignorant, are always good targets.''

Now, what we have to do as we look at S. 240 is make sure that it passes the Keating test. Can we get a crook like Charles Keating, if we weaken our securities laws too much?

What the Senator from Maryland, Senator SARBANES, is trying to do, and the Senator from Nevada is trying to do, and the Senator from Alabama, and this Senator, and I hope others, we are trying to fix S. 240, so we do not allow these charlatans, these crooks, these criminals, to target elderly people, to go after the weak, the meek, and the ignorant as targets, and get away with it.

Remember, the Senator from Nevada, who was a prosecutor, has said if S. 240 had been the law of the land, the people who were conned by Charles Keating would not have recovered what they have now recovered. It is about 40 to 60 percent of their losses.

Mr. SARBANES. Is that an instruction sheet they gave to their salesmen?

Mrs. BOXER. This is an instruction sheet they gave to their salespeople, exactly. This was in the period of discovery, when the attorneys went in to make their case against Charles Keating, they were able to come up with these documents which are on file at the court. We took them out.

I thought it shows the people of America that there are, sad to say, bad people, bad people who will try to get the elderly to make investments that are no good.

As the Senator knows, the Keating case, they led people to believe that their investments were, in fact, insured by the Federal Government, and people lost everything.

Mr. D'AMATO. Might I make an inquiry?

Mrs. BOXER. Certainly.

Mr. D'AMATO. I understand the horrible and the terrible things that were done to these people, the unscrupulous tactics that were used, but I ask what the relevance of insider trading is to the legislative proposal that we have before us.

This legislation does not deal with insider trading. Insider trading remains completely banned. There are other existing sections of the securities law which deals with insider trading. We do not make it any easier for insider trading to occur.

The fact is that this bill does not protect fraudulent conduct. It absolutely does not.

If you knowingly advertise falsely, you will be in violation of this bill, the safe harbor does not protect these false statements nor does it apply to ITO's or to small emerging companies. Also, the Securities Exchange Commission will still have the authority to bring any suit that it can bring today.

When we bring up the name of Charles Keating, and the terrible things that his salespeople were trained to do, we imply that this legislation will allow this kind of conduct. This legislation will not sanction that kind of conduct.

Mrs. BOXER. And I respond to my friend that we are changing the laws that protected the people who were conned by Charles Keating.

The fact of the matter is, Charles Keating ripped off the assets of the savings and loan, went bankrupt, and these poor people who were left with nothing had to go after other people. And in this bill you make it far more difficult. That is why Senator SHELBY is offering an amendment on this.

Mr. D'AMATO addressed the Chair.

Mrs. BOXER. The other point—I would like to just finish my point because my friend raised two issues. My

colleague is asking me about insider trading. The Senator is exactly right.

Mr. D'AMATO. Does the Senator know what fraud provisions we are changing? I would like to know. If she can point out to me a particular provision that will permit fraud, then I want to strike it. You say we have changed the law without identifying what section we have changed and allude to the practices of somebody we all agree was contemptible but his actions are not relevant. If you can point it out these provisions I would be delighted to review them.

The comment that we will make it possible for people to engage in fraudulent conduct and wipe away the protections that now exist, is not, in my opinion, square with the facts.

Mrs. BOXER. I would like to respond to my friend very clearly. I am making an opening statement tonight. I told my friend, I will be supporting amendments to make this bill better; amendments that will not leave people prey to people like Charles Keating. The Senator wants to know specifically? You can talk about the safe harbor. We are going to do that. I was happy to hear my friend from Connecticut saying maybe he will have a little change there. We welcome that. We are going to look at pleadings. And on insider trading, which we are going to talk about, the bill is silent about it. That is my problem.

Mr. D'AMATO. But this legislation does not deal with insider trading. Insider trading provisions are as vigilant and tough as ever. If there are constructive suggestions to make insider trading laws more effective, to appropriately protect defrauded people, we should certainly consider them. But this bill, as it does not address insider trading.

Mrs. BOXER. That is my point.

Mr. D'AMATO. To suggest that this bill will somehow make it easier for insider trading, because that is the implication when you cite Charles Keating and his misdeeds, that somehow we are going to make it easier for these people to prey on the elderly to is not true. I might just make one observation, this bill does, makes it possible for those who are truly aggrieved, not the entrepreneurial lawyer, to bring suit against violators and to receive their fair share of the settlement money.

It allows the institutional investors and the pension managers who are at risk, whose clients are at risk, to have the opportunity to manage a lawsuit, instead of giving this control to lawyers who have no concern for the defrauded investors. These lawyers do not give two hoots and a holler about the stockholders, and walk off with millions of dollars in settlement fees when the stockholders get a penny or 2 pennies per share. I suggest to the Senator that this bill helps pensioners, who hold $4.5 trillion in securities, by giving them the authority to choose the lawyers who control the suits. It gives them the ability to agree to a settlement as opposed to a charlatan, who owns 10 shares of stock and now is employed by lawyers.

That is what we tried to do with this legislation. I point this out because as I listen to my colleague's statement it sounds to me like this legislation will open a door for the Charles Keatings, this is just not accurate.

Mrs. BOXER. If I could just reclaim my time—and I will yield in a moment—I really need to say to my friend from New York: He may not agree with me, but to stand there and say that it —and my friend is a good debater—it is unequivocal that pensioners are better off—you should see the people who oppose your bill.

It seems to me—

Mr. D'AMATO. I know the people who oppose the bill.

Mrs. BOXER. Let me read the list: American Association of Community Colleges, American Association of Retired Persons, American Council on Education, American Federation of State, County and Municipal Employees, the Association of the Bar of the City of New York, the Association of Community College Trustees, the Association of Governing Boards of Universities and Colleges. It goes on. The Consumer Federation of America. Et cetera, et cetera.

I just read before—the Senator was not on the floor—some incredible, incredible editorials that have been written across this Nation by people who have no vested interest at all.

How about the Investors Rights Association of America? How about the Municipal Treasurers Association of the United States and Canada?

My friend has to, I hope, leave a little bit of room for dissension here. I know the bill was voted out overwhelmingly. But in the course of this debate I am going to be supporting amendments and perhaps offering some that are going to improve this bill. Because I do not agree with my friend. I do not agree with my friend that investors are better protected. I will be happy to yield to my friend from Maryland who sought to engage in a colloquy.

Mr. SARBANES. I would say to the distinguished Senator from New York, on the morning of the markup of this bill in the committee, the Chairman of the Securities and Exchange Commission wrote to us and stressed that the substitute committee print failed to adhere to his belief that a safe harbor should never protect fraudulent statements. This is what he said:

I continue to have serious concerns about the safe harbor fraud exclusion as it relates to the stringent standard of proof that must be satisfied before a private plaintiff can prevail. As Chairman of the Securities and Exchange Commission, I cannot embrace proposals which allow willful fraud to receive the benefit of safe harbor protection. The scienter standard in the amendment may be so high as to preclude all but the most obvious frauds.

That is not me talking. That is me quoting the Chairman of the Securities and Exchange Commission. He expressing very deep concern about the safe harbor provision in this legislation. So there is a very direct answer to the Senator from New York.

Second, we offered in the committee an aiding-and-abettingamendment. Earlier in the debate the distinguished Senator from Nevada pointed out about half of the recovery in the Keating case that helped these elderly citizens who had been swindled to get at least some of their money back, about half of the money they got back was because they were able to move against aiders and abettors.

There is no aider and abettor provision in this legislation for private litigants—which is, of course, how they were able to proceed in order to get their money back. And later there will be an amendment offered to provide aider and abettor liability in private actions.

So there again, unless we get that provision in, the ability that people who have been swindled in the Keating matter had to recover at least some of their losses would otherwise not be available to them.

So I say to my friend from California, there are two very clear examples to support the proposition she was just arguing.

I thank the Senator for yielding.

Mr. DODD. May I make a comment?

Mrs. BOXER. Without losing my right to the floor, and briefly, I yield to my friend.

Mr. DODD. I thank my colleague from California.

Mr. President, we are dealing here with apples and oranges. Talking about the Keating case has the desired effect because people recall what happened to innocent investors. But under the Keating situation we were talking about a failure of the bank regulatory system. Here we are talking about securities laws, two entirely different areas of the law.

What Mr. Keating and his cohorts were charged with was not violation of fraud and forward-looking statements, they lied to them about present facts. That is a vastly different situation. No safe harbor provisions were necessary in the Keating case, because he told those people, in these absolutely ridiculous and outrageous statements and instructions, that ''your money is being guaranteed. You are protected.'' It was not forward looking, he was lying about the present situation.

What the safe harbor provisions deal with are forward-looking statements, entirely different fact situations than existed in the Keating case.

I want to go into that at some length and I will later on, on this, but that is a very different fact situation than what we are talking about here.

Last, I just make this one point.

One of the major provisions of S. 240 has to deal with the requirement that we have the auditors reach out. Look, this is a provision that was added by Congressman WYDEN on the House side

who for years had 30 hearings on this provision which we have incorporated in this bill. Had that provision, by the way—one provision of this bill that does apply to Keating—had the auditors been required to seek out the fraud which does not exist on the books, that is the one area, I would argue, in S. 240 that might have made a difference in the Keating case.

What we have done with this bill is add a new requirement that auditors must do that. That would have assisted in the prosecution of Mr. Keating. That is a part of this bill. But forward-looking statements and lying about present facts are very different, and safe harbor would not have applied.

I thank my colleague for yielding.

Mrs. BOXER. I am happy to yield.

I say it is my understanding—and we are going to debate this—that it is not as clear as the Senator made it. We are going to bring that out as we move forward in this debate.

My friend from New York says insider trading is not in this bill; exactly my point. I would like to see us connect insider trading to these forward-looking statements. And I want to explain what I am talking about. We know insider trading. ''It's back, but with a new cast of characters.'' That is Business Week. That is December 1994.

I want to quote from a book written by Gene Marcial, ''The Secrets of Wall Street'':

> Don't kid yourselves: Very little has changed on Wall Street. Half a dozen years after the scandals of the 1980's, when any number of Street veterans were charged with violations of securities laws and several high-profile insiders were marched off to jail, insider trading and market manipulation—in cases 100 percent illegal—are still the most zealously desired play in the financial world. It's almost the only way to make the truly big bucks. All the market savvy in the world will come up short if you're playing against other investors who have market savvy plus inside information: Sorry, but that is the way the game is played.

How does that fit into this bill? What this bill does not address is forward-looking statements made in combination with insider trading.

Let me show you what I mean. Here is a forward-looking statement. Crazy Eddie. Some of you may remember a business run by a crook. Here comes the forward-looking statement.

> We are confident that our market penetration can grow appreciably . . .
>
> Glowing evidence of consumer acceptance of the Crazy Eddie ''Name'' augurs well for continuing growth outside of New York . . .

All during the time of this forward-looking statement, Crazy Eddie and his friends are unloading the stock, and they are unloading it at a high point. And after awhile, just a little bit later, you see this forward-looking statement was fraudulent and the top officer flees the country with millions of dollars, and the CEO is convicted of fraud.

So my point, I say to my friends—and what I tried to do in the committee, but we could not get agreement at that time, I am hoping we can get an agreement—is to make a point that, if you have a forward-looking statement in connection with insider trades, in other words, you can show—because, by the way, the insider trades are definitely recorded with the SEC, fortunately; some have 40 days to do it; I would like to make it 5 business days—if you can show that there is a forward-looking statement in connection with an insider trade, that you meet the heightened Keating requirement and you cannot take advantage of the safe harbor. My understanding is that if we made that change, it would be very helpful to this bill.

Mr. DODD. Will my colleague yield?

Mrs. BOXER. Sure.

Mr. DODD. As I see the fact situation here, in the Crazy Eddie case, these are knowingly false statements that were made. The provisions of S. 240 are fine. My point is that the insider trading laws are on the books. Frankly, if you have some new ideas on insider trading—we do not cover cattle rustling in this bill either. It does not mean it may not be important.

Mrs. BOXER. May not be important?

Mr. DODD. My point is you have very good laws today. We wrote some laws on insider trading which I dealt with in our committee a few years ago. But the implication here is somehow that Crazy Eddie would have gone scot-free if S. 240 were the law of the land.

Mrs. BOXER. No.

Mr. DODD. The Senator is not suggesting that, is she?

Mrs. BOXER. No. I would like to explain it before my friend gets too agitated. Let me explain it to my friend.

What I am suggesting—and I tried to explain it to my friends in the committee, but no one was interested in talking about it. I am trying to explain it now. The Senator is right. He made clearly false statements. But he might get away with it under the new safe harbor because it is a more difficult standard to meet. What we are saying is that, if you can show, going into the case, unequivocally that in connection and conjunction with a false statement, a forward-looking statement, there is insider trading, you do not have to meet the requirements of the new safe harbor, and you do not have to meet the pleadings requirement because what we are really saying is here ipso facto, if you are unloading a stock the day after you make a phony statement, that should meet the heightened requirement.

Mr. DODD. Is there anything that you believe—we now know in this case there were knowingly false statements that were made. Is there anything in S. 240 that would in any way make it possible for a Crazy Eddie to have gone scot-free?

Mrs. BOXER. Yes.

Mr. DODD. Why?

Mrs. BOXER. Because the safe harbor is quite different the way it is written in S. 240, and it would be much more difficult for investors to move against this particular company.

Mr. DODD. S. 240 says knowingly false statements.

Mrs. BOXER. I know. But it is a much higher level. You have to know the intent and all the rest.

All we are saying is in cases of insider trading—I hope my friends can go along with this because I think it is good law; that is, ipso facto, if you can show that there is insider trading in connection with a forward-looking statement, that you meet the new safe harbor and the pleading requirements. That is all we are suggesting.

We will be offering that amendment. I hope we can have some support. I think it makes a lot of sense.

I want to say something about the laws that deal with insider trading. I hope my friends can help me on this because I think we all want to go after the bad people. I know we do.

Mr. SARBANES. Will the Senator yield?

Mrs. BOXER. Yes.

Mr. SARBANES. I say to the Senator from Connecticut, I cannot give a definitive answer to his question because there has not been a court interpretation of the standard that you had put in this bill, the safe harbor. But it is clear that under this standard, that Crazy Eddie was held to a standard that was not as stringent as the standard you have written into this legislation. That is clear. There is no argument about that. The standard by which Crazy Eddie was held under the existing law was a less stringent standard than the standard the Senator has written into this bill, because his standard—he says it is knowingly made with the expectation, purpose, and actual intent of misleading investors, and, of course, the Chairman of the SEC indicated he was fearful that this would allow willful fraud and still enjoy the benefit of safe harbor protection.

The other thing, I say to my friend, because I wanted to make this point earlier, is that I do think that the insider trading issue is more related to this bill by far than cattle rustling, if I may state that to my colleague, because, as I understand it, his effort was to counter my good friend from California to say, ''Well, you know, what has insider trading got to do with this bill? What does cattle rustling have to do with this bill?'' I think there is a difference between insider trading as it relates to this kind of legislation and cattle rustling.

Mr. DODD. I think my colleague from Maryland fully understood the point I was making on this. Yes, there is a different standard we are applying here. But the implication of using Crazy Eddie as an example I think is wrong.

But, second, what we are trying to do here is to minimize the kind of frivolous litigation where some people have a position that there should be no safe harbor, that we should do away with safe harbor altogether. I disagree with that. I think you can make a case for that.

But the idea of arguing, on the one hand, that we ought to have a safe harbor, and, second, making it so transparent that anyone can bring a lawsuit based on any kind of forward-looking statement is going against the trend of the balance we are trying to strike here where you have companies withholding information, pulling back, fearful that anything they say, no matter how well intended, becomes the automatic subject of a litigation when stocks fluctuate.

So we are trying to strike that balance, if I might just say to my colleague from Maryland.

Mr. SARBANES. If I could bring my dear friend back into the parameters, no one that I know of out here has argued that there should be no safe harbor whatever, which is the statement the Senator just made.

Mr. DODD. I said some may. I do not know.

Mr. SARBANES. It is a red herring. It is a diversionary thing.

Mr. DODD. Crazy Eddie is a red herring.

Mr. SARBANES. We are trying to get at what is a proper approach on the safe harbor issue. Now, it is a complicated issue. The Senator himself said that earlier in the day, a very complicated issue. But the potential for harm and damage, if you do not get it right, is enormous.

Mr. DODD. On both sides.

Mr. SARBANES. Is enormous.

Mr. DODD. Will my colleague agree, on both sides?

Mr. SARBANES. Not quite. Because until 1979 the SEC would not even permit forward-looking statements and yet our markets did very well. They grew. People prospered. Investments were made. The SEC would not even allow a forward-looking statement because they were so worried about what might happen to the investors.

Then people came in and made the argument, well, you know, this is difficult; we ought to be able to make some projection. And they began to try to accommodate that, which is what they have been trying to do. So we have been trying to make some changes. But you have to get it right. And when the chairman of the SEC comes in with a letter when he came to the committee, it ought to give you pause. You ought to pause. You ought to stop and think about this thing.

We ought not to have to enact something, then have devastation happen to investors and then come back and try to get it right, I say to my friend.

Mr. DODD. If my colleague will yield on that, we are already seeing—the reason the bill exists at all is because of the kind of devastation that can occur here. And so we are trying to strike that balance here.

Mr. SARBANES. That is right. And we have to strike the balance in the right place. That is all I am saying to my distinguished friend.

Mrs. BOXER. If I may reclaim my time at this point, I have enjoyed the give and take but I am bringing it back to real people. And my friends can talk all they want about safe harbor and all that. Let me tell you what I am talking about.

I used to be a stockbroker, I say to my friend, and I took that job very seriously. And I had a lot of widows and they came into me and, God, I worried. I am not concerned about the good people that my friend from Connecticut talks about. I want to help them. I want to protect them from frivolous lawsuits. I wish to also, however, say while I am doing that I do not want to hurt the average investor, and they can tell you from today until tomorrow it has nothing to do with the Keating case. Fine, they can say it all they want. But I will prove it as we go through this debate. But I wish to take you back to what happened to real people. This is just one case. There are many. I will show you another article behind here.

''Regulatory Alarms Ring on Wall Street'' New York Times, Friday June 9, 1995:

With the frenzy of merger deals and takeover battles these days, it seems like old times on Wall Street in more ways than one. Securities regulators say they are opening investigations into insider trading at a rate not seen since the mid 1980's, the era in which Ivan Boesky, who went to jail for trading on inside information, became a household name.

The point I am trying to make, my friends, yes, I want to have a safe harbor. I voted for the safe harbor that was in the Dodd-Domenici bill. And my friend from Connecticut said, well, we have moved past that. We can do better.

I think what was in the Dodd-Domenici bill made sense to give this to the SEC and let them develop a safe harbor. They know more than any of us.

Mr. DODD. Will my colleague yield on this one?

Mrs. BOXER. Yes.

Mr. DODD. The Senator is absolutely correct. I asked a year and a half ago. A year and a half ago I said to the SEC, in response to the letter by the chairman, a year and a half ago I said, ''Look, let's let you do it. Would you get some answers back.''

Month after month we inquired: What are you going to do on this? We would like to know. A year and a half went by and the SEC basically, because they wanted no change whatsoever, refused to provide any response. I say that to my colleague in frustration. We have had this happen with other agencies. They were not interested in doing this at all, despite their claims to the contrary. That is why we put the provision in here. Frankly, I would have preferred that they would have done it. But, frankly, after a year and a half, the patience of a Senator runs out when an agency refuses to respond.

Mrs. BOXER. I say to my friend, I know of his good faith and his good will and his good patience, but you know what? I think it is dangerous: Well, we tried and they did not do it, so we are going to write this our way.

I was in the House when we started the whole mess with the S&L's. Everyone thought: We can handle it; we know what is best; we will regulate them. Great. We do not need the agency to tell us how to do it. We are going to legislate.

I say to my friend from Connecticut, whom I admire—and we are friends, and we agree on 98 percent of the things around here—on this particular case, I hope he can get some more patience because I am a little concerned about the direction, and it is not just me. It is list after list of consumer groups and senior groups and securities administrators. They have no ax to grind. They are scared for the investors.

We do not want to go too far. We should find that balance. We should crack down on frivolous lawsuits, but let us be careful.

The point I am making with this, as my friend from Maryland pointed out, there is a tougher standard now. That is the whole point of the bill. Let us not play games with it. It is a tougher standard to meet, on purpose. The Senator himself has said, others have said we are worried about these suits against good, decent people and we are raising the bar; we are making it tougher.

What I am suggesting is if in connection with a forward-looking statement there is insider trading and it is clear and convincing and everyone knows it because they have to file it, then that should meet the standard right away, and the case moves over.

That is all I am saying. I hope I can work with my friend from Connecticut. I think when he looks at it he is going to think this is good. He does not want to protect people who make these statements; they are false; they dump their stock.

You know what happened? All the people in here that bought it on the basis of this lost so much. And I think there are ways we can work together to strengthen this bill so that when we have this connection—by the way, it happens many, many times with this insider trading, with these false statements, and the public gets it in the neck. And now they have to meet a higher standard.

And my friend from New York, I do not agree with him on this business about choosing the attorney. Now, in this bill we say the richest person, the person with the most invested gets to pick the attorney.

Mr. D'AMATO. If I might I ask, does the Senator mean to tell me that, for example, the pension manager of the city of New York, a $20-some-odd billion fund, should not be given greater latitude given the magnitude of the investment they manage than a professional plaintiff who buys 10 shares of stock and who is retained basically by a lawyer who rushes to file a suit? You would not want to give to the pension

managers the ability to have a greater say in who is selected when half of the dollars lost are invested by pension funds?

I would say I would rather have that any time. So when you say who is going to pick the lawyer, I would rather have people who have a real stake, who really invested billions of dollars, who really have something at risk, pick the lawyer. Than entrepenurial lawyers who simply watch for the stock to move 5 points one way or the other way. The Senator feels one way, I feel the public needs to be protected, and the way to protect the stockholders, the little people is to give them a say. They do not get a say now. They absolutely do not. What is going on now is a travesty.

Mrs. BOXER. Well, I assume that was a question, and so I will attempt to answer it this way. I say to my friend, we have a disagreement, and so does the SEC. They do not agree. They want to work on this provision. Just to say because someone has the most money, that is the end of it, they get to pick the lawyer, I think is a problem.

If you look at the Keating case, by the way, it is very interesting because in some of these cases, as the SEC pointed out in their recent communication, it may well be that the largest stockholder is somehow in cahoots with the fraudulent individual.

Now, I would rather give—

Mr. D'AMATO. Are you really suggesting—

Mrs. BOXER. May I finish my point, I say to my friend? I so admire my friend's tenacity, but let me finish my point and then I will be so happy to yield. Two people from Brooklyn, and I know it is hard. Two people from Brooklyn, I know it is hard. I want to yield to my friend.

Mr. D'AMATO. You do not have to.

Mrs. BOXER. I would like to remember my point, which is that under the current law, the judge gets to make the decision based on who is the most competent lawyer. I would assume judges are not dumb. They know if there is a phony plaintiff. I think that is another area on which we can perhaps compromise that the SEC has found problems with.

My colleagues will be glad to know that I am reaching the end of my remarks tonight. I know my chairman is absolutely thrilled with that, but I want to point out that I was yielding to many of my colleagues throughout this time. I wanted to do that. I think we have some legitimate differences.

Look, I only have one goal here. This is a tough issue for me. I represent so many wonderful companies who are complaining about this. I want to resolve this in the right way. I represent so many investors that got bilked.

Why do I represent all these people? Because I come from the largest State. I have 32 million people. I have thousands and thousands of investors, thousands of companies, and I want to be able to support a bill that strikes the balance that my friend from Connecticut talked about.

I think this bill, in its current form, does not do that. Now, I am not the only one to say that. Respected people in this Senate have said it tonight, people like DICK BRYAN, people like PAUL SARBANES. These are not people who do not know their facts. These are fair people.

We have a list of people who look after consumers, who look after investors who are begging us to fix this bill. I want to make sure that when this process ends, we have adopted some amendment, we have made sure that we do not have unintended consequences. We certainly had them in the S&L debacle. Not one of us ever dreamed we would have the problems we had when we deregulated.

Please, please view my comments tonight in the spirit in which they are offered. I want to be able to support a bill that does the right thing, but let us heed what Arthur Levitt and the SEC is saying in regard to the safe harbor, in regard to joint and several, in regard to the statute of limitations, in regard to the provisions regarding selecting an attorney. These are complicated matters, but the bottom line for me is making sure we protect the investors and that we protect the good business people, and if we do the wrong thing, we could be very, very sorry.

So let us proceed with caution, with comity. I hope we can improve this bill, and I look forward to working with my colleagues on the amendments that will be offered.

I yield the floor.

Mr. D'AMATO addressed the Chair.

The PRESIDING OFFICER. The Senator from New York.

Mr. D'AMATO. Mr. President, I will be brief considering the late hour.

I cannot let go unchallenged the statement that would imply that somehow this legislation will open up the door for people like Charles Keating to do the kinds of things that he did. This legislation does not deal with the criminal law or criminal conduct.

This bill does deal with the civil suits which are being brought and stating that there has to be a showing of intent to cause harm when making forward statements. These forward statements are defined in a very limited fashion, they include only projections. In order for a statement to be a projection, the company must state that it is a projection and warn investors that these projections may not come true.

If we want companies to be able to make these projections, and most people agree that it is in the consumers interest that they make them, then you have to give them this protection against frivolous suits. The question of who should represent the people, is not, in my opinion, a question of rich investors trampling the concerns of small investors. We are trying to give pension funds which operate on behalf of millions of people, many of whom are in the public sector, more control over their suits. We want to address more investors' concerns, not fewer. That is what we are attempting to do with this legislation.

Fraudulent conduct is not protected by the safe harbor section in this bill. This bill specifically excludes from protection any statements made with the expectation, purpose, and intent of misleading investors. If you are trying to mislead your investors you do not get protection. It is designed to protect honest companies from abusive suits.

There will be amendments to attempt to improve on the language of the bill. We will have exhaustive debate on all the issues on which my colleagues have concern and we will have votes on those amendments.

I just do not think it is fair to bring up the cases of Charles Keating or Crazy Eddie in which criminal violations were committed and which have absolutely no relation to the provisions in this legislation. One could easily assume when they hear the names of these outstandingly monstrous cases that are indelibly imprinted on so many people that somehow we are going to open the door to these kinds of actions. That is just not fair, and it is not an accurate representation of what we are attempting to do here. Although I certainly believe that reasonable people can disagree, as is their right, but I do not believe these analogies are correct or fair, with respect to this legislation.

Finally, I will conclude by saying that I did not sponsor this legislation, because I thought that the initial provisions of the legislation would have precluded and made it impossible for many people who are truly wronged to bring a suit. It was only after we were able to craft a compromise and some of the most onerous provisions, both of the original legislation and of the draft, were dropped, did I sponsor this bill.

For example, along the way, there was thought that an intentional misstatement would be protected in the safe harbor if a person did not rely upon it, which meant that somebody could actually deliberately distort the facts and could not be sued unless the person who brought the suit actually read that statement.

I could not support that, and I insisted that provision in the draft be dropped. We now have a provision which says only that there has to be an intentional misstatement.

It is in that spirit that we crafted an agreement. I might point to the House bill which has loser pays provision. We do not have a provision like that, but, yes, we do have a provision that says the courts shall ascertain, upon a dismissal of a suit, whether or not there has been an abuse, because too many of my colleagues in the law have brought these suits because it is an easy thing to get a company to settle. And that is not what the judicial system should be about, to wring out settlements from

people because they have wealth or because they cannot stand the litigation that might hurt them for 2 or 3 years; litigation that is meritless, or will keep them from doing business or obtaining the necessary financing. That is simply wrong. So, yes, we have sought to change that.

Do we seek to change that to disadvantage people? No, but to make the system operate on the basis that it should, to protect the truly aggrieved, to give them the right to sue, and to give the people who really lose the ability to decide who is going to represent them. A lawyer who finds his plaintiffs by pressing a button on a computer and calling up his list of investors with 10 shares in any particular company should not speak for the class of defrauded investors. That is wrong and is making a mockery of the system. That is why people are angry. The business community is absolutely right when they say we need fundamental change.

As I have said, I initially had great reservations about this legislation. My friend Senator DODD knows that, as does Senator DOMENICI. I studied this legislation and became convinced that many of the original reforms were necessary, while others, I felt went too far. I mention this to explain why I have not been a cosponsor—because I wanted to achieve a balance. When you have balance, there are parties on both sides who are not happy because, unfortunately, they all want their side to be more balanced. Some want loser pays. Some want a larger safe harbor; they would like companies to have no responsibility and no ability for anyone to sue them. Well, that is wrong. Of course on the other side, some of the lawyers want to be able to bring suit on anything that moves and some things that do not. They do not want to have accountability. The judges do not want to have to finding. They are overburdened and overworked, sometimes they have a year or 2-year backlog of cases. Here is Congress telling them they have made those findings, that they are in the public interest and the public has to be served. We are suffering in this country as a result of these frivolous lawsuits.

So one way for us to find the balance is ask the Judges only to look at cases which are dismissed, to find out whether or not sanctions should be brought. We hope that will help deter frivolous suits. Maybe after one or two sanctions are imposed we will have sent a message to those who are abusing the system.

Mr. President, I hope that we can proceed on this tomorrow. As I understand it, Senator SHELBY will lay down the first amendment. We will come into session at 9 o'clock. We will move to this bill at 9:30, when Senator SHELBY will offer his amendment dealing with proportionate liability, and I hope to hear debate from both sides. We will vote at 10:55.

If there is nothing further——

Mr. SARBANES. Mr. President, I will be very quick. I think we have had a good opening debate. I very strongly commend to my colleagues the very thoughtful and perceptive statements that were made by Senator BRYAN and Senator BOXER. I hope Members will review those very carefully.

We have to focus this debate on what the real issues are that divide us. There are provisions in this legislation—I was listening to the chairman of the committee talking just now, and he mentioned a number of provisions that we are not contesting. We accept those and think they are designed to deal with some abuses that have been taking place. But we do want to get the focus on other provisions where we think a proper balance has not been struck, where we think investors will be jeopardized, and where we think immunity is being provided to potential wrongdoers that ought not to be provided to them.

This is a very complicated question, there is no doubt about it. My good friend from New York, the chairman now, got very excited about the appointment of the lead plaintiff in a class action. Well, let me read you what the SEC said about that, and it is not all black and white, I admit that. Here is what they said:

> One provision of section 102 requires a court generally to appoint as lead plaintiff the class member that has the largest financial interest in the case. While this approach has merit, it may create additional litigation concerning the qualification of the lead plaintiff, particularly when the class member with the greatest financial interest in the litigation has ties to management or interests that may be different from other class members.

Now, I am not pretending this is simple. There is the problem. The SEC has stated this, and we need to think about it and address it. We may be making a mistake. I am sort of puzzled a bit by the absolute certainty of the people on the other side of this. I think this is complicated. I am not absolutely certain that the position I am advocating anticipates all of the problems. But, clearly, outside observers, in many respects, are far more knowledgeable than we are—the State securities regulators, the chairman of the SEC, and the finance officer people have all come in here expressing a lot of misgivings. One group said, ''We think you need these amendments. If you get these amendments in, we will take a different view of the bill. Without these amendments, we oppose the bill.'' They, in effect, are saying they recognize that there are other aspects or features of the bill that are acceptable or desirable.

As I said earlier, parts of this bill are desirable; parts of it are not desirable. We need to address, in my judgment, the undesirable parts. If we can do that, I think we can end up strengthening the bill, changing its thrust, achieving a better balance, and eliminating, hopefully, the differences between us.

As the very able Senator from California pointed out, that is the quest that she is on now, as we come to address this legislation.

So, again, I strongly commend to my colleagues the opening statement of Senator BRYAN and the opening statement of Senator BOXER. I say to them that this is a complicated issue. They need to consider it very carefully, because we will have to live with the consequences of this thing. As one commentator observed, ''The pendulum had swung too far toward the lawyers, and now it is swinging too far the other way. Unfortunately, some major investor frauds may have to take place before it again moves back toward the center.''

I want to get it to the center before we send it out of here, so the major investor frauds will never happen. I do not want a situation where we send it out of here, then the major investor frauds happen, and everybody comes back and says, oh, my goodness, we overreached. Let us correct it now and avoid it. Get the pendulum, as this says, in the center to begin with.

I thank the Chair.

Mr. DODD. Mr. President, very briefly, I do not debate what my colleague has said. Some of us have been at this for 4 or 5 years trying to strike a balance.

As I pointed out earlier today, the first couple of years, any suggestion about doing anything in this area was greeted, in many quarters, with total hostility. A threshold has been reached in the last year or so now, and the people are finally agreeing that the present system is not working well. And it has taken some time to get people to agree to that particular position.

As my colleague from Maryland knows far better than I, as you try and put together a legislative package here, it is in a complicated area where, unfortunately, only a relatively small number of people get involved in issues like this. The galleries are empty.

Not for lack of people who are probably in the building covering these matters, but this does not help itself to the 30-second sound bite, to the 30-second campaign ad or a bumper sticker. These are highly complicated areas.

Striking the balance is truly my interest here. In the years I have spent as chairman of the Security Subcommittee and as ranking minority member, I have authored many pieces of legislation in this area, and forever keeping in mind confidence.

Investor confidence. Confidence in our markets is what has made our markets so attractive to people. Why people, as the Senator from Maryland pointed out, why people come from around the world. It is not just because the dollars are here, but the confidence they have in our markets.

I think there has been an erosion in that confidence because of some of the activities we have seen. Trying to strike that balance is truly the interest of this Senator, the Senator from

New York, the Senator from New Mexico, and others.

There will be some amendments. Some of them, as my colleagues know, I support. The statute of limitations, I support that. My colleague from New York wants that. I wanted to keep that in the bill.

We will be together on a few of these things. When we deal with the legislative process, it is darn near impossible to strike that perfect balance all the time.

The Senator from Maryland is correct. Anyone who sits here and says with absolute certainty they know what will happen as a result of legislation they pass, has not been here very long, or never been in the legislative process. We know the system is not working well. We are trying to correct it.

Obviously, how the markets respond, what happens down the road in many ways, we will have to deal with as it occurs. Maybe we have not gone far enough. Maybe we have gone far in some areas.

No one here claims perfection. Clearly, we need to address a present situation that is not working. My hope and desire over the next 2 or 3 days, we have the four, five, six amendments that I think we will have, that possibly we can address some of these issues, modify the bill if that is necessary, in a few areas to accommodate some of these interests, but move the process along so we have a chance to address the underlying concerns people have raised about the present situation.

I thank my colleague for listening. I yield the floor.

MORNING BUSINESS

Mr. D'AMATO. Mr. President, I ask unanimous consent that there be a period for the transaction of morning business with Senators permitted to speak for up to 5 minutes each.

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

MESSAGES FROM THE PRESIDENT

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

EXECUTIVE MESSAGES REFERRED

As in executive session the Presiding Officer laid before the Senate a message from the President of the United States submitting a nomination which was referred to the Committee on the Judiciary and a withdrawal.

(The nomination and withdrawal received today are printed at the end of the Senate proceedings.)

NOTICE OF THE TERMINATION OF THE SUSPENSION OF LICENSES FOR THE EXPORT OF CRYPTOGRAPHIC ITEMS TO THE PEOPLE'S REPUBLIC OF CHINA—MESSAGE FROM THE PRESIDENT—PM 57

The PRESIDING OFFICER laid before the Senate the following message from the President of the United States; which was referred to the Committee on Foreign Relations:

To the Congress of the United States:

Pursuant to the authority vested in me by section 902(b)(2) of the Foreign Relations Authorization Act, Fiscal Years 1990 and 1991 (Public Law 101–246) (''the Act''), and as President of the United States, I hereby report to the Congress that it is in the national interest of the United States to terminate the suspension under subsection 902(a)(3) of the Act with respect to the issuance of licenses for the export to the People's Republic of China of U.S. Munitions List articles, insofar as such suspension pertains to export license requests for cryptographic items covered by Category XIII on the U.S. Munitions List.

License requirements remain in place for these exports and require review and approval on a case-by-case basis. The Department of State, in consultation with the Department of Defense and other relevant agencies, will review each request, including each proposed use and end-user, and will approve only those requests determined to be consistent with U.S. foreign policy and national security.

WILLIAM J. CLINTON.

THE WHITE HOUSE, *June 22, 1995*.

EXECUTIVE AND OTHER COMMUNICATIONS

The following communications were laid before the Senate, together with accompanying papers, reports, and documents, which were referred as indicated:

EC–1039. A communication from the Chairman of the Interstate Commerce Commission, transmitting, pursuant to law, the annual report for fiscal year 1994; to the Committee on Commerce, Science, and Transportation.

EC–1040. A communication from the Chairman of the Interstate Commerce Commission, transmitting, pursuant to law, a report relative to transportation rates; to the Committee on Commerce, Science, and Transportation.

EC–1041. A communication from the Secretary of Commerce, transmitting, pursuant to law, the report on the International Commission for the Conservation of Atlantic Tunas; to the Committee on Commerce, Science, and Transportation.

EC–1042. A communication from the Secretary of Transportation, transmitting, pursuant to law, the report relative to eligible export vessels; to the Committee on Commerce, Science, and Transportation.

EC–1043. A communication from the Under Secretary for Oceans and Atmosphere, Department of Commerce, transmitting, pursuant to law, the report on the National Oceanic and Atmospheric Administration's Chesapeake Bay Office; to the Committee on Commerce, Science, and Transportation.

EC–1044. A communication from the Secretary of Energy, transmitting, pursuant to law, the report on the Electric and Hybrid Vehicles program for fiscal year 1994; to the Committee on Commerce, Science, and Transportation.

EC–1045. A communication from the Administrator of the Federal Aviation Administration, transmitting, pursuant to law, the report on developing and certifying the traffic alert and collision avoidance system for the period January 1 through March 31, 1995; to the Committee on Commerce, Science, and Transportation.

EC–1046. A communication from General Counsel of the Department of Commerce, transmitting, a draft of proposed legislation entitled ''The Coastal Zone Management Act Reauthorization Amendments of 1995''; to the Committee on Commerce, Science, and Transportation.

EC–1047. A communication from the Chairman of the Federal Trade Commission, transmitting, pursuant to law, the report relative to the International Energy Program; to the Committee on Energy and Natural Resources.

EC–1048. A communication from the Chairman of the Federal Energy Regulatory Commission, transmitting, pursuant to law, the annual report for fiscal year 1994; to the Committee on Energy and Natural Resources.

EC–1049. A communication from the Secretary of the Interior, transmitting, pursuant to law, the report relative to the National Natural Landmarks; to the Committee on Energy and Natural Resources.

EC–1050. A communication from the Secretary of the Interior, transmitting, pursuant to law, the report on the operation of the Colorado River; to the Committee on Energy and Natural Resources.

EC–1051. A communication from the Secretary of the Interior, transmitting, pursuant to law, the report on the continuing studies of the quality of water in the Colorado River; to the Committee on Energy and Natural Resources.

EC–1052. A communication from the Deputy Associate Director for Compliance, Royalty Management Program, Minerals Management Service, Department of the Interior, transmitting, pursuant to law, a report relative to the refunds of offshore lease revenues where a recoupment or refund is appropriate; to the Committee on Energy and Natural Resources.

EC–1053. A communication from the Deputy Associate Director for Compliance, Royalty Management Program, Minerals Management Service, Department of the Interior, transmitting, pursuant to law, a report relative to the refunds of offshore lease revenues where a recoupment or refund is appropriate; to the Committee on Energy and Natural Resources.

EC–1054. A communication from the Deputy Associate Director for Compliance, Royalty Management Program, Minerals Management Service, Department of the Interior, transmitting, pursuant to law, a report relative to the refunds of offshore lease revenues where a recoupment or refund is appropriate; to the Committee on Energy and Natural Resources.

EC–1055. A communication from the Deputy Associate Director for Compliance, Royalty Management Program, Minerals Management Service, Department of the Interior, transmitting, pursuant to law, a report relative to the refunds of offshore lease revenues where a recoupment or refund is appropriate; to the Committee on Energy and Natural Resources.

EC–1056. A communication from the Secretary of Agriculture, transmitting, pursuant to law, the report on the Youth

Conservation Corps for fiscal year 1994; to the Committee on Energy and Natural Resources.

EC–1057. A communication from the Acting Assistant Secretary of the Interior [Territorial and International Affairs], transmitting, a draft of proposed legislation to provide for the territories, and for other purposes; to the Committee on Energy and Natural Resources.

EC–1058. A communication from the Assistant Secretary of the Interior [Fish and Wildlife and Parks], transmitting, a draft of proposed legislation to improve the administration of the national park system by providing general leasing authority for the National Park Service, and for other purposes; to the Committee on Energy and Natural Resources.

EC–1059. A communication from the Secretary of Transportation, transmitting, pursuant to law, the report on the alternative transportation modes feasibility study; to the Committee on Energy and Natural Resources.

EC–1060. A communication from the Secretary of Energy, transmitting, pursuant to law, the report relative to clean coal technologies; to the Committee on Energy and Natural Resources.

EC–1061. A communication from the Secretary of Energy, transmitting, pursuant to law, the report on the Coke Oven Emission Control Program for fiscal year 1994; to the Committee on Energy and Natural Resources.

EC–1062. A communication from the Secretary of Energy, transmitting, a draft of proposed legislation entitled ''The Federal Power Administration Transfer Act''; to the Committee on Energy and Natural Resources.

EC–1063. A communication from the Secretary of Energy, transmitting, pursuant to law, the report on the status of Exxon and Stripper Well oil overcharge funds as of December 31, 1994; to the Committee on Energy and Natural Resources.

EC–1064. A communication from the Secretary of Energy, transmitting, a draft of proposed legislation to amend the National Energy Conservation Policy Act; to the Committee on Energy and Natural Resources.

EC–1065. A communication from the Secretary of Energy, transmitting, pursuant to law, the report on Federal Government energy management and conservation programs for fiscal year 1993; to the Committee on Energy and Natural Resources.

EC–1066. A communication from the Secretary of Energy, transmitting, pursuant to law, the report on the Strategic Petroleum Reserve for the period January 1 through March 31, 1995; to the Committee on Energy and Natural Resources.

EC–1067. A communication from the Secretary of Energy, transmitting, pursuant to law, the report entitled ''The Study of Export Promotion Practices''; to the Committee on Energy and Natural Resources.

EC–1068. A communication from the Secretary of Energy, transmitting, pursuant to law, the report of the ''Program Update 1994'' for the Clean Coal Technology Demonstration Program; to the Committee on Energy and Natural Resources.

EC–1069. A communication from the Secretary of Transportation, transmitting, a draft of proposed legislation entitled ''The National Highway System Designation Act of 1995''; to the Committee on Environment and Public Works.

EC–1070. A communication from the Secretary of Transportation, transmitting, pursuant to law, the report entitled ''Alaska Demonstration Programs''; to the Committee on Environment and Public Works.

EC–1071. A communication from the Secretary of Transportation, transmitting, pursuant to law, the report of the study of the feasibility of constructing a four-lane highway in the vicinity of Pensacola, FL; to the Committee on Environment and Public Works.

EC–1072. A communication from the Administrator of the General Services Administration, transmitting, pursuant to law, the report of the informational copies of 12 lease prospectuses for fiscal year 1996; to the Committee on Environment and Public Works.

EC–1073. A communication from the Chairman of the Nuclear Regulatory Commission, transmitting, pursuant to law, the report on the Nondisclosure of Safeguards Information for the period January 1 through March 31, 1995; to the Committee on Environment and Public Works.

EC–1074. A communication from the Assistant Administrator of the Environmental Protection Agency, transmitting, pursuant to law, the report under the Toxic Substances Control Act for fiscal years 1992 and 1993; to the Committee on Environment and Public Works.

EC–1075. A communication from the Administrator of the Environmental Protection Agency, transmitting, a draft of proposed legislation to authorize funding for wastewater infrastructure projects for hardship cities; to the Committee on Environment and Public Works.

EC–1076. A communication from the Administrator of the Environmental Protection Agency, transmitting, a draft of proposed legislation to authorize funding for improvements to the New Orleans, LA, wastewater collection system; to the Committee on Environment and Public Works.

EC–1077. A communication from the Administrator of the Environmental Protection Agency, transmitting, a draft of proposed legislation to authorize funding for infrastructure improvements in Bristol County, MA; to the Committee on Environment and Public Works.

EC–1078. A communication from the Assistant Secretary of State (Legislative Affairs), transmitting, pursuant to law, the report of a Presidential Determination relative to the Republic of Romania; to the Committee on Finance.

EC–1079. A communication from the Secretary of Health and Human Services, transmitting, pursuant to law, the report of the initial estimate of the applicable percentage increase in inpatient hospital payment rates for fiscal year 1996; to the Committee on Finance.

EC–1080. A communication from the Acting Executive Director of the Physician Payment Review Commission, transmitting, pursuant to law, the report entitled ''Fee Update and Medicare Volume Performance Standards for 1996''; to the Committee on Finance.

EC–1081. A communication from the Secretary of Health and Human Services, transmitting, pursuant to law, the report of the physician fee schedule update for calendar year 1996; to the Committee on Finance.

EC–1082. A communication from the U.S. Trade Representative, transmitting, pursuant to law, the report on eliminating or reducing foreign unfair trade practices; to the Committee on Finance.

EC–1083. A communication from the Chairman of the Prospective Payment Assessment Commission, transmitting, pursuant to law, the report entitled ''Medicare and the American Health Care System''; to the Committee on Finance.

EC–1084. A communication from the Assistant Secretary of State [Legislative Affairs], transmitting, pursuant to law, notice of the intention to obligate funds in fiscal year 1995; to the Committee on Foreign Relations.

EC–1085. A communication from the Assistant Secretary of State [Legislative Affairs], transmitting, pursuant to law, the report of efforts made by the United Nations and specialized agencies to employ Americans; to the Committee on Foreign Relations.

EC–1086. A communication from the Assistant Secretary of State [Legislative Affairs], transmitting, pursuant to law, the report of a Presidential Determination relative to an assistance program for New Independent States of the Former Soviet Union; to the Committee on Foreign Relations.

EC–1087. A communication from the Assistant Secretary of State [Legislative Affairs], transmitting, pursuant to law, the report of a Presidential Determination relative to African peacekeeping efforts in Liberia; to the Committee on Foreign Relations.

EC–1088. A communication from the Assistant Legal Adviser for Treaty Affairs, Department of State, transmitting, pursuant to law, the text of international agreements other than treaties, and background statements; to the Committee on Foreign Relations.

EC–1089. A communication from the Assistant Legal Adviser for Treaty Affairs, Department of State, transmitting, pursuant to law, the text of international agreements other than treaties, and background statements; to the Committee on Foreign Relations.

EC–1090. A communication from the Secretary of Agriculture, transmitting, pursuant to law, the report under the Inspector General's Act for the period October 1, 1994 through March 31, 1995; to the Committee on Governmental Affairs.

EC–1091. A communication from the Comptroller General of the United States, transmitting, pursuant to law, the report and recommendation on a claim; to the Committee on the Judiciary.

EC–1092. A communication from the Secretary of Labor, transmitting, pursuant to law, the report under the Freedom of Information Act for calendar year 1994; to the Committee on the Judiciary.

EC–1093. A communication from the Director of the Office of Management and Budget, Executive Office of the President, transmitting, pursuant to law, the report under the Freedom of Information Act for calendar year 1994; to the Committee on the Judiciary.

EC–1094. A communication from the Director of the U.S. Arms Control and Disarmament Agency, transmitting, a draft of proposed legislation entitled ''The Chemical Weapons Convention Implementation Act of 1995''; to the Committee on the Judiciary.

EC–1095. A communication from the Postmaster General, Chief Executive Officer, U.S. Postal Service, transmitting, pursuant to law, the report under the Freedom of Information Act for calendar year 1994; to the Committee on the Judiciary.

EC–1096. A communication from the Chairman of the Board of Directors of the Tennessee Valley Authority, transmitting, pursuant to law, the report under the Freedom of Information Act for calendar year 1994; to the Committee on the Judiciary.

EC–1097. A communication from the Director of the National Legislative Commission of the American Legion, transmitting, pursuant to law, the report of financial statements for calendar year 1994; to the Committee on the Judiciary.

EC–1098. A communication from the Acting Assistant Attorney General, Office of Legislative Affairs, Department of Justice, transmitting, pursuant to law, the report of settlements for calendar year 1994; to the Committee on the Judiciary.

EC–1099. A communication from the Chairman of the Board of Governors of the Federal Reserve System, transmitting, pursuant to law, the report of the Federal Open Market

Committee for calendar year 1994; to the Committee on the Judiciary.

EC–1100. A communication from the Attorney General, transmitting, pursuant to law, the report on Federal Prison Industries, Inc.; to the Committee on the Judiciary.

EC–1101. A communication from the Chairman of the U.S. Sentencing Commission, transmitting, pursuant to law, the annual report for fiscal year 1994; to the Committee on the Judiciary.

EC–1102. A communication from the Chairman of the Federal Election Commission, transmitting, pursuant to law, the report of the proposed regulations governing the public financing of the Presidential Primary and General Election Candidates; to the Committee on Rules and Administration.

EC–1103. A communication from the Secretary of Health and Human Services, transmitting, a draft of proposed legislation entitled ''The Substance Abuse and Mental Health Performance Partnership Act of 1995''; to the Committee on Labor and Human Services.

EC–1104. A communication from the Secretary of Health and Human Services, transmitting, a draft of proposed legislation entitled ''The Preventive Health Performance Partnership Act of 1995''; to the Committee on Labor and Human Services.

EC–1105. A communication from the Secretary of Health and Human Services, transmitting, a draft of proposed legislation entitled ''The Health Centers Consolidation Act of 1995''; to the Committee on Labor and Human Services.

EC–1106. A communication from the Secretary of Health and Human Services, transmitting, pursuant to law, the report on the implementation of the National Child Abuse and Neglect Data System; to the Committee on Labor and Human Services.

EC–1107. A communication from the Secretary of Health and Human Services, transmitting, pursuant to law, the report of the Administration on Developmental Disabilities for fiscal year 1993; to the Committee on Labor and Human Services.

EC–1108. A communication from the Secretary of Education, transmitting, pursuant to law, the report of the National Advisory Council on Educational Research and Improvement; to the Committee on Labor and Human Resources.

EC–1109. A communication from the Secretary of Education, transmitting, pursuant to law, the report under the Inspector General Act for the period October 1, 1994 through March 31, 1995; to the Committee on Labor and Human Resources.

EC–1110. A communication from the Secretary of Education, transmitting, pursuant to law, the report on the performance standards and measurement systems developed by States for their vocational education programs; to the Committee on Labor and Human Resources.

EC–1111. A communication from the Administrator of the Small Business Administration, transmitting, a draft of proposed legislation relative to the SBA; to the Committee on Small Business.

EC–1112. A communication from the General Counsel of the Department of Defense, transmitting, a draft of proposed legislation to amend Title 38, United States Code, to authorize the termination of Servicemen's Group Life Insurance when premiums are not paid; to the Committee on Veterans' Affairs.

EC–1113. A communication from the Comptroller General, transmitting, pursuant to law, the report of proposed rescissions of budget authority; referred jointly, pursuant to the order of January 30, 1975, as modified by the order of April 11, 1986, to the Committee on Appropriations, to the Committee on the Budget, to the Committee on Commerce, Science, and Transportation, and to the Committee on the Judiciary.

EC–1114. A communication from the Director of the Office of Management and Budget, Executive Office of the President, transmitting, pursuant to law, the cumulative report on rescissions and deferrals dated June 1, 1995; referred jointly pursuant to the order of January 30, 1975, as modified by the order of April 11, 1986 to the Committee on Appropriations, the Committee on Agriculture, Nutrition, and Forestry, the Committee on Banking, Housing, and Urban Affairs, the Committee on the Budget, the Committee on Commerce, Science and Transportation, the Committee on Environment and Public Works, the Committee on Labor and Human Resources, the Committee on Small Business, the Committee on Finance, the Committee on Foreign Relations, and to the Committee on the Judiciary.

REPORTS OF COMMITTEES

The following reports of committees were submitted:

By Mr. HATCH, from the Committee on the Judiciary, without amendment:

S. 457. A bill to amend the Immigration and Nationality Act to update references in the classification of children for purposes of United States immigration laws.

By Mr. HATCH, from the Committee on the Judiciary, without amendment and with a preamble:

S.J. Res. 27. A joint resolution to grant the consent of the Congress to certain additional powers conferred upon the Bi-State Development Agency by the States of Missouri and Illinois.

EXECUTIVE REPORTS OF COMMITTEES

The following executive reports of committees were submitted:

By Mr. HATCH, from the Committee on the Judiciary:

Donald C. Nugent, of Ohio, to be United States District Judge for the Northern District of Ohio.

Wiley Y. Daniel, of Colorado, to be United States District Judge for the District of Colorado.

Peter C. Economus, of Ohio, to be United States District Judge for the Northern District of Ohio.

Carlos F. Lucero, of Colorado, to be United States Circuit Judge for the Tenth Circuit.

Janie L. Shores, of Alabama, to be a Member of the Board of Directors of the State Justice Institute for a term expiring September 17, 1997.

Terrence B. Adamson, of the District of Columbia, to be a Member of the Board of Directors of the State Justice Institute for a term expiring September 17, 1997.

Andrew Fois, of New York, to be an Assistant Attorney General.

Nancy Friedman Atlas, of Texas, to be United States District Judge for the Southern District of Texas.

(The above nominations were reported with the recommendation that they be confirmed.)

INTRODUCTION OF BILLS AND JOINT RESOLUTIONS

The following bills and joint resolutions were introduced, read the first and second time by unanimous consent, and referred as indicated:

By Mr. HATCH (for himself, Mr. GREGG, Mr. FRIST, Mr. KENNEDY, Mrs. KASSEBAUM, Mr. GRAMS, Mr. WELLSTONE, Mr. CHAFEE, Mrs. HUTCHISON, and Mr. D'AMATO):

S. 955. A bill to clarify the scope of coverage and amount of payment under the medicare program of items and services associated with the use in the furnishing of inpatient hospital services of certain medical devices approved for investigational use; to the Committee on Finance.

By Mr. GORTON (for himself, Mr. BURNS, Mr. MURKOWSKI, Mr. STEVENS, Mr. KEMPTHORNE, Mr. CRAIG, Mr. PACKWOOD, and Mr. HATFIELD):

S. 956. A bill to amend title 28, United States Code, to divide the ninth judicial circuit of the United States into two circuits, and for other purposes; to the Committee on the Judiciary.

By Mr. BURNS (for himself, Mr. KYL, Mr. THOMAS, Mr. HELMS, Mr. SANTORUM, Mr. NICKLES, Mr. THOMPSON, and Mr. BROWN):

S. 957. A bill to terminate the Office of the Surgeon General of the Public Health Service; to the Committee on Labor and Human Resources.

By Mr. HELMS:

S. 958. A bill to provide for the termination of the Legal Services Corporation; to the Committee on the Judiciary.

By Mr. HATCH (for himself, Mr. LIEBERMAN, and Mr. FAIRCLOTH):

S. 959. A bill to amend the Internal Revenue Code of 1986 to encourage capital formation through reductions in taxes on capital gains, and for other purposes; to the Committee on Finance.

STATEMENTS ON INTRODUCED BILLS AND JOINT RESOLUTIONS

By Mr. HATCH (for himself, Mr. GREGG, Mr. FRIST, Mr. KENNEDY, Mrs. KASSEBAUM, Mr. GRAMS, Mr. WELLSTONE, Mr. CHAFEE, Mrs. HUTCHISON, and Mr. D'AMATO):

S. 955. A bill to clarify the scope of coverage and amount of payment under the Medicare Program of items and services associated with the use in the furnishing of inpatient hospital services of certain medical devices approved for investigational use; to the Committee on Finance.

THE ADVANCED MEDICAL DEVICES ACCESS ASSISTANCE ACT OF 1995

Mr. HATCH. Mr. President, today I am introducing S. 955, the Advanced Medical Devices Access Assurance Act of 1995, which is aimed at addressing two serious threats to high quality health care in the United States: restricted access for our senior citizens to the most advanced medical technologies; and our country's loss of clinical research activities to overseas facilities.

I am pleased to be joined in cosponsorship of this bill by Senators GREGG, FRIST, KENNEDY, KASSEBAUM, GRAMS, WELLSTONE, CHAFEE, HUTCHISON, and D'AMATO.

At the outset, I want to recognize the outstanding leadership of our House colleague, Chairman BILL THOMAS, who introduced the companion measure as H.R. 1744 on June 6. Representative THOMAS was the first in Congress to

step forward and take steps to correct the problem this legislation addresses. His leadership has been—and will continue to be—invaluable as we seek to move this legislation forward.

Mr. President, the Thomas-Hatch legislation was prompted as a result of recent changes in Health Care Financing Administration [HCFA] reimbursement practices for medical procedures which include the use of so-called next generation devices, that is, medical devices that are undergoing clinical trials, yet which have a precursor device which has been approved by the Food and Drug Administration as safe and effective.

In December 1994, HCFA advised its regional administrators that Medicare must only reimburse for items and services that are reasonable and necessary; according to HCFA, reimbursement of reasonable and necessary procedures precludes payment for the use of experimental or investigational services.

The HCFA policy change came on the heels of an HHS inspector general inquiry in which patient records were subpoenaed from over 100 hospitals nationwide, including virtually all of the premier medical research bodies in this Nation.

The effect of this change in HCFA policy is to deny Medicare contractors discretion to pay for any of a beneficiary's hospital costs and related services if an investigational device were being used, even if such a device were a refinement of a proven, FDA-approved technology.

Examples might be a pacemaker which is made in a smaller version or a pacemaker with a new type of lead.

This policy denies patients in the Medicare population the benefits of the best available medical therapies which are often life-saving and life-enhancing.

In effect, in adopting such a policy, HCFA has created a two-tiered health care delivery system, consisting of privately insured individuals who can access these improved devices and Medicare beneficiaries who cannot. That is a situation which must be corrected.

Although our senior citizens are the immediate victims of this unwise policy, all Americans will ultimately suffer.

Medicare's position not only deprives this Nation's elderly population of the most advanced, efficacious care and treatment available, but it also significantly interferes with clinical advancements that might otherwise be available for generations to come.

In addition, I wish to note there are other negative effects of the HCFA policy.

First, it undermines the Food and Drug Administration's efforts to press for clinical trials to prove the scientific validity of device studies.

Second, it delays advances in medical device technology for all Americans, not just those eligible for Medicare.

Third, it has a disproportionate impact on small-to-medium medical device companies, those who traditionally have been the leaders in developing innovative technology, and who simply cannot afford millions of dollars for clinical trials.

Fourth, the policy exacerbates current over-regulatory trends in the United States which are driving manufacturers offshore and jobs to other countries.

And fifth, it runs contrary to the recent report of the Physician Payment Review Commission, which stated that Congress should authorize an additional coverage option for Medicare so that:

> For devices subject to Food and Drug Administration approval, and for other services that the Health Care Financing Administration has not approved for coverage, Medicare should pay up to the cost of standard care when the device or service is clearly substituting for an established one and is being evaluated in a Food and Drug Administration-approved or other approved study.

The situation giving rise to the legislation we offer today was first brought to my attention a year ago by officials of the LDS Hospital in Salt Lake City, UT.

LDS Hospital, which ranks among the top in the Nation for cardiac procedures, was among the more than 100 hospitals which had received a subpoena from the HHS inspector general for records relating to Medicare reimbursement of cardiac procedures reaching as far back as 10 years ago.

Included on the list of devices that are affected by this policy are implantable cardiac defibrillators, which are devices that are implanted in a patient's body and assist in correcting life threatening, irregular heart rhythms.

My colleagues may be aware of the problem with reimbursement for state-of-the-art defibrillators, as it was reported by John Carey in the June 12 issue of Business Week.

In reporting on the HCFA policy and its impact on clinical research and patient care, Mr. Carey wrote:

> In some cases, the impact on the quality and cost of care was dramatic. Cardiac arrest survivors typically need defibrillators to shock their hearts back to normal whenever the fragile organ races out of control. For several years, the standard device was so large that it had to be implanted in patients' abdomens. But Minneapolis-based Medtronic, Inc. built a much smaller version that could fit in the pectoral region. In trials at the Mayo Clinic, says cardiologist Stephen C. Hammill, the new device reduced deaths from the actual operation from 3.8% of patients to zero—and cut hospital costs after implantation from $24,000 to $18,000. Yet Mayo's doctors could no longer use the device for Medicare patients—unless they found another way to pay the bills.

Let me put this in the words of one of Utah's preeminent cardiologists, Dr. Jeffrey L. Anderson, professor of medicine and chief of the division of cardiology at LDS Hospital in Salt Lake. Dr. Anderson has advised me:

> Since notification of the OIG investigation and statement of the HCFA policy, the Division of Cardiology at LDS Hospital has been instructed by its Counsel to avoid use of any newer, incremental technologies in Medicare patients, including pacemakers, defibrillators, and interventional coronary devices (such as angioplasty catheters and stents) that are not final market approved.
>
> Unquestionably, this has made our Medicare patients second class citizens, as these newer devices are generally smaller, more efficient and effective, last longer, and can be implanted with lower operative risk.

Dr. Anderson also notes a recent tendency for these new devices to be developed overseas and not readily available here. Several firms have indicated to him that initial research is now being done in Europe and elsewhere and that the devices will be only available here after final FDA approval, often with a delay of years.

Or, let me put it in the words of another distinguished Utah cardiologist, Dr. James W. Long, attending cardiothoracic surgeon at LDS Hospital. Dr. Long, has related to me:

> As a cardiothoracic surgeon, I am extremely troubled by the growing restrictions which are preventing us from implementing great medical technologies for our patients in Utah. Clearly, three major impediments exist: First, reimbursement problems; second, product liability concerns; and third, FDA constraints. Those barriers are exercising a major chilling effect on the development and implementation of medical technologies which offer the hope of improving quality of life while offering cost-effectiveness.

Dr. Long goes on to state:

> The current posture of HCFA to deny Medicare reimbursement for any hospital charges when a new, ''investigational'' device is used is an example of how problems with reimbursement lead to discrimination against the Medicare population. To illustrate, I can no longer implant a new, improved heart valve undergoing clinical evaluation because reimbursement for ALL hospital charges for the surgery and care (not just the heart valve charges) will be denied. This is even more frustrating when one considers that these clinical evaluations are being conducted with the approval of the FDA as well as local, hospital internal review boards or medical devices whose efficacy and safety have already been demonstrated in preclinical testing.

Mr. President, as has been demonstrated, over time, increasingly improved devices have been developed that are far more efficient and efficacious than each prior version of the device. Such refinements have not only improved the functioning of the device from a patient perspective, but also have: First, increased the longevity of the device, thereby minimizing the need for replacement; second, improved the ability to monitor the device without the need for hospitalization; and third, minimized the invasiveness of the procedure require to implant the device.

Not only have patient outcomes been greatly improved, but the overall costs and consumption of resources within the health care system have been reduced.

My concerns about the HCFA policy were reinforced by evidence revealed at a recent hearing before the Finance Committee.

During the committee's May 16 hearing on the solvency of the Medicare Program, Dr. John W. Rowe, president of the Mount Sinai Hospital and the Mount Sinai School of Medicine in New York City, shocked members by revealing that his medical center has virtually discontinued clinical research on investigational devices for Medicare beneficiaries because of the HCFA ruling.

Dr. Rowe related to the committee that:

> The Inspector General of HHS has indicated that if a patient is given an investigational device—that is something that is not approved by the Food and Drug Administration for general use—during their experience in the hospital—let me be clear on this—then the entire reimbursement or payment for the admission to the hospital is not allowed and the hospital is liable for treble damages.

Dr. Rowe went on to make the point that, whereas Medicare historically has not paid for research, there are differences between real research and marginal refinements of innovations.

In subsequent correspondence to me, Dr. Rowe added another critical point. He said:

> Mount Sinai's decision to stop all clinical trials was made after careful deliberation and with great regret and consternation, but is the only rational position that can be taken by an institution which, under normal circumstances, performs a large number of such trials.
>
> This outcome is also a particularly unfortunate one given our belief that the controls put in place by the FDA's IDE approval process and Mount Sinai's own Institutional Review Board assure that there is an appropriate level of safety, efficacy, and oversight with respect to each such device. In the end, we believe that Medicare's position not only deprives this nation's elderly population of the most advanced, efficacious care and treatment available, but significantly interferes with clinical advancements that might otherwise be available for generations to come.

A survey released June 7 by the Health Industry Manufacturers Association reveals the problems inherent in this new HCFA policy.

HIMA found that 71 companies have had clinical trials with their products brought to a halt due to the new HCFA policy. The response of 40 percent of those companies was to limit the clinical research to non-Medicare patients, in other words, denying those seniors access to the latest medical technologies.

Even more indicative of this policy's ill effects, 59 percent surveyed had moved clinical trials overseas, and 57 percent said they plan to move future trials overseas.

It is clear that due the uncertainty generated by the recent change, clinical trials are being stopped around the country. Many medical technology companies are moving their life saving research technologies out of the United States to Europe, Canada, and Japan.

This loss of research will erode the base of expertise in an industry where the United States has traditionally led the world.

Mr. President, this policy must be changed for the benefit of our Nation's elderly and all Americans. The bill I am introducing today will accomplish this, and will do so without increasing Medicare costs.

Under S. 955, coverage would be limited to circumstances in which the device in question is used in lieu of an approved device or otherwise covered procedure. This latter provision permits the use of devices that are often used in lieu of far more invasive and costly procedures. Because these investigational devices reduce hospital stays, mortality and the need for repeat procedures, it is likely that this legislation will reduce total treatment costs over the long term.

In fact, the legislation specifically states that the amount of payment for any item or service associated with the use of an investigational device may not exceed the amount which would have been made for the approved device. This will ensure the bill's budget neutrality.

Before closing, Mr. President, I want to discuss for a moment one other factor which led us to introduce S. 955.

After Senator GREGG and I decided to explore legislation in this area, we contacted both HCFA and the OIG.

The IG's office advised us that ''This is an open active investigation in the OIG. It is the policy of the OIG not to comment on investigations which are active.''

HCFA officials, however, were extremely helpful, and shared with us the results of the considerable time they have spent on this issue.

Two factors, however, led us to conclude that legislation is necessary.

First, we were not persuaded that the agency's efforts would be concluded as quickly as we would like. And, second, while we agreed with HCFA's conclusion that Medicare should not be subsidizing pure research, we did not feel that these clinical investigations could be termed as such.

We were, however, concerned that the concept underlying the agency's proposed rule-making could lead to more regulation at the Food and Drug Administration, in that FDA is considering a system whereby investigational devices would be certified as eligible for Medicare reimbursement. With the device approval rate lag already the subject of mounting congressional concern, a process which adds even more review is not viable.

As I close, I would like to note the considerable support this legislation enjoys. It is supported by the American Academy of Orthopedic Surgeons, American College of Cardiology, American Hospital Association, American Medical Association, Association of American Medical Colleges, Association of Professors of Medicine, California Health Care Institute, Catholic Health Association, Cleveland Clinic, Coalition of Boston Teaching Hospitals, Federation of American Health Systems, Greater New York Hospital Association, Health Industry Manufacturers Association, Mayo Clinic, Medical Device Manufacturers' Association, North American Society of Pacing and Electrophysiology, Society of Thoracic Surgeons, and last but not least, the Utah Life Science Industries Association.

In introducing this legislation today, it is our hope that the bill can be incorporated in this year's reconciliation legislation and moved swiftly to the President for signature. I urge my colleagues to support the Advanced Medical Devices Access Act of 1995.

Mr. GREGG. Mr. President, I am pleased to join my colleagues, especially my colleague from Utah, Senator HATCH, in introducing this important piece of legislation. The Advanced Medical Devices Access Assurance Act of 1995 was developed to ensure that our senior population can be treated with the most advanced—and most cost-effective—medical technology available in the United States.

As chairman of the Aging Subcommittee in the Senate, I hear constantly from older individuals who are concerned about their medical options: They read about a breakthrough technology that is being explored, and want an opportunity to have access to such a product. Believe me, these folks are often more up-to-speed about their medical choices than you or I; they take the time to do their homework on their health care.

As my colleague, Senator HATCH, has mentioned, this bill is designed to get at the heart of a problem which has arisen from a Health Care Financing Administration policy. HCFA has ruled that it will not provide Medicare reimbursement for any episode—any portion of the care associated with the device, including the hospital stay—which uses a medical device not defined as ''reasonable or necessary.'' ''Reasonable and necessary'' excluded medical devices which are being implanted under an FDA investigation device exemption, or IDE.

In other words, if a surgeon who is performing state-of-the-art medicine wants to take advantage of a product which has been granted an IDE, he or she can only do so on their population under age 65. The random nature of a person's date of birth controls their ability to receive the most modern care, to get that technology that we are constantly touting as the ''best in the world.''

A clear backlash from this policy has also been seen in the form of a mass exodus of clinical trials being conducted in the United States. The brain drain in medical device development and manufacturing in this country has already begun to have devastating results. Not only does the United States now have an atmosphere unconducive to research and development, but it has evolved into an environment that is unattractive for investment capital to be risked on medical devices. Not only does this relegate the citizens of this

country to antiquated generations of technology, it moves jobs and innovation overseas.

I am hopeful that the administration will listen to the plea we are making here today to address this critical issue. While it may seem like a small item on the agenda of the day, it is probably the greatest accomplishment we could achieve for those individuals whose lives and medical care we can so easily improve.

Mr. KENNEDY. Mr. President, it's an honor to join Senator HATCH and other Members of the House and Senate in sponsoring this important bipartisan legislation. Insurance coverage for physician and hospital costs in clinical trials is essential to the progress of medicine.

The current policy under Medicare is especially counterproductive, because it denies reimbursement even if expensive care would be required if the patient does not participate in the clinical trials.

The current rules are clearly impeding research at leading hospitals around the country. Needed medical care is being denied to many elderly patients. It's time to change the rules and take this step to enhance research and improve patient care.

Mr. WELLSTONE. Mr. President, I am pleased to be a cosponsor of the Advanced Medical Devices Access and Assurance Act of 1995 which would ensure that seniors can participate in clinical trials that involve investigational medical devices. It signifies a bipartisan first step toward addressing patient concerns about access to the latest technologies. It also addresses the medical research community's concerns about its ability to continue clinical trials and keep our Nation at the forefront of state-of-the-art medicine, and industry's concerns about being forced to ship all of its resources and brainpower overseas.

Minnesota's patients, researchers, and world-famous medical device industry have a clear stake in both the upcoming Medicare and FDA reform debates. Researchers and industry need to know that the Government will create a favorable environment for innovation, thus propelling this country's leadership position into the 21st century. And, Minnesota's patients need to know that they will have access to the best technologies and the latest treatments and that, when appropriate, these will be covered by their health insurance policies.

Unfortunately, access to leading-edge technologies and next generation medical devices for seniors—the population for whom they are often most appropriate—has recently been jeopardized by the Medicare Program's refusal to pay for them in clinical trials.

A next generation device could be a pacemaker that enables a person to lead a more normal life than a traditional pacemaker. It could be a pacemaker that would last longer than an older model and be more reliable. Next generation devices are medical devices which are undergoing clinical trials, yet which have a precursor device which has been approved by the Federal Food and Drug Administration [FDA] as safe and effective. Medical devices—unlike drugs—are continually updated and improved incrementally even after they are approved by the FDA.

But currently, Medicare just flat-out denies payment for the surgery or illness if an investigational device is used. Medicare will pay for the costs associated with the hospital stay and procedure only if the soon-to-be-obsolete device is used and not the newest model. Therefore, even though the patient potentially benefits from receiving a modified and updated pacemaker and clinical studies are necessary to prove what works and what does not, hospitals and physicians are being forced to exclude seniors from clinical trials. Providers and manufacturers would rather more their studies to Europe where everybody has health insurance than confront reimbursement practices that discourage participation in clinical trials. But patients want the leading-edge technologies available in the United States as quickly as possible.

Some may surmise that Medicare has refused to pay for this technology because of safety concerns. But any next generation device involved in a clinical trial has already received approval from the FDA to test the device in humans. During a study of an FDA-approved investigational device, physicians and hospitals follow strict procedures. Hospitals and physicians must have the informed consent of the patient in order for the patient to be eligible to participate in the investigational device studies. And the manufacturer of the device is prohibited from promoting or commercializing the device or charging a price that exceeds the amount necessary to recover its costs.

So how much would it cost the Medicare Program to pay for the most advanced technologies? Currently, Medicare pays a lump sum for surgeries and hospitalization based on the illness of the patient. If you need a pacemaker and choose to be a part of an FDA-approved clinical trial, it shouldn't matter to the Medicare Program whether you get the next generation model of the pacemaker or the current model—as long as the FDA has approved the clinical trial and you gave your informed consent to participate. In other words, Medicare should pay the hospital a lump sum based on the illness of the patient regardless of which device is used.

This legislation provides a commonsense solution that protects patient safety, access to high-quality health care, and Federal dollars. For the sake of Minnesotans, we must meet these standards during the broader Medicare and FDA reform debates.

By Mr. HELMS:

S. 958. A bill to provide for the termination of the Legal Services Corporation; to the Committee on the Judiciary.

LEGAL SERVICES CORPORATION TERMINATION ACT

Mr. HELMS. Mr. President, with a Federal debt of $4,898,068,854,045.71 as of the close of business yesterday, Wednesday, June 21, it is time to ask ourselves a question: Should Congress continue to force the American taxpayers to provide $400 million every year to pay the salaries of, and to otherwise fund, a cadre of liberal lawyers to push their social policies down the throats of local governments and citizens?

I think not—and I suspect most Americans will agree, which is why I today offer legislation to put an end to Federal funding of the Legal Services Corporation.

North Carolina has been harassed by the LSC for years and, adding insult to injury, LSC attorneys in my State—whose salaries are federally subsidized—are now demanding through the courts that the State of North Carolina pay them $320,000 in additional attorney's fees.

Mr. President, a few details about this specific outrage may be in order.

In 1975, Legal Services attorneys successfully took on the State of North Carolina on behalf of applicants enrolled in the Federal Aid to Families with Dependent Children and Medicaid programs. And what was the great offense by North Carolina's local Departments of Social Services to justify this law suit? In the arrogant judgment of the Legal Services lawyers, it was taking the local Departments of Social Services too long to process benefits.

Since that time, the local Departments of Social Services have done their best to follow the numerous court-imposed requirements. In the meantime, the Legal Services attorneys have collected—now get this, Mr. President—an estimated $1 million in attorney's fees from the State of North Carolina. But that doesn't satisfy them. On June 14, a little more than a week ago, the Legal Services attorneys demanded another $320,000 in attorney's fees.

So, Mr. President, these Legal Services attorneys are paid with Federal funds through the Legal Services Corporation and with State and local Legal Services agencies to sue the State of North Carolina. In addition to the taxpayers' money they receive to dismantle local government policies, the Legal Services attorneys are demanding additional money for themselves—out of the pockets of North Carolina's taxpayers.

The legislation I introduce today will fix this costly problem—by ending Federal funding of Legal Services Corporation, which like most other social programs spawned in the 1960's, has strayed far from any meaningful purpose and deserves a quiet funeral.

For the record, the Legal Services Corporation was created in 1974 ostensibly to provide legal assistance to low-income citizens in civil, noncriminal matters. Its first annual budget, for fiscal year 1976 was $92 million. It will cost the taxpayers $400 million in 1995. It does not provide services directly, it makes grants to local agencies which in turn are charged with providing legal services to those who can't afford a lawyer—low-income individuals, migrants and immigrants, and minorities.

Mr. President, it is precisely these local agencies throughout the country which, instead of carrying out the mission of providing legal assistance to those who can't afford it, have promoted a liberal public policy and propaganda mechanism. It has unmercifully harassed law-abiding citizens and has imposed countless dollars in litigation costs upon hapless small businessmen, farmers, and so forth.

Another example from North Carolina:

The Department of Labor, in conjunction with local legal services agencies, has done its best to dismantle the H–2A Immigrant Farm Labor Program—a Federal program allowing small farmers to employ temporary immigrant workers for seasonal harvests. Since North Carolina's farmers have had difficulty finding citizens to work on their farms, this program is a must for the survival of many of these small farms.

There is no other reason for the local legal service agency to harass North Carolina's farmers beyond furthering the protection and rights of immigrants brought in to work.

Mr. President, the North Carolina Growers Association is today mired in a legal battle to protect the rights of farmers to participate in a program designed by Congress to assist farming production. The irony is that the American taxpayer is forced to fund the LSC and its liberal assault on law-abiding citizens, North Carolina's farmers included.

Of course, the LSC has not limited its activities to bullying citizens. The corporation has set its sights on changing State laws through litigation and direct lobbying as well as tearing apart programs designed to help the poor and needy.

For example, as the Heritage Foundation notes in its publication ''Rolling Back Government: A budget plan to rebuild America,'' the LSC recently filed a lawsuit in New Jersey challenging that State's welfare reform initiatives. In New York City, the LSC filed suit against HELP, a proven nonprofit organization that assists the homeless. The LSC has even pursued cases to provide free public education for illegal aliens. The Heritage Foundation report concludes, ''rather than helping the poor settle landlord disputes, wills, and other common legal problems, the LSC increasingly is concerned with public policy.''

Perhaps William Mellor, president of the Washington-based Institute for Justice, said it best in his February 1, 1995, editorial, ''Want Welfare Reform? First Fight Legal Services Corporation.'' Mr. Mellor writes:

> Instead of just helping the poor with problems such as child support and rent disputes, LSC lawyers have worked for years to get the courts to enshrine a constitutional right to welfare.

Mr. President, is this the kind of arrogant absurdity that was intended for LSC? Why should the U.S. Congress be concerned with—as candidate Bill Clinton put it—''changing welfare as we know it,'' when the taxpayers are required to pay lawyers to convince the Federal courts to make welfare a constitutional right?

The American people in the 1994 election emphatically stated that government is running their lives. There is far more waste in government than the American people should be forced to pay for.

Congress, for a half century, has been wasting billions of dollars, running up a Federal debt of about $4.9 trillion. Fortunately, for the American people, the House of Representatives has proposed eliminating funding for the Legal Services Corporation, the cost of which has exploded from $92 million in fiscal year 1976 to $400 million in fiscal year 1995. And according to the Heritage Foundation, despite this large budget and tremendous growth, only 4 percent of the Nation's poor directly benefited from the LSC in 1993.

So, Mr. President, the legislation I offer today, to eliminate Federal funding of the Legal Services Corporation, is long past due. While saving the taxpayers millions of dollars, my bill will end the forced sponsorship by the U.S. taxpayers of an agency the purpose and mission of which was laid aside and forgotten long ago in its rush to promote a leftwing social agenda. It's time for the Legal Services Corporation to be discarded—forever.

By Mr. HATCH (for himself, Mr. LIEBERMAN, and Mr. FAIRCLOTH):

S. 959. A bill to amend the Internal Revenue Code of 1986 to encourage capital formation through reductions in taxes on capital gains, and for other purposes; to the Committee on Finance.

CAPITAL GAINS FORMATION ACT OF 1995

Mr. HATCH. Mr. President, on behalf of myself, Senator LIEBERMAN, and Senator FAIRCLOTH, I rise today to introduce the Capital Gains Formation Act of 1995.

Mr. President, reducing the high rate on capital gains has long been a priority of mine. Earlier this year, I joined my good friend, the chairman of the House Ways and Means Committee, BILL ARCHER, in introducing the Archer-Hatch capital gains bill in Congress. In the Senate, this was S. 182. A modified version of this bill was passed by the House in April.

Now that the Congress is on the verge of passing a budget resolution that will almost certainly allow for some tax reductions, Senator LIEBERMAN and I concluded that it is now the right time to introduce a bipartisan capital gains tax reduction bill that will contribute to economic growth and job creation. We are exceptionally pleased to be joined in this effort by Senator FAIRCLOTH.

Our bill combines the best elements of the House-passed capital gains bill with a targeted incentive to give an extra push for newly formed or expanding small businesses. Like the capital gains measure the House passed in April, our bill would allow individual taxpayers to deduct 50 percent of any net capital gain. This means that the top capital gains tax rate for individuals would be 19.8 percent. Also like the House bill, it grants a 25-percent maximum capital gains tax rate for corporations. Our bill also includes the important provision of the House-passed bill that would allow homeowners who sell their personal residences at a loss to take a capital gains deduction.

Unlike the House measure, however, the bill we are introducing today does not include provisions for indexing assets. Many of our Senate colleagues have expressed concern that indexing capital assets would results in undue complexity and possibly lead to a resurgence of tax shelters. While I support the concept of indexing capital assets to prevent the taxation of inflationary gains, we felt it important to streamline this bill to ease its passage in the Senate. I hope that some form of indexing can be developed, perhaps by a Senate-House conference committee, that will achieve the goals of indexing without adding undue complexity, or the potential for abuse, to the code.

In addition to the broad-based provisions listed above, our bill also includes some extra capital gains incentives targeted to individuals and corporations who are willing to invest in small businesses. We see this add-on as an inducement for investors to provide the capital needed to help small businesses get established and to expand.

Mr. President, this additional targeted incentive works as follows: If an investor buys newly issued stock of a qualified small business, which is defined as one with up to $100 million in assets, and holds that stock for 5 or more years, he or she can deduct 75 percent of the gain on the sale of that stock, rather than just the 50 percent deduction provided for other capital gains.

In addition, anytime after the end of the 5-year period, if the investor decides to sell the stock of one qualified small business and invest in another qualified small business, he or she can completely defer the gain on the sale of the first stock and not pay taxes on the gain until the second stock is sold. In essence, the investor is allowed to roll over the gain into the new stock until he or she sells the stock and keeps the money. We think that this additional

incentive will make a tremendous amount of capital available for new and expanding small businesses in this country.

Let me just add, Mr. President, that these special incentives should really make a difference in the electronics, biotechnology, and other high-technology industries that are so important to our economy and to our future. The software and medical device industries in Utah are perfect examples of how these industries have transformed our economy. While these provisions are not limited to high-tech companies by any means, these are the types of businesses that are most likely to use them because it is so hard to attract capital for these higher risk ventures.

Our economy is becoming more connected to the global marketplace every day. And, it is vital for us to realize that capital flows across national boundaries these days at the speed of light. Therefore, we need to be concerned with how our trading partners tax capital.

Unfortunately, the United States has the highest rate on individual capital gains of all of the G–7 nations, except the United Kingdom. And, even in the United Kingdom, individuals can take advantage of indexing to alleviate capital gains caused solely by inflation. Germany totally exempts long-term capital gains on securities. In Japan, investors pay the lesser of 1 percent of the sales price or 20 percent of the net gain. I think it is no coincidence, Mr. President, that Germany's saving rate is twice ours and Japan's is three times as high as ours. In order to stay competitive in the world, it is vital that our tax laws provide the proper incentive to attract the capital we need here in the United States.

We are aware that some of the opponents of capital gains tax reductions have asserted that such changes would inordinately benefit the wealthy, leaving little or no tax relief for the lower- and middle-income classes. Nothing could be further from the truth. In fact, capital gains taxation affects every homeowner, every employee who participates in a stock purchase plan, or every senior citizen who relies on income from mutual funds for their basic needs during retirement.

The current law treatment of capital gains only gives preferential treatment to those taxpayers who incomes lie in the highest tax brackets. Under the Capital Formation Act of 1995, the benefits will tilt decidedly toward the middle-income taxpayer. A married couple with $39,000 in taxable income who sells a capital asset would, under our bill, pay only a 7.5 percent tax on the capital gain. Further, this bill would slash the taxes retired seniors pay when they sell the assets they have accumulated for income during retirement.

I also believe there is a misperception about the term ''capital asset.'' We tend to think of capital assets as something only wealthy persons have. In fact, a capital asset is a savings account—which we should all have—a piece of land, a savings bond, some stock your grandmother bought you, your house, your farm, your 1964 Mustang convertible, or any number of things that have monetary worth. It is misleading to imply that only the wealthy would benefit from this bill.

I want to elaborate on this point, Mr. President. Current law already provides a sizeable differential between ordinary income tax rates and capital gains tax rates for upper income taxpayers. The wealthiest among us pay up to 39.6 percent on ordinary income but only 28 percent on capital gains. We certainly feel that this 28 percent is too high. But, my point is that taxpayers in the lower bracket of 28 percent and the lowest bracket of 15 percent enjoy no difference between their capital gains rate and their ordinary income rate. Our bill would correct this problem and give the largest percentage rate reduction to the lowest income taxpayers.

Frankly, Mr. President, the introduction of a bipartisan capital gains bill couldn't come at a better time than now. There are currently some indications that our economy is slowing down. In fact, some experts feel we may be on the verge of a mild recession. Such a concern is always important, but right now, it is critical. Congress is in the midst of formulating a 7-year plan to balance the Federal budget. The elements of this plan will have consequences far beyond this year or even beyond 2002 when we hope to achieve our goal.

Crucial to the achievement of a balanced budget is the underlying growth and strength of our economy. Small changes in the behavior of the economy can make or break our ability to put our fiscal house in order. Thus, especially right now, we can ill afford to have our economy slow down. Such a recession could make it impossible for us to balance the budget. With recession comes the fear of future job insecurity. Both Republicans and Democrats alike can agree that the creation of new and secure jobs is imperative for a vibrant and growing economy.

This is where a reduction of the capital gains rate can be so important. By stimulating the economy and spurring job creation, a cut in the capital gains rate can stave off the downturn that appears to be on its way.

This is not just our opinion. Senator LIEBERMAN and I received a letter yesterday from Allen Sinai, a well-known and respected mainstream economist. In his letter, Dr. Sinai concludes that ''The enactment of this bipartisan Senate bill* * *could well help offset forces contributing to the current cooling of the U.S. economy.''

Many Americans have expressed concern about the wisdom of a tax reduction while we are trying to balance the budget. However, Mr. President, we see this bill as a change that will help us balance the budget. The evidence clearly shows that a cut in the capital gains tax rate will increase, not decrease, revenue to the Treasury. During the period from 1978 to 1985, the tax rate on capital gains was cut from almost 50 percent to 20 percent. Over this same period, however, tax receipts increased from $9.1 billion to $26.5 billion. The opposite occurred after the 1986 Tax Reform Act raised the capital gains tax rate. The higher rate resulted in less revenue.

Mr. President, the capital gains tax is really a tax on realizing the American dream. For those Americans who have planted seeds in savings accounts, small or large companies, family farms, or other investments, and who have been fortunate enough and worked hard enough to see them grow, the capital gains tax is a tax on success. It is an additional tax on the reward for taking risks. The American dream is not dead; it's just that we have been taxing it away.

I urge my colleagues on both sides of the aisle to take a close look at this bill. We believe it offers a solid plan to help us achieve our goal of a brighter future for our children and grandchildren. When it comes down to it, jobs, economic growth, and entrepreneurship are not partisan issues. They are American issues. This bill will help us get there.

Mr. President, I ask unanimous consent that the text of the bill and additional material be printed in the RECORD.

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

S. 959

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE; AMENDMENT OF 1986 CODE.

(a) SHORT TITLE.—This Act may be cited as the ''Capital Formation Act of 1995''.

(b) AMENDMENT OF 1986 CODE.—Except as otherwise expressly provided, whenever in this Act an amendment or repeal is expressed in terms of an amendment to, or repeal of, a section or other provision, the reference shall be considered to be made to a section or other provision of the Internal Revenue Code of 1986.

TITLE I—CAPITAL GAINS REFORM

Subtitle A—Capital Gains Deduction for Taxpayers Other Than Corporations

SEC. 101. CAPITAL GAINS DEDUCTION.

(a) IN GENERAL.—Part I of subchapter P of chapter 1 (relating to treatment of capital gains) is amended by redesignating section 1202 as section 1203 and by inserting after section 1201 the following new section:

''SEC. 1202. CAPITAL GAINS DEDUCTION.

''(a) GENERAL RULE.—If for any taxable year a taxpayer other than a corporation has a net capital gain, 50 percent of such gain shall be a deduction from gross income.

''(b) ESTATES AND TRUSTS.—In the case of an estate or trust, the deduction shall be computed by excluding the portion (if any) of the gains for the taxable year from sales or exchanges of capital assets which, under sections 652 and 662 (relating to inclusions of amounts in gross income of beneficiaries of trusts), is includible by the income beneficiaries as gain derived from the sale or exchange of capital assets.

''(c) COORDINATION WITH TREATMENT OF CAPITAL GAIN UNDER LIMITATION ON INVESTMENT INTEREST.—For purposes of this section, the net capital gain for any taxable year shall be reduced (but not below zero) by the amount which the taxpayer takes into account as investment income under section 163(d)(4)(B)(iii).

''(d) TRANSITIONAL RULE.—

''(1) IN GENERAL.—In the case of a taxable year which includes January 1, 1995—

''(A) the amount taken into account as the net capital gain under subsection (a) shall not exceed the net capital gain determined by only taking into account gains and losses properly taken into account for the portion of the taxable year on or after January 1, 1995, and

''(B) if the net capital gain for such year exceeds the amount taken into account under subsection (a), the rate of tax imposed by section 1 on such excess shall not exceed 28 percent.

''(2) SPECIAL RULES FOR PASS-THRU ENTITIES.—

''(A) IN GENERAL.—In applying paragraph (1) with respect to any pass-thru entity, the determination of when gains and losses are properly taken into account shall be made at the entity level.

''(B) PASS-THRU ENTITY DEFINED.—For purposes of subparagraph (A), the term 'pass-thru entity' means—

''(i) a regulated investment company,

''(ii) a real estate investment trust,

''(iii) an S corporation,

''(iv) a partnership,

''(v) an estate or trust, and

''(vi) a common trust fund.''

(b) DEDUCTION ALLOWABLE IN COMPUTING ADJUSTED GROSS INCOME.—Subsection (a) of section 62 is amended by inserting after paragraph (15) the following new paragraph:

''(16) LONG-TERM CAPITAL GAINS.—The deduction allowed by section 1202.''

(c) TECHNICAL AND CONFORMING CHANGES.—

(1) Section 1 is amended by striking subsection (h).

(2) Paragraph (1) of section 170(e) is amended by striking ''the amount of gain'' in the material following subparagraph (B)(ii) and inserting ''50 percent ($^{25}/_{35}$ in the case of a corporation) of the amount of gain''.

(3) Subparagraph (B) of section 172(d)(2) is amended to read as follows:

''(B) the deduction under section 1202 and the exclusion under section 1203 shall not be allowed.''

(4) The last sentence of section 453A(c)(3) is amended by striking all that follows ''long-term capital gain,'' and inserting ''the maximum rate on net capital gain under section 1201 or the deduction under section 1202 (whichever is appropriate) shall be taken into account.''

(5) Paragraph (4) of section 642(c) is amended to read as follows:

''(4) ADJUSTMENTS.—To the extent that the amount otherwise allowable as a deduction under this subsection consists of gain from the sale or exchange of capital assets held for more than 1 year or gain described in section 1203(a), proper adjustment shall be made for any deduction allowable to the estate or trust under section 1202 (relating to deduction for excess of capital gains over capital losses) or for the exclusion allowable to the estate or trust under section 1203 (relating to exclusion for gain from certain small business stock). In the case of a trust, the deduction allowed by this subsection shall be subject to section 681 (relating to unrelated business income).''

(6) The last sentence of section 643(a)(3) is amended to read as follows: ''The deduction under section 1202 (relating to deduction of excess of capital gains over capital losses) and the exclusion under section 1203 (relating to exclusion for gain from certain small business stock) shall not be taken into account.''

(7) Subparagraph (C) of section 643(a)(6) is amended by inserting ''(i)'' before ''there shall'' and by inserting before the period '', and (ii) the deduction under section 1202 (relating to capital gains deduction) and the exclusion under section 1203 (relating to exclusion for gain from certain small business stock) shall not be taken into account''.

(8) Paragraph (4) of section 691(c) is amended by striking ''sections 1(h), 1201, 1202, and 1211'' and inserting ''sections 1201, 1202, 1203, and 1211''.

(9) The second sentence of section 871(a)(2) is amended by inserting ''or 1203'' after ''section 1202''.

(10)(A) Paragraph (2) of section 904(b) is amended by striking subparagraph (A), by redesignating subparagraph (B) as subparagraph (A), and by inserting after subparagraph (A) (as so redesignated) the following new subparagraph:

''(B) OTHER TAXPAYERS.—In the case of a taxpayer other than a corporation, taxable income from sources outside the United States shall include gain from the sale or exchange of capital assets only to the extent of foreign source capital gain net income.''

(B) Subparagraph (A) of section 904(b)(2), as so redesignated, is amended—

(i) by striking all that precedes clause (i) and inserting the following:

''(A) CORPORATIONS.—In the case of a corporation—'', and

(ii) by striking in clause (i) ''in lieu of applying subparagraph (A),''.

(C) Paragraph (3) of section 904(b) is amended by striking subparagraphs (D) and (E) and inserting the following new subparagraph:

''(D) RATE DIFFERENTIAL PORTION.—The rate differential portion of foreign source net capital gain, net capital gain, or the excess of net capital gain from sources within the United States over net capital gain, as the case may be, is the same proportion of such amount as the excess of the highest rate of tax specified in section 11(b) over the alternative rate of tax under section 1201(a) bears to the highest rate of tax specified in section 11(b).''

(D) Clause (v) of section 593(b)(2)(D) is amended—

(i) by striking ''if there is a capital gain rate differential (as defined in section 904(b)(3)(D)) for the taxable year,'', and

(ii) by striking ''section 904(b)(3)(E)'' and inserting ''section 904(b)(3)(D)''.

(11) The last sentence of section 1044(d) is amended by striking ''1202'' and inserting ''1203''.

(12)(A) Paragraph (2) of section 1211(b) is amended to read as follows:

''(2) the sum of—

''(A) the excess of the net short-term capital loss over the net long-term capital gain, and

''(B) one-half of the excess of the net long-term capital loss over the net short-term capital gain.''

(B) So much of paragraph (2) of section 1212(b) as precedes subparagraph (B) thereof is amended to read as follows:

''(2) SPECIAL RULES.—

''(A) ADJUSTMENTS.—

''(i) For purposes of determining the excess referred to in paragraph (1)(A), there shall be treated as short-term capital gain in the taxable year an amount equal to the lesser of—

''(I) the amount allowed for the taxable year under paragraph (1) or (2) of section 1211(b), or

''(II) the adjusted taxable income for such taxable year.

''(ii) For purposes of determining the excess referred to in paragraph (1)(B), there shall be treated as short-term capital gain in the taxable year an amount equal to the sum of—

''(I) the amount allowed for the taxable year under paragraph (1) or (2) of section 1211(b) or the adjusted taxable income for such taxable year, whichever is the least, plus

''(II) the excess of the amount described in subclause (I) over the net short-term capital loss (determined without regard to this subsection) for such year.''

(C) Subsection (b) of section 1212 is amended by adding at the end the following new paragraph:

''(3) TRANSITIONAL RULE.—In the case of any amount which, under this subsection and section 1211(b) (as in effect for taxable years beginning before January 1, 1996), is treated as a capital loss in the first taxable year beginning after December 31, 1995, paragraph (2) and section 1211(b) (as so in effect) shall apply (and paragraph (2) and section 1211(b) as in effect for taxable years beginning after December 31, 1995, shall not apply) to the extent such amount exceeds the total of any capital gain net income (determined without regard to this subsection) for taxable years beginning after December 31, 1995.''

(13) Paragraph (1) of section 1402(i) is amended by inserting '', and the deduction provided by section 1202 and the exclusion provided by section 1203 shall not apply'' before the period at the end thereof.

(14) Subsection (e) of section 1445 is amended—

(A) in paragraph (1) by striking ''35 percent (or, to the extent provided in regulations, 28 percent)'' and inserting ''25 percent (or, to the extent provided in regulations, 19.8 percent)'', and

(B) in paragraph (2) by striking ''35 percent'' and inserting ''25 percent''.

(15)(A) The second sentence of section 7518(g)(6)(A) is amended—

(i) by striking ''during a taxable year to which section 1(h) or 1201(a) applies'', and

(ii) by striking ''28 percent (34 percent'' and inserting ''19.8 percent (25 percent''.

(B) The second sentence of section 607(h)(6)(A) of the Merchant Marine Act, 1936 is amended—

(i) by striking ''during a taxable year to which section 1(h) or 1201(a) of such Code applies'', and

(ii) by striking ''28 percent (34 percent'' and inserting ''19.8 percent (25 percent''.

(d) CLERICAL AMENDMENT.—The table of sections for part I of subchapter P of chapter 1 is amended by striking the item relating to section 1202 and by inserting after the item relating to section 1201 the following new items:

''Sec. 1202. Capital gains deduction.

''Sec. 1203. 50-percent exclusion for gain from certain small business stock.''

(e) EFFECTIVE DATE.—

(1) IN GENERAL.—Except as otherwise provided in this subsection, the amendments made by this section shall apply to taxable years ending after December 31, 1994.

(2) CONTRIBUTIONS.—The amendment made by subsection (c)(2) shall apply to contributions on or after January 1, 1995.

(3) USE OF LONG-TERM LOSSES.—The amendments made by subsection (c)(12) shall apply to taxable years beginning after December 31, 1995.

(4) WITHHOLDING.—The amendment made by subsection (c)(14) shall apply only to amounts paid after the date of the enactment of this Act.

Subtitle B—Capital Gains Reduction for Corporations

SEC. 111. REDUCTION OF ALTERNATIVE CAPITAL GAIN TAX FOR CORPORATIONS.

(a) IN GENERAL.—Section 1201 is amended to read as follows:

"SEC. 1201. ALTERNATIVE TAX FOR CORPORATIONS.

''(a) GENERAL RULE.—If for any taxable year a corporation has a net capital gain, then, in lieu of the tax imposed by sections 11, 511, and 831 (a) and (b) (whichever is applicable), there is hereby imposed a tax (if such tax is less than the tax imposed by such sections) which shall consist of the sum of—

''(1) a tax computed on the taxable income reduced by the amount of the net capital gain, at the rates and in the manner as if this subsection had not been enacted, plus

''(2) a tax of 25 percent of the net capital gain.

''(b) TRANSITIONAL RULE.—

''(1) IN GENERAL.—In the case of any taxable year ending after December 31, 1994, and beginning before January 1, 1996, in applying subsection (a), net capital gain for such taxable year shall not exceed such net capital gain determined by taking into account only gain or loss properly taken into account for the portion of the taxable year after December 31, 1994.

''(2) SPECIAL RULE FOR PASS-THRU ENTITIES.—Section 1202(d)(2) shall apply for purposes of paragraph (1).

''(c) CROSS REFERENCES.—

"For computation of the alternative tax—

"(1) in the case of life insurance companies, see section 801(a)(2),

"(2) in the case of regulated investment companies and their shareholders, see section 852(b)(3)(A) and (D), and

"(3) in the case of real estate investment trusts, see section 857(b)(3)(A)."

(b) TECHNICAL AMENDMENT.—Clause (iii) of section 852(b)(3)(D) is amended by striking ''65 percent'' and inserting ''75 percent''.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years ending after December 31, 1994.

Subpart C—Capital Loss Deduction Allowed With Respect to Sale or Exchange of Principal Residence

SEC. 121. CAPITAL LOSS DEDUCTION ALLOWED WITH RESPECT TO SALE OR EXCHANGE OF PRINCIPAL RESIDENCE.

(a) IN GENERAL.—Subsection (c) of section 165 (relating to limitation on losses of individuals) is amended by striking ''and'' at the end of paragraph (2), by striking the period at the end of paragraph (3) and inserting ''; and'', and by adding at the end the following new paragraph:

''(4) losses arising from the sale or exchange of the principal residence (within the meaning of section 1034) of the taxpayer.''

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply to sales and exchanges after December 31, 1994, in taxable years ending after such date.

TITLE II—SMALL BUSINESS VENTURE CAPITAL STOCK

SEC. 201. MODIFICATIONS TO EXCLUSION OF GAIN ON CERTAIN SMALL BUSINESS STOCK.

(a) INCREASE IN EXCLUSION PERCENTAGE.—

(1) IN GENERAL.—Section 1203(a), as redesignated by section 101, is amended—

(A) by striking ''50 percent'' and inserting ''75 percent'', and

(B) by striking ''50-PERCENT'' in the heading and inserting ''Partial''.

(2) CONFORMING AMENDMENTS.—

(A) Section 1203, as so redesignated, is amended by adding at the end the following new subsection:

''(l) CROSS REFERENCE.—

"For treatment of eligible gain not excluded under subsection (a), see sections 1201 and 1202."

(B) The heading for section 1203, as so redesignated, is amended by striking ''**50-percent**'' and inserting ''**partial**''.

(C) The table of sections for part I of subchapter P of chapter 1, as amended by section 101(d), is amended by striking ''50-percent'' in the item relating to section 1203 and inserting ''Partial''.

(b) EXCLUSION AVAILABLE TO CORPORATIONS.—

(1) IN GENERAL.—Subsection (a) of section 1203, as redesignated by section 101, is amended by striking ''other than a corporation''.

(2) TECHNICAL AMENDMENT.—Subsection (c) of section 1203, as so redesignated, is amended by adding at the end the following new paragraph:

''(4) STOCK HELD AMONG MEMBERS OF CONTROLLED GROUP NOT ELIGIBLE.—Stock of a member of a parent-subsidiary controlled group (as defined in subsection (d)(3)) shall not be treated as qualified small business stock while held by another member of such group.''

(c) REPEAL OF MINIMUM TAX PREFERENCE.—

(1) IN GENERAL.—Subsection (a) of section 57 is amended by striking paragraph (7).

(2) TECHNICAL AMENDMENT.—Subclause (II) of section 53(d)(1)(B)(ii) is amended by striking '', (5), and (7)'' and inserting ''and (5)''.

(d) STOCK OF LARGER BUSINESSES ELIGIBLE FOR EXCLUSION.—

(1) Paragraph (1) of section 1203(d), as redesignated by section 101, is amended by striking ''$50,000,000'' each place it appears and inserting ''$100,000,000''.

(2) Subsection (d) of section 1203, as so redesignated, is amended by adding at the end the following new paragraph:

''(4) INFLATION ADJUSTMENT OF ASSET LIMITATION.—In the case of stock issued in any calendar year after 1996, the $100,000,000 amount contained in paragraph (1) shall be increased by an amount equal to—

''(A) such dollar amount, multiplied by

''(B) the cost-of-living adjustment determined under section 1(f)(3) for the calendar year in which the taxable year begins, determined by substituting 'calendar year 1995' for 'calendar year 1992' in subparagraph (B) thereof.

If any amount as adjusted under the preceding sentence is not a multiple of $10,000, such amount shall be rounded to the nearest multiple of $10,000.''

(e) REPEAL OF PER-ISSUER LIMITATION.—Section 1203, as redesignated by section 101, is amended by striking subsection (b).

(f) OTHER MODIFICATIONS.—

(1) REPEAL OF WORKING CAPITAL LIMITATION.—Paragraph (6) of section 1203(e), as redesignated by section 101, is amended—

(A) by striking ''2 years'' in subparagraph (B) and inserting ''5 years'', and

(B) by striking the last sentence.

(2) EXCEPTION FROM REDEMPTION RULES WHERE BUSINESS PURPOSE.—Paragraph (3) of section 1203(c), as so redesignated, is amended by adding at the end the following new subparagraph:

''(D) WAIVER WHERE BUSINESS PURPOSE.—A purchase of stock by the issuing corporation shall be disregarded for purposes of subparagraph (B) if the issuing corporation establishes that there was a business purpose for such purchase and one of the principal purposes of the purchase was not to avoid the limitations of this section.''

(g) QUALIFIED TRADE OR BUSINESS.—Section 1203(e)(3), as redesignated by section 101, is amended by inserting ''and'' at the end of subparagraph (C), by striking '', and'' at the end of subparagraph (D) and inserting a period, and by striking subparagraph (E).

(h) EFFECTIVE DATES.—

(1) IN GENERAL.—Except as provided in paragraph (2), the amendments made by this section shall apply to stock issued after the date of the enactment of this Act.

(2) SPECIAL RULE.—The amendments made by subsections (a), (c), (e), and (f) shall apply to stock issued after August 10, 1993.

SEC. 202. ROLLOVER OF GAIN FROM SALE OF QUALIFIED STOCK.

(a) IN GENERAL.—Part III of subchapter O of chapter 1 is amended by adding at the end the following new section:

"SEC. 1045. ROLLOVER OF GAIN FROM QUALIFIED SMALL BUSINESS STOCK TO ANOTHER QUALIFIED SMALL BUSINESS STOCK.

''(a) NONRECOGNITION OF GAIN.—In the case of any sale of qualified small business stock with respect to which the taxpayer elects the application of this section, eligible gain from such sale shall be recognized only to the extent that the amount realized on such sale exceeds—

''(1) the cost of any qualified small business stock purchased by the taxpayer during the 60-day period beginning on the date of such sale, reduced by

''(2) any portion of such cost previously taken into account under this section.

This section shall not apply to any gain which is treated as ordinary income for purposes of this title.

''(b) DEFINITIONS AND SPECIAL RULES.—For purposes of this section—

''(1) QUALIFIED SMALL BUSINESS STOCK.—The term 'qualified small business stock' has the meaning given such term by section 1203(c).

''(2) ELIGIBLE GAIN.—The term 'eligible gain' means any gain from the sale or exchange of qualified small business stock held for more than 5 years.

''(3) PURCHASE.—A taxpayer shall be treated as having purchased any property if, but for paragraph (4), the unadjusted basis of such property in the hands of the taxpayer would be its cost (within the meaning of section 1012).''

''(4) BASIS ADJUSTMENTS.—If gain from any sale is not recognized by reason of subsection (a), such gain shall be applied to reduce (in the order acquired) the basis for determining gain or loss of any qualified small business stock which is purchased by the taxpayer during the 60-day period described in subsection (a).

''(c) SPECIAL RULES FOR TREATMENT OF REPLACEMENT STOCK.—

''(1) HOLDING PERIOD FOR ACCRUED GAIN.—For purposes of this chapter, gain from the disposition of any replacement qualified small business stock shall be treated as gain from the sale or exchange of qualified small business stock held more than 5 years to the extent that the amount of such gain does not exceed the amount of the reduction in the basis of such stock by reason of subsection (b)(4).

''(2) TACKING OF HOLDING PERIOD FOR PURPOSES OF DEFERRAL.—Solely for purposes of applying this section, if any replacement qualified small business stock is disposed of before the taxpayer has held such stock for more than 5 years, gain from such stock shall be treated eligible gain for purposes of subsection (a).

''(3) REPLACEMENT QUALIFIED SMALL BUSINESS STOCK.—For purposes of this subsection, the term 'replacement qualified small business stock' means any qualified small business stock the basis of which was reduced under subsection (b)(4).''

(b) CONFORMING AMENDMENTS.—

(1) Section 1016(a)(23) is amended—

(A) by striking ''or 1044'' and inserting '', 1044, or 1045'', and

(B) by striking ''or 1044(d)'' and inserting '', 1044(d), or 1045(b)(4)''.

(2) The table of sections for part III of subchapter O of chapter 1 is amended by adding at the end the following new item:

''Sec. 1045. Rollover of gain from qualified small business stock to another qualified small business stock.''

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to stock sold or exchanged after the date of the enactment of this Act.

SUMMARY OF CAPITAL FORMATION ACT OF 1995

The Capital Formation Act of 1995 would reduce the tax rate on capital gains and encourage investment in new and growing business enterprises through the following provisions:

I. BROAD-BASED TAX RELIEF (SIMILAR TO PROVISIONS IN HOUSE-PASSED H.R. 1215):

(1) Individual taxpayers would be allowed a deduction of 50 percent of any net capital gain. The top effective tax rate on capital gains would thus be 19.8 percent.

(2) Corporations would be subject to a maximum capital gains tax rate of 25 percent.

(3) Capital loss treatment would be allowed with respect to the sale of a taxpayer's principal residence.

(4) Indexing of capital assets would not be included.

(5) Would be effective for taxable years ending after December 31, 1994.

II TARGETED INCENTIVE TO INVEST IN SMALL BUSINESS ENTERPRISES:

(1) Provides an exclusion of 75 percent of capital gains from sale of investment in qualified small business stock held for more than five years.

(2) Allows 100 percent deferral of capital gains tax, after the five year period, if proceeds from the sale of qualified small business stock are rolled over within 60 days into another qualified small business stock. Gains accrued after the rollover would qualify for a 50 percent deduction if held for more than one year, 75 percent exclusion if held for more than another five years, or at any time, could be rolled over yet again into another qualified small business stock for 100 percent deferral.

(3) Would be effective upon date of enactment.

Example: A taxpayer buys qualified small business stock in 1996 for $10,000. She sells the stock in 2002 for $20,000. She would be allowed to exclude 75 percent of the gain, or $7,500. Of, if she chose to roll over the $20,000 proceeds from the sale into another qualified small business stock within 60 days, she would defer all tax until she ultimately sold the second stock.

Qualified small business stock is defined as newly issued stock of corporations with up to $100 million in assets and is an expansion of the current law targeted small business capital gains exclusion added by the 1993 tax act. The changes in the targeted small business stock incentive from current law would:

(1) Allow corporations to participate.

(2) Remove the current law per-issuer limitation.

(3) Repeal the working capital limitation.

(4) Expand the list of qualified businesses in which the corporation may engage.

LEHMAN BROTHERS,
June 21, 1995.

Hon. ORRIN HATCH,
U.S. Senate,
Hon. JOSEPH LIEBERMAN,
U.S. Senate,
Washington, DC.

DEAR SENATORS HATCH AND LIEBERMAN: The Hatch-Lieberman Capital Gains Tax Reduction Proposal would have positive impacts on U.S. economic growth, employment and investment. The enactment of this bipartisan Senate bill, whose main features include a 50 percent exclusion for individual capital gains (a top marginal rate of 19.8 percent), a 25 percent maximum capital gains rate for corporations, and expansion of the current 50 percent exclusion for small business capital stock to 75 percent, as well as other small business provisions, could well help offset forces contributing to the current cooling of the U.S. economy.

Indexing capital gains, not included in the Hatch-Lieberman proposal, also would help stimulate economic activity and has the positive dimension of eliminating the distortion from the taxation of illusory gains that come from inflation. It would also be good to have. But of the two measures, capital gains rate reduction and indexing under limitations set by the very important first priority of moving the federal budget into balance, the rate reductions and small business provisions provide more ''bang-for-a-buck''.

A stronger economy would be stimulated by the lower cost of capital from a reduction in capital gains taxes, also business and personal saving would rise, and more business capital spending occur. This would come about, in part, from increased stock prices and higher household net worth as investors shifted funds away from other investments into stocks. The stronger economy would lead to increased hiring and new jobs. Wealth, income and profits improvement would raise spending, saving, and purchases of financial assets.

With a stronger economy and increased capital formation, greater entrepreneurship, as measured by new business incorporations, ought to raise productivity and thus the potential output of this economy. This supply-side effect, although modest, would tend to limit any potential inflationary effect of the capital gains tax reductions. In addition, an unlocking effect on tax receipts from the unrealized capital gains that would be realized ought to reduce the ex-post cost of this tax measure.

Of all the tax reductions being considered by the Congress, the most beneficial, in a balanced way, to both the demand-side and supply-sides of the economy, potentially at the least net cost, would be the capital gains tax rate reductions that are proposed.

On several criteria for judging changes in taxes—allocative efficiency, economic growth, savings and investment, international competition and fairness—capital gains tax reduction wins on almost all. The one exception is equity, because higher income families tend to hold proportionately more of the assets that could be subject to capital gains.

Sincerely,

ALLEN SINAI.

Mr. LIEBERMAN. Mr. President, I am delighted and proud to join Senator HATCH in this bipartisan introduction of the Capital Formation Act of 1995. As a Democrat, I have often borrowed Paul Tsongas' line that you can't be pro-jobs and anti-business, because the jobs we want for people are going to come from business. The bill we are introducing today is pro-jobs and pro-business. It gives people at all income levels a reason to put their money in places where that money will help businesses start and grow and that means more jobs for Americans and more economic prosperity for our country.

We are introducing this bill at a time when the American economy may be on the verge of recession. There are those who say we are already in a recession. One of the most effective things Congress can do to give our economy a boost is to cut the capital gains tax rate.

We also have a shortage of savings and investment in this country. Our personal savings rate is now about one-third of Japan's rate and about one-half of Germany's rate. We are ill prepared to deal with the effects of recession, and we are ill prepared for the economic battles of the global marketplace. Unlike most other industrialized nations, we stifle savings and investment by over-taxing it. Nations like Japan and Germany value capital gains. Germany exempts long-term capital gains from taxes for individuals and Japan taxes these gains at either 1 percent of the sales price or 20 percent of the net gain. They reward investment.

Not only have we done too little to encourage investment, too often it is actively discouraged. To attack capital gains tax relief as a bonanza for the wealthy is quite simply missing the point.

The benefits of this capital gains tax cut will not flow just to people of wealth. Anyone who has stock, who has money invested in a mutual fund, who has investment property, who has a stock option plan at work has a stake in capital gains tax relief. That represents millions and millions of middle class American families. We have information on 310 major firms that offer their employees stock options and stock purchase plans—companies like GTE, Pfizer and Stanley Works, to name a few of the companies in my State.

Each of those workers and their spouses and children stand to gain from what we propose today. And these firms are just the tip of the iceberg.

And we're talking about direct beneficiaries—not even counting the many middle and lower income people who will get and keep jobs thanks to the investments spurred by the capital gains tax cut.

Of course, people who are wealthy can benefit from this proposed capital gains cut, but that is the point. They will benefit if they invest more of their money in ways that help our economy and create jobs. That benefits everyone. Government doesn't make people rich. But Government can and should encourage people who have money to use that money in a way that helps the economy as a whole. That is what this is about. We are simply talking about letting people who are willing to risk their money keep a little bit more of it if they invest that money in our economy.

People who oppose cutting the capital gains tax are treating profit as if it were to be avoided. I believe that we should recognize profit as being an advantage of the free market, and we want to encourage it, reward it, help it spread its benefits throughout the

economy to more and more of our people. Opponents also frame this debate in a winners-and-losers context that is totally inappropriate to what is at stake here. Because a rising tide of economic growth raises all ships, there need be no losers when capital gains taxes are cut by our bill.

Finally, let me point out that this capital gains tax is broad but it also has a targeted element. It aims at directing investment in a way that maximizes the benefit for our economy. It promotes investment in small businesses—the firms that are driving job creation in our economy. It encourages people to leave their investments in small businesses, start-up businesses for a longer period of time, giving entrepreneurs the kind of predictable cash flow they need to make their businesses succeed.

The targeted feature of our capital gains tax cut will be very helpful to the kinds of small businesses we need for our future—the high technology businesses that will be the source of many new jobs in the next century, and that will be the source of our success in global markets. These businesses are high risk. They require a lot of capital investment early on. The payoff is down the road. And the benefits for America are, potentially, enormous. Not just jobs and profits for Americans. But exciting new technological innovations. New ways to educate our children. New medicines and medical devices. New services, and new opportunities for recreation. All these positive changes need the kind of investment our Capital Formation Act will encourage.

In closing, let me say that I see this bill as the first leg of a tripod of tax relief for the American people. The second leg is the President's tax credit for children and tax deduction for higher education costs, which I support.

The third leg will be a research and development tax credit that is being developed now and I hope will be introduced in the near future.

With these tax proposals, we can help more Americans raise their kids today, educate them tomorrow, and provide them with good job opportunities in thriving American businesses in the future.

Mr. FAIRCLOTH. Mr. President, today I am joining with Senators HATCH and LIEBERMAN to introduce the Capital Formation Act of 1995. This bipartisan effort sends a clear signal that there is broad-based support for a capital gains tax cut to stimulate job creation, foster sound economic growth, and enhance U.S. international competitiveness.

Prior to my election to the Senate, I spent 45 years in the private sector running a small business and meeting a payroll. I learned firsthand that a cut in the capital gains tax rate would stimulate the release of billions of dollars of unproductive capital, unlock economic assets, and encourage new investment by both mature and new businesses. Moreover, a reduction in capital gains taxes would have a powerful impact on the entrepreneurial segment of the economy, thereby creating new start-up companies and new jobs.

I commend Senators HATCH and LIEBERMAN for working together to craft a bipartisan capital gains tax cut proposal. I am proud to be the first cosponsor of this bill, and I sincerely hope that many of our colleagues—Democrats and Republicans—will join this important effort to provide much needed tax relief and encourage further economic growth.

ADDITIONAL COSPONSORS

S. 400

At the request of Mrs. HUTCHISON, the name of the Senator from Utah [Mr. HATCH] was added as a cosponsor of S. 400, a bill to provide for appropriate remedies for prison conditions, and for other purposes.

S. 401

At the request of Mr. LEAHY, the name of the Senator from Massachusetts [Mr. KERRY] was added as a cosponsor of S. 401, a bill to amend the Internal Revenue Code of 1986 to clarify the excise tax treatment of hard apple cider.

S. 495

At the request of Mrs. KASSEBAUM, the names of the Senator from Washington [Mr. GORTON] and the Senator from Tennessee [Mr. FRIST] were added as cosponsors of S. 495, a bill to amend the Higher Education Act of 1965 to stabilize the student loan programs, improve congressional oversight, and for other purposes.

S. 593

At the request of Mr. HATCH, the name of the Senator from Florida [Mr. MACK] was added as a cosponsor of S. 593, a bill to amend the Federal Food, Drug, and Cosmetic Act to authorize the export of new drugs and for other purposes.

S. 854

At the request of Mr. LUGAR, the name of the Senator from Pennsylvania [Mr. SANTORUM] was added as a cosponsor of S. 854, a bill to amend the Food Security Act of 1985 to improve the agricultural resources conservation program, and for other purposes.

S. 896

At the request of Mr. CHAFEE, the names of the Senator from Rhode Island [Mr. PELL], the Senator from West Virginia [Mr. ROCKEFELLER], the Senator from Colorado [Mr. CAMPBELL], and the Senator from Texas [Mrs. HUTCHISON] were added as cosponsors of S. 896, a bill to amend title XIX of the Social Security Act to make certain technical corrections relating to physicians' services, and for other purposes.

SENATE RESOLUTION 85

At the request of Mr. CHAFEE, the name of the Senator from Oklahoma [Mr. INHOFE] was added as a cosponsor of Senate Resolution 85, a resolution to express the sense of the Senate that obstetrician-gynecologists should be included in Federal laws relating to the provision of health care.

SENATE RESOLUTION 103

At the request of Mr. DOMENICI, the names of the Senator from Alabama [Mr. HEFLIN], the Senator from Rhode Island [Mr. CHAFEE], and the Senator from Hawaii [Mr. AKAKA] were added as cosponsors of Senate Resolution 103, a resolution to proclaim the week of October 15 through October 21, 1995, as National Character Counts Week, and for other purposes.

AMENDMENTS SUBMITTED

THE NATIONAL HIGHWAY SYSTEM DESIGNATION ACT OF 1995

EXON AMENDMENT NO. 1462

Mr. EXON proposed an amendment to the bill (S. 440) to amend title 23, United States Code, to provide for the designation of the National Highway System, and for other purposes; as follows:

At the appropriate place in the bill insert the following:

SEC. 301. SHORT TITLE.

This amendment may be cited as the ''Federal Highway and Railroad Grade Crossing Safety Act of 1995''.

SEC. . INTELLIGENT VEHICLE-HIGHWAY SYSTEMS.

(a) IN GENERAL.—In implementing the Intelligent Vehicle-Highway Systems Act of 1991 (23 U.S.C. 307 note), the Secretary of Transportation shall ensure that the National Intelligent Vehicle-Highway Systems Program addresses, in a comprehensive and coordinated manner, the use of intelligent vehicle-highway technologies to promote safety at railroad-highway grade crossings. The Secretary of Transportation shall ensure that two or more operational tests funded under such Act shall promote highway traffic safety and railroad safety.

SEC. . STATE HIGHWAY SAFETY MANAGEMENT SYSTEMS.

(a) AMENDMENT OF REGULATIONS.—The Secretary of Transportation shall conduct a rulemaking proceeding to amend the regulations under section 500.407 of title 23, Code of Federal Regulations, to require that each highway safety management system developed, established, and implemented by a State shall, among countermeasures and priorities established under subsection (b)(2) of that section—

(1) include public railroad-highway grade-crossing closure plans that are aimed at eliminating high-risk or redundant crossings (as defined by the Secretary);

(2) include railroad-highway grade-crossing policies that limit the creation of new at-grade crossings for vehicle or pedestrian traffic, recreational use, or any other purpose; and

(3) include plans for State policies, programs, and resources to further reduce death and injury at high-risk railroad-highway grade crossings.

(b) DEADLINE.—The Secretary of Transportation shall complete the rulemaking proceeding described in subsection (a) and prescribe the required amended regulations, not later than one year after the date of enactment of this Act.

SEC. . VIOLATION OF GRADE-CROSSING LAWS AND REGULATIONS.

(a) FEDERAL REGULATIONS.—Section 31311 of title 49, United States Code, is amended by

adding at the end the following new subsection:

''(h) GRADE-CROSSING VIOLATIONS.—

''(1) SANCTIONS.—The Secretary shall issue regulations establishing sanctions and penalties relating to violations, by persons operating commercial motor vehicles, of laws and regulations pertaining to railroad-highway grade crossings.

''(2) MINIMUM REQUIREMENTS.—Regulations issued under paragraph (1) shall, at a minimum, require that—

''(A) the penalty for a single violation shall not be less than a 60-day disqualification of the driver's commercial driver's license; and

''(B) any employer that knowingly allows, permits, authorizes, or requires an employee to operate a commercial motor vehicle in violation of such a law or regulation shall be subject to a civil penalty of not more than $10,000.''.

(b) DEADLINE.—The initial regulations required under section 31310(h) of title 49, United States Code, shall be issued not later than one year after the date of enactment of this Act.

(c) STATE REGULATIONS.—Section 31311(a) of title 49, United States Code, is amended by adding at the end the following new paragraph:

''(18) GRADE-CROSSING REGULATIONS.—The State shall adopt and enforce regulations prescribed by the Secretary under section 31310(h) of this title.''.

SEC. . SAFETY ENFORCEMENT.

(a) COOPERATION BETWEEN FEDERAL AND STATE AGENCIES.—The National Highway Traffic Safety Administration, and the Office of Motor Carriers within the Federal Highway Administration, shall on a continuing basis cooperate and work with the National Association of Governors' Highway Safety Representatives, the Commercial Vehicle Safety Alliance, and Operation Lifesaver, Inc., to improve compliance with and enforcement of laws and regulations pertaining to railroad-highway grade crossings.

(b) REPORT.—The Secretary of Transportation shall submit a report to Congress by January 1, 1996, indicating (1) how the Department worked with the above mentioned entities to improve the awareness of the highway and commercial vehicle safety and law enforcement communities of regulations and safety challenges at railroad-highway grade crossings, and (2) how resources are being allocated to better address these challenges and enforce such regulations.

SEC. . CROSSING ELIMINATION; STATEWIDE CROSSING FREEZE.

(a) STATEMENT OF POLICY.—

(1) Railroad-highway grade crossings present inherent hazards to the safety of railroad operations and to the safety of persons using those crossings. It is in the public interest—

(A) to eliminate redundant and high risk railroad-highway grade crossings; and

(B) to limit the creation of new crossings to the minimum necessary to provide for the reasonable mobility of the American people and their property, including emergency access.

(2) Elimination of redundant and high-risk railroad-highway grade crossings is necessary to permit optimum use of available funds to improve the safety of remaining crossings, including funds provided under Federal law.

(3) Effective programs to reduce the number of unneeded railroad-highway grade crossings, and to close those crossings that cannot be made reasonably safe (due to reasons of topography, angles of intersection, etc.), require the partnership of Federal, State, and local officials and agencies, and affected railroads.

(4) Promotion of a balanced national transportation system requires that highway planning specifically take into consideration the interface between highways and the national railroad system.

(b) PARTNERSHIP AND OVERSIGHT.—The Secretary shall foster a partnership among Federal, State, and local transportation officials and agencies to reduce the number of railroad-highway grade crossings and to improve safety at remaining crossings. The Secretary shall make provision for periodic review to ensure that each State (including State subdivisions and local governments) is making substantial, continued progress toward achievement of the purposes of this section.

(c) CROSSING FREEZE.—If, upon review, and after opportunity for a hearing, the Secretary determines that a State or political subdivision thereof has failed to make substantial, continued progress toward achievement of the purposes of this section, then the Secretary shall impose a limit on the maximum number of public railroad-highway grade crossings in that State. The limitation imposed by the Secretary under this subsection shall remain in effect until the State demonstrates compliance with the requirements of this section. In addition, the Secretary may, for a period of not more than 3 years after such a determination, require compliance with specific numeric targets for net reductions in the number of railroad-highway grade crossings (including specification of hazard categories with which such crossings are associated).

(d) REGULATIONS.—The Secretary shall issue such regulations as may be necessary to carry out this section.

EXON AMENDMENT NO. 1463

Mr. EXON proposed an amendment to the bill S. 440, supra; as follows:

At the appropriate place in the bill add the following:

SEC. . TRUCK LENGTH AND THE NORTH AMERICAN FREE TRADE AGREEMENT.

Any federal regulatory standard for single trailer length issued pursuant to negotiations and procedures authorized under the North American Free Trade Agreement, shall not exceed fifty three feet.

SMITH (AND GREGG) AMENDMENT NO. 1464

Mr. CHAFEE (for Mr. SMITH for himself and Mr. GREGG) proposed an amendment to the bill S. 440, supra; as follows:

At the appropriate place on the bill add the following new section:

SEC. .

The State of New Hampshire shall be deemed as having met the safety belt use law requirements of section 153 of title 23 of the U.S. Code, upon certification by the Secretary of Transportation that the State has achieved—

(a) a safety belt use rate in each of fiscal years ending September 30, 1995 and September 30, 1996, of not less than 50 percent; and

(b) a safety belt use rate in each succeeding fiscal year thereafter of not less than the national average safety belt use rate, as determined by the Secretary of Transportation.

WARNER (AND OTHERS) AMENDMENT. NO. 1465

Mr. WARNER (for himself, Mr. CHAFEE, and Mr. BAUCUS) proposed an amendment to the bill S. 440, supra; as follows:

On page 22, between lines 2 and 3, insert the following:

SEC. 1___. APPLICABILITY OF CERTAIN REQUIREMENTS TO THIRD PARTY SELLERS.

Section 133(d) of title 23, United States Code, is amended by adding at the end the following:

''(5) APPLICABILITY OF CERTAIN REQUIREMENTS TO THIRD PARTY SELLERS.—

''(A) IN GENERAL.—Except as provided in subparagraphs (B) and (C), in the case of a transportation enhancement activity funded from the allocation required under paragraph (2), if real property or an interest in real property is to be acquired from a qualified organization exclusively for conservation purposes (as determined under section 170(h) of the Internal Revenue Code of 1986), the organization shall be considered to be the owner of the property for the purpose of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (42 U.S.C. 4601 et seq.).

''(B) FEDERAL APPROVAL PRIOR TO INVOLVEMENT OF QUALIFIED ORGANIZATION.—If Federal approval of the acquisition of the real property or interest predates the involvement of a qualified organization described in subparagraph (A) in the acquisition of the property, the organization shall be considered to be an acquiring agency or person as described in section 24.101(a)(2) of title 49, Code of Federal Regulations, for the purpose of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (42 U.S.C. 4601 et seq.).

''(C) ACQUISITIONS ON BEHALF OF RECIPIENTS OF FEDERAL FUNDS.—If a qualified organization described in subparagraph (A) has contracted with a State highway administration or other recipient of Federal funds to acquire the real property or interest on behalf of the recipient, the organization shall be considered to be an agent of the recipient for the purpose of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (42 U.S.C. 4601 et seq.).''.

On page 26, between lines 8 and 9, insert the following:

(3) ORANGE STREET BRIDGE, MISSOULA, MONTANA.—Notwithstanding section 149 of title 23, United States Code, or any other law, a project to construct new capacity for the Orange Street Bridge in Missoula, Montana, shall be eligible for funding under the congestion mitigation and air quality improvement program established under the section.

On page 26, between lines 13 and 14, insert the following:

(c) TRAFFIC MONITORING, MANAGEMENT, AND CONTROL FACILITIES AND PROGRAMS.—The first sentence of section 149(b) of title 23, United States Code, is amended—

(1) in paragraph (2), by striking ''or'' at the end;

(2) in paragraph (3), by striking the period at the end and inserting ''; or''; and

(3) by adding at the end the following:

''(4) to establish or operate a traffic monitoring, management, and control facility or program if the Secretary, after consultation with the Administrator of the Environmental Protection Agency, determines that the facility or program is likely to contribute to the attainment of a national ambient air quality standard.''.

On page 30, strike line 14 and insert the following:

SEC. 119. INTELLIGENT TRANSPORTATION SYSTEMS.

On page 30, lines 15 and 16, strike ''INTELLIGENT VEHICLE-HIGHWAY SYSTEMS'' and insert ''INTELLIGENT TRANSPORTATION SYSTEMS''.

On page 31, lines 1 and 2, strike ''INTELLIGENT VEHICLE-HIGHWAY SYSTEMS'' and insert ''INTELLIGENT TRANSPORTATION SYSTEMS''.

On page 31, lines 10 and 11, strike ''intelligent vehicle-highway systems'' and insert ''intelligent transportation systems''.

On page 31, between lines 20 and 21, insert the following:

(c) CONFORMING AMENDMENTS.—

(1) The table in section 1107(b) of the Intermodal Surface Transportation Efficiency Act of 1991 (Public Law 102–240; 105 Stat. 2048) is amended—

(A) in item 10, by striking ''(IVHS)'' and inserting ''(ITS)''; and

(B) in item 29, by striking ''intelligent/vehicle highway systems'' and inserting ''intelligent transportation systems''.

(2) Section 6009(a)(6) of the Intermodal Surface Transportation Efficiency Act of 1991 (Public Law 102–240; 105 Stat. 2176) is amended by striking ''intelligent vehicle highway systems'' and inserting ''intelligent transportation systems''.

(3) Part B of title VI of the Intermodal Surface Transportation Efficiency Act of 1991 (Public Law 102–240; 23 U.S.C. 307 note) is amended—

(A) by striking the part heading and inserting the following:

''PART B—INTELLIGENT TRANSPORTATION SYSTEMS'';

(B) in section 6051, by striking ''Intelligent Vehicle-Highway Systems'' and inserting ''Intelligent Transportation Systems'';

(C) by striking ''intelligent vehicle-highway systems'' each place it appears and inserting ''intelligent transportation systems'';

(D) in section 6054—

(i) in subsection (a)(2)(A), by striking ''intelligent vehicle-highway'' and inserting ''intelligent transportation systems''; and

(ii) in the subsection heading of subsection (b), by striking ''INTELLIGENT VEHICLE-HIGHWAY SYSTEMS'' and inserting ''INTELLIGENT TRANSPORTATION SYSTEMS'';

(E) in the subsection heading of section 6056(a), by striking ''IVHS'' and inserting ''ITS'';

(F) in the subsection heading of each of subsections (a) and (b) of section 6058, by striking ''IVHS'' and inserting ''ITS''; and

(G) in the paragraph heading of section 6059(1), by striking ''IVHS'' and inserting ''ITS''.

(4) Section 310(c)(3) of the Department of Transportation and Related Agencies Appropriations Act, 1995 (Public Law 103–331; 23 U.S.C. 104 note), is amended by striking ''intelligent vehicle highway systems'' and inserting ''intelligent transportation systems''.

(5) Section 109(a) of the Hazardous Materials Transportation Authorization Act of 1994 (Public Law 103–311; 23 U.S.C. 307 note) is amended—

(A) by striking ''Intelligent Vehicle-Highway Systems'' each place it appears and inserting ''Intelligent Transportation Systems''; and

(B) by striking ''intelligent vehicle-highway system'' and inserting ''intelligent transportation system''.

(6) Section 5316(d) of title 49, United States Code, is amended—

(A) in the subsection heading, by striking ''INTELLIGENT VEHICLE-HIGHWAY'' and inserting ''INTELLIGENT TRANSPORTATION''; and

(B) by striking ''intelligent vehicle-highway'' each place it appears and inserting ''intelligent transportation''

On page 33, line 19, strike ''intelligent vehicle-highway systems'' and insert ''intelligent transportation systems''.

On page 36, line 12, strike the quotation marks and the following period.

On page 36, between lines 12 and 13, insert the following:

''(24) State Route 168 (South Battlefield Boulevard), Virginia, from the Great Bridge Bypass to the North Carolina State line.''.

On page 38, beginning on line 2, strike ''and shall not'' and all that follows through ''program'' on line 4.

On page 40, strike lines 1 through 3.

On page 43, between lines 14 and 15, insert the following:

SEC. 1___. REPORT ON ACCELERATED VEHICLE RETIREMENT PROGRAMS.

Not later than 180 days after the date of enactment of this Act, the Administrator of the Environmental Protection Agency shall transmit to Congress a report evaluating the effectiveness of all accelerated vehicle retirement programs described in section 108(f)(1)(A)(xvi) of the Clean Air Act (42 U.S.C. 7408(f)(1)(A)(xvi)) in existence on the date of enactment of this Act. The report shall evaluate—

(1) the certainties of emissions reductions gained from each program;

(2) the variability of emissions of retired vehicles;

(3) the reduction in the number of vehicle miles traveled by the vehicles retired as a result of each program;

(4) the subsequent actions of vehicle owners participating in each program concerning the purchase of a new or used vehicle or the use of such a vehicle;

(5) the length of the credit given to a purchaser of a retired vehicle under each program;

(6) equity impacts of the programs on the used car market for buyers and sellers; and

(7) such other factors as the Administrator determines appropriate.

On page 57, line 4, insert ''and'' at the end.

On page 57, line 8, strike ''and'' at the end.

On page 57, strike lines 9 through 11.

NICKLES AMENDMENT NO. 1466

Mr. NICKLES proposed an amendment to the bill S. 440, supra; as follows:

At the appropriate place in title I, insert the following:

SEC. 1 . INTERCITY RAIL INFRASTRUCTURE INVESTMENT FROM MASS TRANSIT ACCOUNT OF HIGHWAY TRUST FUND.

Section 5323 of title 49, United States Code, is amended by adding at the end the following new subsection:

''(m) INTERCITY RAIL INFRASTRUCTURE INVESTMENT.—Any assistance provided to a State that does not have Amtrak service as of date of enactment of this Act from the Mass Transit Account of the Highway Trust Fund may be used for capital improvements to, and operating support for, intercity passenger rail service.''.

STEVENS AMENDMENT NO. 1467

Mr. STEVENS proposed an amendment to the bill S. 440, supra, as follows:

At the appropriate place in title I of the bill insert the following new section:

SEC. . MORATORIUM.

(a) IN GENERAL.—Notwithstanding any other provision of law, no agency of the Federal government may take any action to prepare, promulgate, or implement any rule or regulation addressing rights of way authorized pursuant to Revised Statutes 2477 (43 U.S.C. 932), as such law was in effect prior to October 21, 1976.

(b) This section shall cease to have any force or effect after December 1, 1995.

NOTICE OF HEARINGS

PERMANENT SUBCOMMITTEE ON INVESTIGATIONS

Mr. ROTH. Mr. President, I would like to announce for the information of the Senate and the public that the Permanent Subcommittee on Investigations of the Committee on Governmental Affairs, will hold hearings regarding the investigation of friendly fire incident during the Persian Gulf war.

This hearing will take place on Thursday, June 29, 1995, in room 342 of the Dirksen Senate Office Building. For further information, please contact Harold Damelin of the subcommittee staff at 224–3721.

AUTHORITY FOR COMMITTEES TO MEET

COMMITTEE ON THE JUDICIARY

Mr. WARNER. Mr. President, I ask unanimous consent that the Committee on the Judiciary be authorized to hold a business meeting during the session of the Senate on Thursday, June 22, 1995, at 10:15 a.m. in SD 226.

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

COMMITTEE ON LABOR AND HUMAN RESOURCES

Mr. WARNER. Mr. President, I ask unanimous consent that the Committee on Labor and Human Resources be authorized to meet for a hearing on the Oversight of OSHA, during the session of the Senate on Thursday, June 22, 1995, at 9:30 a.m.

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

SUBCOMMITTEE ON INDIAN AFFAIRS

Mr. WARNER. Mr. President, I ask unanimous consent that the Committee on Indian Affairs be authorized to meet on Thursday, June 22, 1995, beginning at 9:30 a.m., in room G–50 of the Dirksen Senate Office Building on S. 487, a bill to amend the Indian Gaming Regulatory Act, and for other purposes.

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

SUBCOMMITTEE ON DRINKING WATER, FISHERIES, AND WILDLIFE

Mr. WARNER. Mr. President, I ask unanimous consent that the Subcommittee on Drinking Water, Fisheries, and Wildlife be granted permission to meet Thursday, June 22, at 10 a.m., to conduct an oversight hearing on the National Marine Fisheries Service policy on spills at Columbia River hydropower dams, gas bubble trauma in endangered salmon, and the scientific methods used under the Endangered Species Act which gave rise to that policy.

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

SUBCOMMITTEE ON FORESTS AND PUBLIC LAND MANAGEMENT

Mr. WARNER. Mr. President, I ask unanimous consent that the Subcommittee on Forests and Public Land Management of the Committee on Energy and Natural Resources be granted permission to meet during the session of the Senate on Thursday, June 22, 1995, for purposes of conducting a subcommittee hearing which is scheduled to begin at 9:30 a.m. The purpose of this hearing is to receive testimony on S. 852, a bill to provide for uniform management of livestock grazing on Federal land, and for other purposes.

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

ADDITIONAL STATEMENTS

THE TELECOMMUNICATIONS BILL

• Mr. ABRAHAM. Mr. President, I want to take a few moments to set forth the reasoning behind a number of my votes with respect to S. 652, the telecommunications bill. Although S. 652 would not deregulate the telecommunications industry as much or as quickly as I would like, it eventually would lead to competition in a number of telecommunications markets that currently are monopolistic. Specifically, the bill would remove artificial barriers to competition in the phone services markets as well as in the cable, equipment manufacturing, and other markets. I, therefore, supported final passage of S. 652.

Much of the debate concerning the bill focused on the issue of RBOC entry into the long-distance market. An amendment offered by Senator MCCAIN, No. 1261, would have defined the term ''public interest'' as it relates to the FCC's decision as to whether to allow a Bell to enter the long-distance market. The bill as introduced did not define that term. I voted for the McCain amendment because the absence of such a definition would give the FCC virtually absolute discretion as to whether a Bell can enter the long-distance market—or, put differently, as to whether consumers will enjoy the benefits of full competition in that market.

The Senate's rejection of McCain amendment No. 1261 was part of the reason for my vote against the Dorgan-Thurmond amendment, No. 1265. The Dorgan-Thurmond amendment would have added yet another layer of regulatory obstacles to the RBOC's entry into the long-distance market. The bill already would have required a Bell to satisfy an extensive competitive checklist and to secure the FCC's public interest determination before entering the long-distance market; and even then, the Bell could enter that market only through a separate subsidiary. Moreover, the bill would for the first time allow utility and cable companies to compete for the Bells' local customers, thereby further reducing the Bells' ability to subsidize predatory pricing in the long-distance market by raising the prices paid by local customers. Thus, the Dorgan-Thurmond amendment, by requiring the Bells additionally to secure the approval of the Department of Justice before entering the long-distance market, would only delay unnecessarily the arrival of full competition in that market. To paraphrase Holmes, three layers of regulatory obstacles is enough.

From the outset of the Senate's consideration of S. 652, I was concerned that the bill might mandate discounted telecommunications rates for selected groups. The cost of such mandatory discounts is inevitably passed on to customers whose rates are not set by Congress, and thus often falls, at least in part, on poorer customers who cannot muster the lobbying clout necessary to secure special treatment. Moreover, apart from the equities of the issue, I think Government exceeds its legitimate role when it sets special telecommunications rates for favored groups. I, therefore, supported McCain amendment No. 1262, which would have struck bill language, contained in section 310, that would force telecommunications providers to provide their services to schools and hospitals at discounted rates. After the Senate rejected amendment 1262, I voted for another McCain amendment, No. 1285, that at least would subject section 310 to means testing. The amendment passed.

Finally, I want to set forth in detail my reasons for supporting McCain amendment No. 1276. This amendment would jettison our current crazy-quilt of universal-service subsidies, in favor of a means tested voucher system. The universal-service subsidies and rate-averaging schemes currently in place have as their principal effect the perpetuation of telephone service monopolies in rural areas. These schemes exclude competitors from rural telephone service markets in two ways. First, by keeping rural rates artificially low, rate averaging reduces if not eliminates the incentive of would-be competitors to enter the rural services market. Second, the subsidization of existing providers effectively bars the entry into those markets of competitors who would not be similarly subsidized. In contrast, a voucher system would not distort market signals or suppress competition in the markets whose customers it seeks to help. Thus, the need-based voucher system described in the McCain amendment would be vastly preferable to the current and proposed cost-based schemes, which make the inner-city poor pay higher phone rates so that customers in remote areas, including wealthy resort areas, can enjoy lower rates.•

THE ABOLITION OF THE DEATH PENALTY IN SOUTH AFRICA

• Ms. MOSELEY-BRAUN. Mr. President, the new Government of South Africa has just abolished the death penalty.

As we all know, South Africa has undergone incredible changes in the last 2 years. They have achieved nothing short of a revolution—peacefully, via the ballot box. They have abolished apartheid and rebuilt their government and institutions to reflect real majority rule. The American people can take pride in the fact that American leadership in imposing international sanctions played a significant role in making this negotiated revolution possible, and the Government of Nelson Mandela a reality.

South Africa has looked to the United States as a model as it creates its institutions of government. I recently met with member of Parliament Johnny DeLange, chairman of the equivalent of our Judiciary Committee in the South African Parliament, who was in the United States to study how Congress and the Justice Department interact. Likewise, the new Constitutional Court, the equivalent of the Supreme Court, has looked to American jurisprudence for guidance in a variety of areas of the law.

As a lawyer and a Senator, I take pride in the fact that South Africa is looking to our legal system and our body of laws as a model. But in the case of the death penalty, after thoroughly examining its practice in the United States, the 11 justices of the

Constitutional Court of South Africa unanimously concluded the death penalty is cruel and unusual punishment subject to elements of arbitrariness and the possibility of error.

The case before the Constitutional Court, *Makwanyane and McHunu* versus *State*, stemmed from an intra-family murder-for-hire which occurred in July 1987. Five people died when their hut was set on fire. Both men who carried out the attack and the man who hired them were convicted of murder and sentenced to death. The issues raised before the court concerned not the facts of the crime, but rather the constitutionality of the death penalty. Attorneys for the defendants cited the long history of racial discrimination and the arbitrary application of the death penalty in the United States as grounds for outlawing this ultimate punishment. The South African court heard that the United States practice of leaving capital punishment to the discretion of the judge and jury opens the door to the inevitable influences of race, poverty, and the quality of representation.

In effect, the South African court came to the same conclusion as former United States Supreme Court Justice Harry Blackmun, who concluded that the death penalty experiment has failed. Although Blackmun repeatedly voted to uphold capital punishment in the belief that the law could be channeled to guarantee its fair application, he ultimately decided that he could no longer ''Tinker with the machinery of death.''

South Africa had a history of applying the death penalty in an even more arbitrary fashion than the United States. Until the use of the death penalty was suspended in February 1990, South Africa had one of the highest rates of judicial executions in the world. The previous government executed 1,217 people between 1980 and 1989. And, as in the United States, it was much more common for a black defendant to be sentenced to death than a white defendant. In 1988, 47 percent of black defendants convicted of murdering whites were sentenced to death; 2.5 percent of blacks convicted of murdering other blacks were sentenced to death; while no whites convicted of killing blacks were given the death penalty.

I want to emphasize that the abolition of the death penalty will not result in impunity for those who commit the most heinous of crimes. But South Africa concluded that even in the country they looked to for guidance, the United States, the death sentence had not been shown to be materially more effective at deterring or preventing murder than the alternative sentence of life imprisonment.

The Government of South Africa has come to the decision that the recognition of the right to life and dignity is incompatible with the death penalty. I applaud them for it.●

MAJ. GEN. DAVID P. DE LA VERGNE

● Mr. GORTON. Mr. President, I am honored to offer my congratulations to Maj. Gen. David P. de la Vergne, who retires on June 25, 1995, as commanding general and civilian executive officer of Fort Lawton, WA.

The general's career has been exemplary. A native of Meriden, CT, he graduated from the Citadel and was commissioned a second lieutenant in 1961. After attending the infantry officer's basic and counterintelligence officers course, he served as special agent in charge of the Hartford Resident Office of the 108th Intelligence Corps Group. He did tours in Germany as operations officer of the 207th Military Intelligence Detachment and as commander of the Columbia Field Office of the 111th Military Intelligence Group. Posted to I Corps Advisory Group, Military Assistance Command Vietnam, he served as order of battle advisor and sector intelligence advisor, and then returned from Vietnam to serve as security officer for the Defense Language Institute in Monterey, CA.

After leaving active military duty in 1971, Major General de la Vergne was assigned to the 6211th U.S. Army Garrison, Presidio of San Francisco, where he served as inspector general, S–1, comptroller, and deputy commander before leaving to assume command of the 2d Battalion, 363d Regiment, 4th Brigade, 91st Division, training; Returning to the 6211th in 1981, he served as the garrison commander for 3 years before leaving for the 124th ARCOM, where he served as deputy chief of staff, resource management, as deputy chief of staff, operations, and then as chief of staff and deputy commander prior to his current assignment as commanding general.

Major General de la Vergne is a graduate of the Command and General Staff College and the Army War College, and he has completed courses at the Intelligence School, the Defense Language Institute, the Industrial College of the Armed Forces, the Inspector General School, the U.S. Army Institute for Administration and the Army Logistics Management Center.

His decorations include the Bronze Star, the Meritorious Service Medal with Oak Leaf Cluster, the Air Medal, the Joint Service Commendation Medal, the Army Commendation Medal with two Oak Leaf Clusters, the Republic of Vietnam Cross of Gallantry with Bronze Star and the Republic of Vietnam Honor Medal First Class.

Time and time again, the general has proven his mettle and displayed most excellent leadership. To quote from the citation for his Distinguished Service Medal, which will be awarded on the occasion of his official change of command ceremony on June 25, 1995:

. . . for exceptionally meritorious service of great responsibility:

Major General David P. de la Vergne distinguished himself by exceptionally meritorious service in successive positions of great responsibility from 15 March 1988 to 27 March 1995. In all assignments, General de la Vergne displayed unexcelled leadership and absolute dedication. As Chief of Staff and later Deputy Commander, 124th United States Army Reserve Command (ARCOM), Fort Lawton, Washington, he displayed exceptional vision, skill, and tenacity in the management and direction of major Army activities. Culminating his distinguished service as Commander of the 124th ARCOM, General de la Vergne took immediate steps to provide the ARCOM with a positive image of its leaders and mission. General de la Vergne's energetic approach for improvement in training, logistics, and recruiting resulted in the molding of a mission-capable unit. His dynamic leadership and unique managerial abilities were instrumental in achieving significant improvements in the readiness posture of the 124th ARCOM elements. This was most evident during the mobilization of nine units to support Operation DESERT SHIELD and Operation DESERT STORM. Major General de la Vergne's unswerving dedication, outstanding service, professional skill, and superb leadership reflect great credit upon him, the United States Army Reserve and the United States Army.''

I want to thank Major General de la Vergne for his many years of service to this country, and I wish him and his wife, Elinor, all the best.●

RECOGNIZING THE ACHIEVEMENTS OF DISTINGUISHED ANNE ARUNDEL COUNTY YOUTH

● Ms. MIKULSKI. Mr. President, it is with a great deal of pride and satisfaction that I commend to your attention a number of young adults from Anne Arundel County. These outstanding individuals are listed below, and they are outstanding because of their character, their academic achievements, and their contributions to their home communities.

Three years ago, an organization was formed in Anne Arundel County by one of my college classmates, Dr. Orlie Reid. He and other caring individuals gathered together to discuss what could be done to encourage our youth to perform at their highest levels and to be community minded, to reinforce the positive and discourage the negative. The Concerned Black Males of Annapolis has done just that since its inception in 1992.

On Monday, June 26, 1995, CBM is recognizing 88 young men and women at its first annual awards dinner. These students were nominated by church, school and community leaders. I extend my heartiest congratulations to them all for their efforts, and to the organizers of the Awards Dinner and the founders of Concerned Black Males of Annapolis. A concerned community working with youth sets a fine example, and CBM has proven over the years that it works. My best to all of them.●

WHITE HOUSE CONFERENCE ON SMALL BUSINESS

● Mr. KYL. Mr. President, the White House Conference on Small Business

met earlier this month to consider issues of concern to small business men and women around the country, and to make recommendations to this Congress about what it can do to make Federal policy more responsive to small business's needs.

The men and women who attended the conference represent a vital economic force in the country. There are more than 20 million small businesses in the United States, and they represent the fastest growing sector of the economy. Small businesses provided all of the net new jobs created between 1987 and 1992. They employed 54 percent of the private work force in 1990. Small businesses provide two of every three new workers with their first job. Small businesses contributed 40 percent of the Nation's new high-technology jobs during the past decade. Together, they truly represent the engine that drives our Nation's economy.

So when small business leaders speak out on issues of concern, it would behoove the members of the Senate and the House to listen. These small business people are the innovators and the job creators. They are the ones on the front lines who have to wade through government rules and regulations every day, pay the taxes, and still find a way to compete in domestic and international markets.

If we are interested in economic growth and opportunity in this country—if we want an economy that is healthy and creating new jobs, and can compete around the world—we ought to take note of what small businessmen and women have to tell us.

And, Mr. President, this is what the delegates to the White House Conference had to say—these are the top-ten vote-getting resolutions approved by the Conference:

No. 1: Clarify the definition of independent contractor for tax purposes—1,471 votes. The Conference called on Congress to recognize the legitimacy of an independent contractor; to develop more realistic and consistent guidelines for IRS auditors, courts, employers and State agencies to follow.

No. 2: Permit a 100 percent deduction for business meal and entertainment expenses—1,444 votes. Small businesses typically rely on close personal relationships and customer service to compete for sales, rather than expensive advertising campaigns. Expenditures for meals and entertainment are often an important part of that effort.

No. 3: Strengthen the Regulatory Flexibility Act—1,398 votes. In addition to making the act applicable to all Federal agencies, the Conference recommended that cost-benefit analyses, scientific benefit analyses, and risks assessments be required.

No. 4: Repeal the Federal estate, gift, and generation-skipping transfer tax laws—1,385 votes. As the members of the Conference noted in their resolution, ''the negative effect (of these transfer taxes) on small business, and others, far exceeds the net income to the Government when all administrative costs to individuals, businesses, and government are considered.''

No. 5: Reform the Superfund law—1,371 votes. Delegates recommended the elimination of retroactive and strict liability prior to 1987, and called for sound science, realistic risk assessments, and cost-benefit analyses in assessing health and environmental hazards.

Mr. President, we ought to act promptly on all of these issues; bring them to the floor, debate them and vote on each of them at the earliest date practicable. I wanted to begin today, however, by speaking about one of the top five resolutions in particular, the one that received the fourth highest number of votes, a resolution that endorsed the Family Heritage Preservation Act, S. 628.

I introduced that measure earlier this year with the distinguished Senator from North Carolina, Senator HELMS. Representative CHRIS COX introduced the companion bill in the House of Representatives.

The Federal estate tax is actually one of the most wasteful and unfair taxes on the books today, and it is no wonder that small business leaders are urging its repeal. By confiscating up to 55 percent of a family's after-tax savings, it penalizes people for a lifetime of hard work, savings, and investment. It hurts small business and costs jobs. The result is that people spend their time, energy, and money trying to avoid the tax—for example, by setting up trusts and other devices—rather than devoting their resources to more productive economic uses.

The estate tax hits small family businesses particularly hard. It strips companies of much-needed capital at the worst possible time—under a change of ownership and oversight following the principle owner's death.

According to a 1993 survey by Prince and Associates—a Stratford, CT research and consulting firm—9 out of 10 family businesses that failed within 3 years of the principal owner's death said that ''trouble paying estate taxes'' contributed to their companies' demise. Sixty percent of family-owned businesses fail to make it to the second generation, and 90 percent do not make it to a third generation.

If the Tax Code were revised to eliminate these transfer taxes, small businesses would have a fighting chance; and the Nation would likely experience significant economic benefits by the year 2000. According to a report by the Institute for Research on the Economics of Taxation [IRET] ''GDP would be $79.22 billion greater, 228,000 more people would be employed, and the amount of accumulated savings and capital would be $630 billion larger than projected under present law'' by the end of the century.

Small business leaders recognize how counterproductive the estate tax really is, and that's why they specifically endorsed the Family Heritage Preservation Act at the White House Conference. That's why my bill is supported by the Small Business Council of America, the Small Business Survival Committee, Americans for Tax Reform, and the 60 Plus Association. The National Federation of Independent Business and the Independent Forest Products Association have called for estate tax reform.

Mr. President, I want to conclude by thanking the delegates to the White House Conference for their thoughtful, hard work. And, I wanted to make special note of the work of Mary Lou Bessette, who chaired the Arizona State delegation and carried out her responsibilities in an exemplary manner. She kept the group focused and on track, and was well respected by its members. Another member of the delegation, Sandy Abalos, served as Arizona tax chair. Her hard work and determination were reflected in the successful outcome of the Conference.

And finally, I wanted to commend Joy Staveley, who was my appointment to the Conference, and who served as environmental chair for the State. All four of her environmental resolutions made it into the top 60 final recommendations to emerge from the Conference session.

A job well done to all the members of Arizona's delegation and to all the delegates from around the country. Now it's time for the Senate and House to act on the good advice from the leaders of the Nation's small businesses. I invite my colleagues to join me as a cosponsor of the Family Heritage Preservation Act, and to begin addressing the other recommendations of the White House Conference as well.●

THE 25TH ANNUAL IRISH HERITAGE FESTIVAL

● Mr. BRADLEY. Mr. President, our country is a remarkable mosaic—a mixture of races, languages, ethnicities, and religions—that grows increasingly diverse with each passing year. Nowhere is this incredible diversity more evident than in the State of New Jersey. In New Jersey, schoolchildren come from families that speak 120 different languages at home. These different languages are used in over 1.4 million homes in my State. I have always believed that one of the United States greatest strengths is the diversity of the people that make up its citizenry and I am proud to call the attention of my colleagues to an event in New Jersey that celebrates the importance of the diversity that is a part of America's collective heritage.

On June 4, 1995, the Garden State Arts Center in Holmdel, NJ, began its 1995 Spring Heritage Festival Series. This heritage festival program salutes many of the different ethnic communities that contribute so greatly to New Jersey's diverse makeup. Highlighting old country customs and culture, the festival programs are an opportunity to express pride in the ethnic

backgrounds that are a part of our collective heritage. Additionally, the spring heritage festivals will contribute proceeds from their programs to the Garden State Arts Center's cultural center fund which presents theater productions free of charge to New Jersey's school children, seniors, and other deserving residents. The heritage festival thus not only pays tribute to the cultural influences from our past, it also makes a significant contribution to our present day cultural activities.

On Sunday, June 25, 1995, the heritage festival series will celebrate the 25th annual Irish Heritage Festival. Twenty-five years ago, when John Gallagherr chaired the very first Irish Heritage Festival, he initiated what has become a grand tradition. This year's celebration, chaired by Kathleen Hyland continues this tradition of highlighting Irish entertainers, food, and crafts, THe day begins early in the morning with a piping competition and will feature traditional Irish sports like hurling and Gaelic football. Additionally, a concelebrated liturgy with Msgr. Kevin Flanagan of St. Peter's Roman Catholic Church, in Parsippany assisted by numerous Irish clergy from throughout New Jersey, will be offered for lasting peace and justice in Ireland. After the liturgy a noon mall show will feature many gifted Irish entertainers including: Daniel O'Donnell, Celtic Cross, Richie O'Shea, Willie Lynch, Barley Bree, Mary McGonigle, and Mike Byrne Band. Over 25,000 people are expected to turnout to eat good food, enjoy traditional music and dance, and to avail themselves of the opportunity to pay tribute to their Irish heritage.

On behalf of the almost 1 million New Jerseyans of Irish descent, who contribute so much energy and vitality to my great and diverse State, I offer my congratulations on the occasion of the 25th annual Irish Heritage Festival.●

CAMBODIA

● Mr. THOMAS. Mr. President, I would like to make a brief comment today about a recent development in Cambodia which I believe does not bode well for the emergent democracy in that country. Last Monday, June 19, the Cambodian National Assembly expelled the representative of northern Siem Reap khet and an outspoken critic of corruption in his country's government, former Finance Minister Sam Rainsy. The move was to be officially announced today.

Cambodia held its first democratic elections in May 1993, under the guidance of the U.N. Transitional Authority. The fragile multiparty coalition that emerged, less a result of electoral processes than power politics and accommodations among the different factions, has depended for its survival mainly on the expedient relationship between the co-prime ministers: Prince Norodom Ranariddh of the Royalist National United Front for an Independent Neutral Peaceful and Cooperative Cambodia [FUNCINPEC] and Hun Sen of the Cambodian People's Party [CPP]. Since 1993, outside observers have often characterized the growth of democracy there as two steps forward, one step back.

Mr. President, the expulsion of Rainsy is just one such step backward. Rainsy was a founding member of FUNCINPEC, and was appointed the party's second representative to the Supreme National Council—the preelection transitional governing body. As the first Finance Minister in the newly established government, Sam Rainsy won praise for successfully balancing the country's first budget. Unfortunately for him, he was also a critic of the country's pervasive and entrenched political corruption which brought him into conflict with members of his own, as well as other parties. He complained publicly that Cambodia's banking system was riddled with corruption and that most private banks were simply fronts for money laundering. His decision to contract with a French company—Total—to promote efficiency in the country's kickback-racked oil distribution system brought him into a jurisdictional dispute with the CPP-headed Commerce Ministry, and made enemies of some powerful and politically influential distributors. Similarly, his decision to take on Thai Boon Rong Co. over the latter's attempts to extract payments from vendors in the Olympic Marketplace made him few high placed friends.

Rainsy's continuing allegations became sufficiently embarrassing to the powers-that-be that he was fired from the Cabinet in October last year. Although fired from the Cabinet, Rainsy became even more vocal in his criticisms. For example, he led an attempt in the assembly to review a series of nontransparent contracts between the government and several influential private contractors, but was rebuffed. Still apparently uncomfortable with Rainsy's position, Prince Ranariddh —in a move that many analysts saw as a power play, a flexing of his political muscle as leader of FUNCINPEC—lobbied to have Rainsy ousted from the party as well. He was successful, and Rainsy was expelled in May.

Things did not stop there, though. Ranariddh then sought to have Rainsy expelled from Parliament on the grounds that he was elected as a member of a specific party and that, having decided to leave that party, should not be allowed to keep his seat. At one point, he even threatened to resign if Rainsy was not expelled. Rainsy waged an international campaign to retain his seat, arguing that he was elected by the voters of Siem Reap to represent them and not the party. He was not successful, however. Rainsy was expelled by a 9 to 3 vote by a permanent committee of the assembly headed by assembly Chairman Chea Sim, his deputy, and several standing committee chairmen.

I view this move with great concern. Mr. President, this situation would be analogous to a Member of the U.S. House of Representatives deciding to vote against the party line or change her party affiliation—a move with which we are not unfamiliar—and consequently being unseated and replaced by the House leadership. The move was made without a vote of the assembly, or recourse to the Member's constituency; in fact, that the vote would be on the committee agenda was secret from its members until they had gathered to vote on unrelated legislation. Moreover, yesterday a report in the Hong Kong press indicated that at least two of the deputies whom purportedly signed the expulsion petition—Prince Norodom Sirivut and another MP who preferred to remain anonymous—have said they did no such thing. This is not how representative government works.

The point behind the expulsion is clear: internal discontent with the leader of the government will not be tolerated. The move is sure to have a chilling effect on other MP's who do not toe the exact party line such as Ieng Muli, the present Information Minister and member of the Buddhist Liberal Democratic Party. It also signals a severe blow to what many saw as the only opposition voice to the government outside the Khmer Rouge. I fear that it signals the transformation of the National Assembly from an open deliberative body into one that simply serves to rubber-stamp the decisions of the leadership. As one MP put it, if the No. 2 man in the country's largest party can be brought down, regardless of the wishes of his constituents, solely for the reason of expressing his personal and political opinions, then who is safe?

Mr. President, I realize that my disapproval will likely mean little to the forces allied against Sam Rainsy. But they should know that I and other Members are watching them closely, and with each increasing threat they pose to democracy there they make one less friend here, and make much less likely the coming forth of support—economic or otherwise—for their country.●

EXECUTIVE SESSION

EXECUTIVE CALENDAR

Mr. D'AMATO. Mr. President, I ask unanimous consent that the Senate proceed to executive session and immediately proceed to executive calendar nomination numbers 196 through 204, and all nominations be placed on the Secretary's desk in the Air Force, Army, Navy, en bloc; I further ask unanimous consent that the nominations be confirmed en bloc, the motions to reconsider be laid upon the table en bloc, and any statements relating to

the nominations appear at the appropriate place in the RECORD, the President be immediately notified of the Senate's action and that the Senate then return to legislative session.

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

The nominations considered and confirmed en bloc are as follows:

AIR FORCE

The following-named officer for reappointment to the grade of general while assigned to a position of importance and responsibility under title 10, United States Code, section 601:

To be general

Gen. James L. Jamerson, 000–00–0000, United States Air Force.

ARMY

The following-named officer to be placed on the retired list in the grade indicated under the provisions of title 10, United States Code, section 1370:

To be lieutenant general

Lt. Gen. Kenneth R. Wykle, 000–00–0000, United States Army.

The following-named officer for appointment to the grade of lieutenant general while assigned to a position of importance and responsibility under title 10, United States Code, section 601(a):

To be lieutenant general

Maj. Gen. Hubert G. Smith, 000–00–0000, United States Army.

The following United States Army National Guard officers for promotion in the Reserve of the Army to the grades indicated under Title 10, United States Code, sections 3385, 3392 and 12203(a).

To be major general

Brig. Gen. Crayton M. Bowen, 000–00–0000
Brig. Gen. James D. Davis, 000–00–0000
Brig. Gen. Robert J. Mitchell, 000–00–0000
Brig. Gen. John E. Prendergast, 000–00–0000
Brig. Gen. Robert E. Schulte, 000–00–0000
Brig. Gen. Walter L. Stewart, Jr., 000–00–0000
Brig. Gen. Carroll Thackston, 000–00–0000

To be brigadier general

Col. Lance A. Talmage, Sr., 000–00–0000
Col. Robert A. Morgan, 000–00–0000
Col. John E. Blair, 000–00–0000
Col. Phillip O. Peay, 000–00–0000
Col. Robert D. Whitworth, 000–00–0000
Col. Ronald W. Henry, 000–00–0000
Col. Vandiver H. Carter, 000–00–0000
Col. Troy B. Oliver, 000–00–0000
Col. Don C. Morrow, 000–00–0000
Col. Smythe J. Williams, 000–00–0000
Col. William W. Austin, 000–00–0000
Col. Jean A. Romney, 000–00–0000
Col. James T. Dunn, 000–00–0000
Col. Paul T. Ott, 000–00–0000
Col. Reid K. Beveridge, 000–00–0000
Col. Bertus L. Sisco, 000–00–0000
Col. Jim E. Morford, 000–00–0000
Col. Willie A. Alexander, 000–00–0000
Col. Steven P. Solomon, 000–00–0000
Col. Jerry V. Grizzle, 000–00–0000
Col. James V. Torgerson, 000–00–0000

NAVY

The following-named Rear Admirals (lower half) in the line of the United States Navy for promotion to the permanent grade of Rear Admiral, pursuant to title 10, United States Code, section 624, subject to qualifications therefore as provided by law:

UNRESTRICTED LINE OFFICER

To be rear admiral

Rear Adm. (lh) Charles Stevens Abbot, 000–00–0000, U.S. Navy
Rear Adm. (lh) Michael Lee Bowman, 000–00–0000, U.S. Navy
Rear Adm. (lh) Frank Matthew Dirren, Jr., 000–00–0000, U.S. Navy
Rear Adm. (lh) Marsha Johnson Evans, 000–00–0000, U.S. Navy
Rear Adm. (lh) Henry Collins Giffin, III, 000–00–0000, U.S. Navy
Rear Adm. (lh) Lee Fredric Gunn, 000–00–0000, U.S. Navy
Rear Adm. (lh) Michael Donald Haskins, 000–00–0000, U.S. Navy
Rear Adm. (lh) Henry Francis Herrera, 000–00–0000, U.S. Navy
Rear Adm. (lh) Francis William Lacroix, 000–00–0000, U.S. Navy
Rear Adm. (lh) Thomas Fletcher Marfiak, 000–00–0000, U.S. Navy
Rear Adm. (lh) Richard Willard Mies, 000–00–0000, U.S. Navy
Rear Adm. (lh) Robert Joseph Natter, 000–00–0000, U.S. Navy
Rear Adm. (lh) Robert Michael Nutwell, 000–00–0000, U.S. Navy
Rear Adm. (lh) James Gregory Prout III, 000–00–0000, U.S. Navy
Rear Adm. (lh) James Reynolds Stark, 000–00–0000, U.S. Navy
Rear Adm. (lh) Robert Sutton, 000–00–0000, U.S. Navy
Rear Adm. (lh) Jay Bradford Yakeley III, 000–00–0000, U.S. Navy

ENGINEERING DUTY OFFICER

To be rear admiral

Rear Adm. (lh) Paul Matthew Robinson, 000–00–0000, U.S. Navy

The following-named captains in the staff corps of the Navy for promotion to the permanent grade of rear admiral (lower half), pursuant to title 10, United States Code, section 624, subject to qualification therefore as provided by law:

MEDICAL CORPS

To be rear admiral (lower half)

Capt. Michael Lynn Cowan, 000–00–0000, United States Navy

SUPPLY CORPS

To be rear admiral

Capt. Raymond Aubrey Archer III, 000–00–0000, United States Navy
Capt. Justin Daniel McCarthy, 000–00–0000, United States Navy
Capt. Paul Oscar Soderberg, 000–00–0000, United States Navy

CIVIL ENGINEERING CORPS

To be rear admiral (lower half)

Capt. Robert Lewis Moeller, 000–00–0000, United States Navy
Capt. Michael William Shelton, 000–00–0000, United States Navy

MEDICAL SERVICE CORPS

To be rear admiral (lower half)

Capt. Harold Edward Phillips, 000–00–0000, United States Navy

MARINE CORPS

The following named officer for appointment to the grade of lieutenant general in the United States Marine Corps while assigned to a position of importance and responsibility under title 10, U.S.C., section 601:

To be lieutenant general

Maj. Gen. Paul K. Van Riper, 000–00–0000

The following named officer for reappointment to the grade of lieutenant general in the United States Marine Corps while assigned to a position of importance and responsibility under title 10, U.S.C., section 601:

To be lieutenant general

Lt. Gen. Charles E. Wilhelm, 000–00–0000

The following named officer to be placed on the retired list in the grade indicated under the provisions of title 10, United States Code, section 1370:

To be general

Gen. Carl E. Mundy, Jr., 000–00–0000, United States Marine Corps.

IN THE AIR FORCE, ARMY, FOREIGN SERVICE, NAVY

Air Force nominations beginning Danny N. Armstrong, and ending James R. Wilson, which nominations were received by the Senate and appeared in the Congressional Record of April 24, 1995

Air Force nominations beginning Maj. William M. Altman, III, and ending Maj. Philip M. Abshere, which nomination were received by the Senate and appeared in the Congressional Record of May 23, 1995

Army nominations beginning Richard F. Anderson, and ending Igwekala E. Njoku, which nominations were received by the Senate and appeared in the Congressional Record of May 19, 1995

Army nominations beginning Ronald C. Bredlow, and ending Kay F. Stanton, which nominations were received by the Senate and appeared in the Congressional Record of May 19, 1995

Army nominations beginning James E. Agnew, and ending Jeffrey M. Young, which nominations were received by the Senate and appeared in the Congressional Record of May 19, 1995

Army nominations beginning Robert T * Aarhus, and ending Annette L * Wuest, which nominations were received by the Senate and appeared in the Congressional Record of May 19, 1995

Army nominations of Robert G. Kowalski, which was received by the Senate and appeared in the Congressional Record of May 23, 1995

Army nominations beginning Joseph F. Miller, and ending Douglas A. Schow, which nominations were received by the Senate and appeared in the Congressional Record of May 23, 1995

Foreign Service nominations beginning Robert A. Kohn, and ending Robert A. Taft, which nominations were received by the Senate and appeared in the Congressional Record of March 23, 1995

Foreign Service nominations beginning Judith A. Futch, and ending Joy Ona Yamamoto, which nominations were received by the Senate and appeared in the Congressional Record of May 15, 1995

Navy nominations beginning Vincent John Andrews, and ending Jerry F. Rea, which nominations were received by the Senate and appeared in the Congressional Record of March 23, 1995

Navy nominations beginning Robert J. Adams, and ending Georgene B. Waecker, which nominations were received by the Senate and appeared in the Congressional Record of April 24, 1995

Navy nominations beginning Milton D. Abner, and ending Thomas G. Warner, which nominations were received by the Senate and appeared in the Congressional Record of Ma, 1995

Navy nominations beginning Camilo L. Abalos, and ending Charlotte A. Thompson, which nominations were received by the Senate and appeared in the Congressional Record of May 19, 1995

Navy nominations beginning Carlton L. Jones, and ending Patrick C. Wrencher, which nominations were received by the Senate and appeared in the Congressional Record of May 23, 1995

LEGISLATIVE SESSION

The PRESIDING OFFICER. Under the previous order, the Senate will now return to legislative session.

EXPRESSING THE SENSE OF THE SENATE WITH RESPECT TO PEACE AND STABILITY IN THE SOUTH CHINA SEA

Mr. D'AMATO. Mr. President, I ask unanimous consent that the Senate proceed to immediate consideration of calendar number 129, Senate Resolution 97.

The PRESIDING OFFICER. Without objection, it is so ordered. The clerk will report.

The legislative clerk read as follows:

A resolution (S. Res. 97) expressing the sense of the Senate with respect to peace and stability in the South China Sea.

The PRESIDING OFFICER. Is there objection to the immediate consideration of the resolution?

There being no objection, the Senate proceeded to consider the resolution, which had been reported from the Committee on Foreign Relations with amendments; as follows:

(The parts of the resolution intended to be stricken are shown in boldface brackets and the parts of the resolution intended to be inserted are shown in italic.)

S. RES. 97

Whereas the South China Sea is a strategically important waterway through which transits approximately 25 percent of the World's ocean freight, including almost 70 percent of Japan's oil supply;

Whereas the South China Sea serves as a crucial sea lane for naval vessels of the United States and other countries, especially in times of emergency;

Whereas the People's Republic of China, the Republic of the Philippines, the Socialist Republic of Vietnam, the Republic of China on Taiwan, the State of Brunei Darussalam, and Malaysia have overlapping and mutually exclusive claims to portions of the South China Sea, especially in the Spratly Island group;

Whereas some of the nations which have claims to portions of the South China Sea are modernizing their military forces, strengthening their ability to project power outside their domestic boundaries, and consequently, are altering the strategic balance of power in the region;

Whereas this power projection capability further drives the concern of nations with territorial claims over acts of aggression in the South China Sea by other nations with claims;

Whereas these competing claims have led to armed conflicts between several of the claimants;

Whereas these conflicts threaten the peace and stability of all of East Asia; and

Whereas the 1992 Manila Declaration of the Association of South East Asian Nations, also recognized by the Socialist Republic of Vietnam and the People's Republic of China, calls on the claimants to exercise restraint and seek a peaceful negotiated solution to the conflicts: Now, therefore, be it

Resolved, That the Senate—

(1) [urges the executive branch to reiterate] *reiterates* to the claimants in the South China Sea that the United States does not take a position on any individual claim;

(2) calls upon all of the claimants to refrain from using military force *or similarly aggressive action* to assert or expand territorial claims in the South China Sea;

(3) urges the executive branch to declare the active support of the United States for the 1992 Manila Declaration of the Association of South East Asian Nations, and calls upon all the claimants to observe faithfully its provisions; and

[(4) calls upon the claimants to scrupulously observe the January, 1995 status quo ante pending any negotiations or resolution of the conflicts between such claimants over such claims.]

(4) would view with profound concern and disapproval any maritime claim or restriction on maritime activity in the South China Sea not strictly consistent with international law.

Mr. D'AMATO. Mr. President, I ask unanimous consent that the resolution, as amended, be considered and agreed to, the preamble as amended be agreed to, and the motion to reconsider be laid upon the table, and any statements relating to the resolution appear at the appropriate place in the RECORD.

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

So the resolution (S. Res. 97), as amended, was considered and agreed to.

The preamble, as amended, was agreed to.

The resolution, as amended, with its preamble, as amended, is as follows:

The resolution was not available for printing. It will appear in a future issue of the RECORD.

ORDER FOR STAR PRINT—REPORT TO ACCOMPANY S. 240

Mr. D'AMATO. Mr. President, I ask unanimous consent that the report accompanying S. 240 be star printed to reflect the following changes, which I now send to the desk.

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

ORDERS FOR FRIDAY, JUNE 23, 1995

Mr. D'AMATO. Mr. President, I ask unanimous consent that when the Senate completes its business today it stand in recess until the hour of 9 a.m., on Friday, June 23, 1995, that following the prayer, the Journal of proceedings be deemed approved to date, the time for the two leaders be reserved for their use later in the day, and there then be a period for morning business until the hour of 9:30 a.m., with Senators to speak for up to 5 minutes each with the exception of the following: Senator DORGAN, 20 minutes, and Senator BAUCUS, 10 minutes.

Further, that at the hour of 9:30 the Senate resume consideration of S. 240, the securities litigation bill and that Senator SHELBY be immediately recognized to offer an amendment relating to proportional liability, and that at the hour of 10:55 a.m., the Senate proceed to a vote on or in relation to the Shelby amendment.

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

PROGRAM

Mr. D'AMATO. For the information of all Senators, the Senate will resume consideration of the securities bill tomorrow at 9:30. Under the previous order the Senate will vote on or in relation to the Shelby amendment regarding proportional liability at 10:55 a.m.

RECESS UNTIL 9 A.M. TOMORROW

Mr. D'AMATO. Mr. President, if there is no further business to come before the Senate, I now ask unanimous consent that the Senate stand in recess under the previous order.

There being no objection, the Senate, at 10:34 p.m., recessed until Friday, June 23, 1995, at 9 a.m.

NOMINATIONS

Executive nominations received by the Senate June 22, 1995:

THE JUDICIARY

TENA CAMPBELL, OF UTAH, TO BE U.S. DISTRICT JUDGE FOR THE DISTRICT OF UTAH, VICE BRUCE S. JENKINS, RETIRED.

CONFIRMATIONS

Executive nominations confirmed by the Senate June 22, 1995:

IN THE AIR FORCE

THE FOLLOWING-NAMED OFFICER FOR REAPPOINTMENT TO THE GRADE OF GENERAL WHILE ASSIGNED TO A POSITION OF IMPORTANCE AND RESPONSIBILITY UNDER TITLE 10, UNITED STATES CODE, SECTION 601:

To be general

GEN. JAMES L. JAMERSON, 000–00–0000

IN THE ARMY

THE FOLLOWING-NAMED OFFICER TO BE PLACED ON THE RETIRED LIST IN THE GRADE INDICATED UNDER THE PROVISIONS OF TITLE 10, UNITED STATES CODE, SECTION 1370:

To be lieutenant general

LT. GEN. KENNETH R. WYKLE, 000–00–0000

THE FOLLOWING-NAMED OFFICER FOR APPOINTMENT TO THE GRADE OF LIEUTENANT GENERAL WHILE ASSIGNED TO A POSITION OF IMPORTANCE AND RESPONSIBILITY UNDER TITLE 10, UNITED STATES CODE, SECTION 601(A):

To be lieutenant general

MAJ. GEN. HUBERT G. SMITH, 000–00–0000

THE FOLLOWING UNITED STATES ARMY NATIONAL GUARD OFFICERS FOR PROMOTION IN THE RESERVE OF THE ARMY TO THE GRADES INDICATED UNDER TITLE 10, UNITED STATES CODE SECTIONS 3385, 3392 AND 12203(A):

To be major general

BRIG. GEN. CRAYTON M. BOWEN, 000–00–0000
BRIG. GEN. JAMES D. DAVIS, 000–00–0000
BRIG. GEN. ROBERT J. MITCHELL, 000–00–0000
BRIG. GEN. JOHN E. PRENDERGAST, 000–00–0000
BRIG. GEN. ROBERT E. SCHULTE, 000–00–0000
BRIG. GEN. WALTER L. STEWART, JR., 000–00–0000
BRIG. GEN. CARROLL THACKSTON, 000–00–0000

To be brigadier general

COL. LANCE A. TALMAGE, SR., 000–00–0000
COL. ROBERT A. MORGAN, 000–00–0000
COL. JOHN E. BLAIR, 000–00–0000
COL. PHILLIP O. PEAY, 000–00–0000
COL. ROBERT D. WHITWORTH, 000–00–0000
COL. RONALD W. HENRY, 000–00–0000
COL. VANDIVER H. CARTER, 000–00–0000
COL. TROY B. OLIVER, 000–00–0000
COL. DON C. MORROW, 000–00–0000
COL. SMYTHE J. WILLIAMS, 000–00–0000
COL. WILLIAM W. AUSTIN, 000–00–0000
COL. JEAN A. ROMNEY, 000–00–0000
COL. JAMES T. DUNN, 000–00–0000
COL. PAUL T. OTT, 000–00–0000
COL. REID K. BEVERIDGE, 000–00–0000
COL. BERTUS L. SISCO, 000–00–0000
COL. JIM E. MORFORD, 000–00–0000
COL. WILLIE A. ALEXANDER, 000–00–0000
COL. STEVEN P. SOLOMON, 000–00–0000
COL. JERRY V. GRIZZLE, 000–00–0000
COL. JAMES V. TORGERSON, 000–00–0000

IN THE NAVY

THE FOLLOWING-NAMED REAR ADMIRALS (LOWER HALF) IN THE LINE OF THE UNITED STATES NAVY FOR PROMOTION TO THE PERMANENT GRADE OF REAR ADMIRAL, PURSUANT TO TITLE 10, UNITED STATES CODE, SECTION 624, SUBJECT TO QUALIFICATIONS THEREFORE AS PROVIDED BY LAW:

UNRESTRICTED LINE OFFICER

To be rear admiral

REAR ADM. (LH) CHARLES STEVENS ABBOT, 000–00–0000
REAR ADM. (LH) MICHAEL LEE BOWMAN, 000–00–0000
REAR ADM. (LH) FRANK MATTHEW DIRREN, JR., 000–00–0000

REAR ADM. (LH) MARSHA JOHNSON EVANS, 000–00–0000
REAR ADM. (LH) HENRY COLLINS GIFFIN, III, 000–00–0000
REAR ADM. (LH) LEE FREDRIC GUNN, 000–00–0000
REAR ADM. (LH) MICHAEL DONALD HASKINS, 000–00–0000
REAR ADM. (LH) HENRY FRANCIS HERRERA, 000–00–0000
REAR ADM. (LH) FRANCIS WILLIAM LACROIX, 000–00–0000
REAR ADM. (LH) THOMAS FLETCHER MARFIAK, 000–00–0000
REAR ADM. (LH) RICHARD WILLIAM MIES, 000–00–0000
REAR ADM. (LH) ROBERT JOSEPH NATTER, 000–00–0000
REAR ADM. (LH) ROBERT MICHAEL NUTWELL, 000–00–0000
REAR ADM. (LH) JAMES GREGORY PROUT, III, 000–00–0000
REAR ADM. (LH) JAMES REYNOLDS STARK, 000–00–0000
REAR ADM. (LH) ROBERT SUTTON, 000–00–0000,
REAR ADM. (LH) JAY BRADFORD YAKELEY, III, 000–00–0000

ENGINEERING DUTY OFFICER

To be rear admiral

REAR ADM. (LH) PAUL MATTHEW ROBINSON, 000–00–0000

THE FOLLOWING-NAMED CAPTAINS IN THE STAFF CORPS OF THE NAVY FOR PROMOTION TO THE PERMANENT GRADE OF REAR ADMIRAL (LOWER HALF), PURSUANT TO TITLE 10, UNITED STATES CODE, SECTION 624, SUBJECT TO QUALIFICATIONS THEREFORE AS PROVIDED BY LAW:

MEDICAL CORPS

To be rear admiral (lower half)

CAPT. MICHAEL LYNN COWAN, 000–00–0000

SUPPLY CORPS

To be rear admiral

CAPT. RAYMOND AUBREY ARCHER III, 000–00–0000
CAPT. JUSTIN DANIEL MC CARTHY, 000–00–0000
CAPT. PAUL OSCAR SODERBERG, 000–00–0000

CIVIL ENGINEER CORPS

To be rear admiral (lower half)

CAPT. ROBERT LEWIS MOELLER, 000–00–0000
CAPT. MICHAEL WILLIAM SHELTON, 000–00–0000

MEDICAL SERVICE CORPS

To be rear admiral (lower half)

CAPT. HAROLD EDWARD PHILLIPS, 000–00–0000

IN THE MARINE CORPS

THE FOLLOWING NAMED OFFICER FOR APPOINTMENT TO THE GRADE OF LIEUTENANT GENERAL IN THE UNITED STATES MARINE CORPS WHILE ASSIGNED TO A POSITION OF IMPORTANCE AND RESPONSIBILITY UNDER TITLE 10, UNITED STATES CODE, SECTION 601:

To be lieutenant general

MAJ. GEN. PAUL K. VAN RIPER, 000–00–0000

THE FOLLOWING NAMED OFFICER FOR REAPPOINTMENT TO THE GRADE OF LIEUTENANT GENERAL IN THE UNITED STATES MARINE CORPS WHILE ASSIGNED TO A POSITION OF IMPORTANCE AND RESPONSIBILITY UNDER TITLE 10, UNITED STATES CODE, SECTION 601:

To be lieutenant general

LT. GEN. CHARLES E. WILHELM, 000–00–0000

THE FOLLOWING NAMED OFFICER TO BE PLACED ON THE RETIRED LIST IN THE GRADE INDICATED UNDER THE PROVISIONS OF TITLE 10, UNITED STATES CODE, SECTION 1370:

To be general

GEN. CARL E. MUNDY, JR., 000–00–0000

IN THE AIR FORCE

AIR FORCE NOMINATIONS BEGINNING DANNY N. ARMSTRONG, AND ENDING JAMES R. WILSON, WHICH NOMINATIONS WERE RECEIVED BY THE SENATE AND APPEARED IN THE CONGRESSIONAL RECORD ON APRIL 24, 1995.

AIR FORCE NOMINATIONS BEGINNING MAJOR WILLIAM M. ALTMAN III, AND ENDING MAJOR PHILIP M. ABSHERE, WHICH NOMINATIONS WERE RECEIVED BY THE SENATE AND APPEARED IN THE CONGRESSIONAL RECORD ON MAY 23, 1995.

IN THE ARMY

ARMY NOMINATIONS BEGINNING RICHARD F. ANDERSON, AND ENDING IGWEKALA E. NJOKU, WHICH NOMINATIONS WERE RECEIVED BY THE SENATE AND APPEARED IN THE CONGRESSIONAL RECORD ON MAY 19, 1995.

ARMY NOMINATIONS BEGINNING RONALD C. BREDLOW, AND ENDING KAY F. STANTON, WHICH NOMINATIONS WERE RECEIVED BY THE SENATE AND APPEARED IN THE CONGRESSIONAL RECORD ON MAY 19, 1995.

ARMY NOMINATIONS BEGINNING JAMES E. AGNEW, AND ENDING JEFFREY M. YOUNG, WHICH NOMINATIONS WERE RECEIVED BY THE SENATE AND APPEARED IN THE CONGRESSIONAL RECORD ON MAY 19, 1995.

ARMY NOMINATIONS BEGINNING *ROBERT T. AARHUS, AND ENDING *ANNETTE L. WUEST, WHICH NOMINATIONS WERE RECEIVED BY THE SENATE AND APPEARED IN THE CONGRESSIONAL RECORD ON MAY 19, 1995.

ARMY NOMINATION OF ROBERT G. KOWALSKI, WHICH WAS RECEIVED BY THE SENATE AND APPEARED IN THE CONGRESSIONAL RECORD OF MAY 23, 1995.

ARMY NOMINATIONS BEGINNING JOSEPH F. MILLER, AND ENDING DOUGLAS A. SCHOW, WHICH NOMINATIONS WERE RECEIVED BY THE SENATE AND APPEARED IN THE CONGRESSIONAL RECORD ON MAY 23, 1995.

IN THE NAVY

NAVY NOMINATIONS BEGINNING VINCENT J. ANDREWS, AND ENDING JERRY F. REA, WHICH NOMINATIONS WERE RECEIVED BY THE SENATE AND APPEARED IN THE CONGRESSIONAL RECORD ON MARCH 23, 1995.

NAVY NOMINATIONS BEGINNING ROBERT J. ADAMS, AND ENDING GEORGENE B. WAECKER, WHICH NOMINATIONS WERE RECEIVED BY THE SENATE AND APPEARED IN THE CONGRESSIONAL RECORD ON APRIL 24, 1995.

NAVY NOMINATIONS BEGINNING MILTON D. ABNER, AND ENDING THOMAS G. WARNER, WHICH NOMINATIONS WERE RECEIVED BY THE SENATE AND APPEARED IN THE CONGRESSIONAL RECORD ON MAY 11, 1995.

NAVY NOMINATIONS BEGINNING CAMILO L. ABALOS, AND ENDING CHARLOTTE A. THOMPSON, WHICH NOMINATIONS WERE RECEIVED BY THE SENATE AND APPEARED IN THE CONGRESSIONAL RECORD ON MAY 19, 1995.

NAVY NOMINATIONS BEGINNING CARLTON L. JONES, AND ENDING PATRICK C. WRENCHER, WHICH NOMINATIONS WERE RECEIVED BY THE SENATE AND APPEARED IN THE CONGRESSIONAL RECORD ON MAY 23, 1995.

WITHDRAWAL

Executive message transmitted by the President to the Senate on June 22, 1995, withdrawing from further Senate consideration the following nomination:

U.S. MARINE CORPS

I WITHDRAW THE NOMINATION OF:

THE FOLLOWING-NAMED OFFICER FOR REAPPOINTMENT TO THE GRADE OF LIEUTENANT GENERAL WHILE ASSIGNED TO A POSITION OF IMPORTANCE AND RESPONSIBILITY UNDER TITLE 10, UNITED STATES CODE, SECTION 601, WHICH WAS FORWARDED ON MAY 15, 1995:

To be lieutenant general

LT. GEN. GEORGE R. CHRISTMAS 000–00–0000