SENATE—*Wednesday, October 3, 1973*

The Senate met at 10 a.m. and was called to order by Hon. LAWTON CHILES, a Senator from the State of Florida.

PRAYER

The Chaplain, the Reverend Edward L. R. Elson, D.D., offered the following prayer:

O Lord, our Guard and Guide, we know not what a day may bring, what hurt to the body or what harm to the soul. We only know that none can escape the tests and crisis of life. Some emerge bitter and cynical, crushed and heartless, some more kind, more gentle, more like the Master, crowned with thorns but crowned, made ready for higher service. As we open our minds and hearts to Thee, grant us grace to be ready for every exigency—disappointment or fulfillment, defeat or victory, sorrow or joy. O Thou Ruler of men and nations give us clean hands and pure hearts to walk worthy of our high calling.

Through Jesus Christ our Lord. Amen.

APPOINTMENT OF ACTING PRESIDENT PRO TEMPORE

The PRESIDING OFFICER. The clerk will please read a communication to the Senate from the President pro tempore (Mr. EASTLAND).

The assistant legislative clerk read the following letter:

U.S. SENATE,
PRESIDENT PRO TEMPORE,
Washington, D.C., October 3, 1973.

To the Senate:

Being temporarily absent from the Senate on official duties, I appoint Hon. LAWTON CHILES, a Senator from the State of Florida, to perform the duties of the Chair during my absence.

JAMES O. EASTLAND,
President pro tempore.

Mr. CHILES thereupon took the chair as Acting President pro tempore.

THE JOURNAL

Mr. MANSFIELD. Mr. President, I ask unanimous consent that the reading of the Journal of the proceedings of Tuesday, October 2, 1973, be dispensed with.

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

COMMITTEE MEETINGS DURING SENATE SESSION

Mr. MANSFIELD. Mr. President, I ask unanimous consent that all committees may be authorized to meet during the session of the Senate today.

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

ORDER OF BUSINESS

Mr. HARRY F. BYRD, JR. Mr. President, will the distinguished majority leader yield for a question?

Mr. MANSFIELD. Yes, indeed.

Mr. HARRY F. BYRD, JR. Is it the intention of the leadership to call up the HEW appropriation bill tomorrow?

Mr. MANSFIELD. Yes.

Mr. HARRY F. BYRD, JR. I should like to point out that the committee report is not yet available and I would hope that Senators would have the opportunity to get the committee report and have some time to study it before the appropriation bill is called up.

Mr. MANSFIELD. We will see to it that the committee report is sent to the Senator's office as soon as possible.

Mr. HARRY F. BYRD, JR. I thank the Senator from Montana very much.

LEAVE OF ABSENCE

Mr. MANSFIELD. Mr. President, I ask unanimous consent to be absent from the Senate on official business beginning at 5 p.m. this afternoon and through the remainder of the week.

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

LEGISLATIVE PROGRESS

Mr. HUGH SCOTT. Mr. President, it is the middle of the week, and the Senate is long past the middle of its annual endeavors. The Senate is actually ahead of the other body in the amount of grain we have turned into flour and passed on to the population in the form of pasta.

There are certain important appropriation bills which are not moving with preferred celerity in the other body as yet. I do not say that critically. Nothing I say here is said critically of the other body. Yet I would hope that we could get these things done.

While Congress has not passed a number of measures which the President has asked for and which he still asks for and would like very much to have, the Senate has, nevertheless, passed a number of those measures on its behalf and has passed a good deal of other legislation, much of which is good, some of which is neutral, and we hope and pray that not too much of it will be harmful.

But the country is always the beneficiary and its health is better when Congress is out of session. Our greatest obligation, I think, to the people is to go home, and to go home as soon as it is feasible to do so.

Thus, I would hope that with every kind expression in the world, the other body would enable us to have those critical elements of the legislative process soon enough so that this body can wrap up its affairs and go home to its annual accounting to the people, make our explanations, our advocacy and, if necessary, our apologies and gird ourselves for next year's session.

So I hope these things may be done. We here are ready to dispose of a number of matters if the other body will send them over. That is the reason why I make this comment at this time.

Mr. MANSFIELD. Mr. President, will the Senator yield?

Mr. HUGH SCOTT. Yes, I yield.

Mr. MANSFIELD. I hope to have an opportunity to discuss this matter further with the distinguished Republican leader this afternoon.

Mr. HUGH SCOTT. I understand.

ORDER OF BUSINESS

The ACTING PRESIDENT pro tempore. Under the previous order, the Senator from Oklahoma is recognized for not to exceed 15 minutes.

(The remarks Senator BELLMON made at this point on the introduction of S. 2522, the Livestock Export Health and Safety Act of 1973, are printed in the Routine Morning Business Section of the RECORD under Statements on Introduced Bills and Joint Resolutions.)

QUORUM CALL

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

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

The second assistant legislative clerk proceeded to call the roll.

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

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

TRANSACTION OF ROUTINE MORNING BUSINESS

The ACTING PRESIDENT pro tempore. Under the previous order, there will now be a period for the transaction of routine morning business for not to exceed 15 minutes with statements limited therein to 3 minutes.

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

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

The second assistant legislative clerk proceeded to call the roll.

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

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

COMMUNICATIONS FROM EXECUTIVE DEPARTMENTS, ETC.

The ACTING PRESIDENT pro tempore (Mr. CHILES) laid before the Senate the following letters, which were referred as indicated:

REPORT OF THE NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

A letter from the Administrator of the National Aeronautics and Space Administration transmitting, pursuant to law, a report concerning grants in which title to equipment was vested pursuant to 42 U.S.C. 1892 (with an accompanying report). Referred to the Committee on Aeronautical and Space Sciences.

REPORT OF THE INDIAN CLAIMS COMMISSION

A letter from the Chairman of the Indian Claims Commission transmitting, pursuant to law, a report on the final determinations in the cases of the Mohave Indians Who Are Members of the Colorado River Indian Tribes, and the Mohave Tribe of Indians of Arizona, California and Nevada (with accompanying papers). Referred to the Committee on Appropriations.

REPORT OF THE DIRECTOR OF SELECTIVE SERVICE

A letter from the Director of Selective Service transmitting, pursuant to law, his semiannual report covering the period January 1–

AUTHENTICATED U.S. GOVERNMENT INFORMATION GPO

June 30, 1973 (with an accompanying report). Referred to the Committee on Armed Services.

REPORT OF THE DEPARTMENT OF DEFENSE

A letter from the Acting Assistant Secretary of Defense transmitting, pursuant to law, a report of Department of Defense Procurement from Small and Other Business Firms for July 1972–June 1973 (with an accompanying report). Referred to the Committee on Banking, Housing and Urban Affairs.

PROPOSED LEGISLATION BY THE SECRETARY OF THE TREASURY

A letter from the Assistant Secretary of the Treasury transmitting a draft of proposed legislation to provide an exemption from the restrictions of the trademark laws (with accompanying papers. Referring to the Committee on Finance.

ANNUAL ENVIRONMENTAL QUALITY REPORT

A letter from the Chairman of the Council on Environmental Quality transmitting, pursuant to law, the fourth annual report of the Council on Environmental Quality (with an accompanying report). Referred to the Committee on Interior and Insular Affairs.

REPORT OF THE BUREAU OF LAND MANAGEMENT

A letter from the Director of the Bureau of Land Management transmitting, pursuant to law, a report of negotiated sales contracts for disposal of materials during the period January 1 through June 30, 1973 (with an accompanying report). Referred to the Committee on Interior and Insular Affairs.

PROPOSED LEGISLATION BY THE ATTORNEY GENERAL

A letter from the Attorney General of the United States transmitting a draft of proposed legislation to establish a working capital fund in the Department of Justice to provide certain service functions on a consolidated basis (with accompanying papers). Referred to the Committee on the Judiciary.

REPORT OF THE NATIONAL COMMISSION ON MATERIALS POLICY

A letter from the Executive Director of the National Commission on Materials Policy transmitting, pursuant to law, a report entitled "Material Needs and the Environment Today and Tomorrow" (with an accompanying report). Referred to the Committee on Public Works.

PETITIONS

Petitions were laid before the Senate and referred as indicated:

By the ACTING PRESIDENT pro tempore (Mr. CHILES):

An order from the city council of Gloucester, Mass., in support of S. 1988 relative to the extension of U.S. fisheries jurisdiction to the 200-mile limit. Referred to the Committee on Commerce.

PRESENTATION OF A PETITION

Mr. HUMPHREY. Mr. President, I present a petition from members of the House of Representatives of the State of Minnesota, calling upon Congress to support legislation which will protect the private pension rights of workers.

Recently, it was my privilege to meet with a delegation of these State representatives, when we discussed the vitally important legislation passed by the Senate, the Retirement Income Security for Employees Act. I believe this petition underscores the necessity for enactment of this legislation without delay.

I ask unanimous consent, Mr. President, that this petition be printed in the RECORD and referred to the Senate Committee on Labor and Public Welfare.

The ACTING PRESIDENT pro tempore (Mr. CHILES). Without objection, it is so ordered.

The petition presented by Mr. HUMPHREY and referred to the Committee on Labor and Public Welfare, reads as follows:

A HOUSE PETITION

We, the following members of the House of Representatives of the State of Minnesota, appeal to all members of the United States Congress to support legislation which will protect the private pension rights of workers. Among the measures we see as necessary are:

(1) the establishment of mandatory vesting after a limited number of years,

(2) requiring plans to be fully funded as rapidly as possible,

(3) the protection of employee benefits through re-insuring any unfunded liabilities.

(4) requiring pension plans to transfer employee credits from one fund to another as the employee moves from job to job, thus ensuring the portability of pension credits, and

(5) the expansion of present disclosures requirements and fiduciary standards. In addition, we request that Congress not pre-empt the entire field of pension legislation but rather, that the states be allowed to adopt legislation to complement federal standards.

(Signed by 91 Members).

REPORTS OF COMMITTEES

The following reports of committees were submitted:

By Mr. TALMADGE, from the Committee on Agriculture and Forestry, without amendment:

S. 2491. A bill to repeal the provisions of the Agriculture and Consumer Protection Act of 1973 which provide for payments to farmers in the event of crop failures with respect to crops planted in lieu of wheat or feed grains (Rept. No. 93–420).

By Mr. HRUSKA, from the Committee on the Judiciary, without amendment:

S.J. Res. 99. A joint resolution to authorize the President to designate the period from March 3, 1974, through March 9, 1974, as "National Nutrition Week" (Rept. No. 93–416).

By Mr. BURDICK, from the Committee on the Judiciary, without amendment:

H.R. 7352. A bill to amend section 4082(c) of title 18, United States Code, to extend the limits of confinement of Federal prisoners (Rept. No. 93–418).

By Mr. BURDICK, from the Committee on the Judiciary, with an amendment:

S. 798. A bill to reduce recidivism by providing community-centered programs of supervision and services for persons charged with offenses against the United States, and for other purposes (Rept. No. 93–417).

By Mr. BURDICK, from the Committee on the Judiciary, with amendments:

S. 1064. A bill to improve judicial machinery by amending title 28, United States Code, to broaden and clarify the grounds for judicial disqualifications (Rept. No. 93–419).

By Mr. CANNON, from the Committee on Rules and Administration, without amendment:

S. 2399. A bill to amend title 44, United States Code, to provide immunity for the Government Printing Office, the Public Printer, and other officers and employees of the Office (Rept. No. 93–421);

S.J. Res. 155. A joint resolution authorizing the securing of storage space for the U.S. Senate, the U.S. House of Representatives, and the Office of the Architect of the Capitol (Rept. No. 93–422);

S. Con. Res. 47. A concurrent resolution authorizing the printing of additional copies of a report of the Senate Special Committee on the Termination of the National Emergency (Rept. No. 93–423);

S. Con. Res. 49. An original concurrent resolution authorizing the printing of the prayers of the Chaplain of the Senate during the 92d Congress as a Senate document (Rept. No. 93–424);

S. Res. 163. A resolution authorizing the printing of the report entitled "The Cost of Clean Air," as a Senate document (Rept. No. 93–425); and

S. Res. 177. An original resolution to pay a gratuity to Nancy O. Vail.

By Mr. JACKSON, from the Committee on Interior and Insular Affairs, without amendment:

H.R. 7699. A bill to provide for the filing of vacancies in the legislature of the Virgin Islands (Rept. No. 93–427).

By Mr. JACKSON, from the Committee on Interior and Insular Affairs, with an amendment:

S. 1871. A bill to amend the Youth Conservation Corps Act of 1972 (Public Law 92–597, 86 Stat. 1319) to expand and make permanent the Youth Conservation Corps, and for other purposes (Rept. No. 93–426).

EXECUTIVE REPORTS OF COMMITTEES

As in executive session, the following favorable reports of nominations were submitted:

By Mr. EASTLAND, from the Committee on the Judiciary:

John R. Bartels, Jr., of New York, to be Administrator of Drug Enforcement;

William R. Burkett, of Oklahoma, to be U.S. attorney for the western district of Oklahoma;

Frank M. Dulan, of New York, to be U.S. marshal for the northern district of New York;

Floyd Eugene Carrier, of Oklahoma, to be U.S. marshal for the western district of Oklahoma;

Christian Hansen, Jr., of Vermont, to be U.S. marshal for the district of Vermont;

Harold S. Fountain, of Alabama, to be U.S. marshal for the southern district of Alabama;

Charles S. Guy, of Pennsylvania, to be U.S. marshal for the eastern district of Pennsylvania;

Melvin A. Hove, of Iowa, to be U.S. marshal for the northern district of Iowa;

Isaac George Hylton, of Virginia, to be U.S. marshal for the eastern district of Virginia;

Thomas P. McNamara, of North Carolina, to be U.S. attorney for the eastern district of North Carolina;

J. Pat Madrid, of Arizona, to be U.S. marshal for the district of Arizona;

William L. Martin, Jr., of Georgia, to be U.S. marshal for the middle district of Georgia;

Dean C. Smith, of Washington, to be U.S. attorney for the eastern district of Washington;

John W. Stokes, Jr., of Georgia, to be U.S. attorney for the northern district of Georgia;

James M. Sullivan, Jr., of New York, to be U.S. attorney for the northern district of New York;

Richard Van Thomas, of Wyoming, to be U.S. attorney for the district of Wyoming;

Richard L. Thornburgh, of Pennsylvania, to be U.S. attorney for the western district of Pennsylvania;

Charles S. White-Spunner, Jr., of Alabama, to be U.S. attorney for the southern district of Alabama;

Marvin G. Washington, of Michigan, to be U.S. marshal for the western district of Michigan;

Robert G. Wagner, of Ohio, to be U.S. marshal for the northern district of Ohio; and

Charles R. Wilcox, of Wyoming, to be U.S. marshal for the district of Wyoming.

(The above nominations were reported with the recommendation that the nominations be confirmed, subject to the nominee's commitment to respond to requests to appear and testify before any duly constituted committee of the Senate.)

By Mr. EASTLAND, from the Committee on the Judiciary:

Allen Sharp, of Indiana, to be a U.S. district judge for the northern district of Indiana.

By Mr. LONG, from the Committee on Finance:

Meade Whitaker, of Alabama, to be an Assistant General Counsel in the Department of the Treasury (Chief Counsel for the Internal Revenue Service);

James B. Rhinelander, of Virginia, to be General Counsel in the Department of Health, Education, and Welfare;

James B. Cardwell, of Maryland, to be Commissioner of Social Security of the Department of Health, Education, and Welfare;

Goodwin Chase, of Washington, to be a member of the Renegotiation Board.

Norman B. Houston, of Virginia, to be a member of the Renegotiation Board; and

The above nominations were reported with the recommendation that the nominations be confirmed, subject to the nominee's commitment to respond to requests to appear and testify before any duly constituted committee of the Senate.

ENROLLED JOINT RESOLUTION PRESENTED

The Secretary of the Senate reported that on today, October 3, 1973, he presented to the President of the United States the enrolled joint resolution (S.J. Res. 160) to provide for an extension of certain laws relating to the payment of interest on time and savings deposits, and for other purposes.

INTRODUCTION OF BILLS AND JOINT RESOLUTIONS

The following bills and joint resolutions were introduced, read the first time and, by unanimous consent, the second time, and referred as indicated:

By Mr. BELLMON:

S. 2522. A bill to extend the application of the Act of March 3, 1891, relating to accommodations for the export of animals by vessels, to aircraft and other means of conveyance, and for other purposes. Referred, by unanimous consent, to the Committee on Agriculture and Forestry.

By Mr. STAFFORD:

S. 2523. A bill to amend chapter 34 of title 38, United States Code, to make eligible for educational assistance under such chapter certain persons who serve on active duty a total of more than 180 days in any calendar year. Referred to the Committee on Veterans' Affairs.

By Mr. TUNNEY:

S. 2524. A bill to amend the Economic Stabilization Act of 1970 to provide effective consumer remedies for retail price violations. Referred to the Committee on Banking, Housing and Urban Affairs.

S. 2525. A bill to require the Secretary of Commerce to prepare and transmit to the Congress periodic reports on export levels, domestic supplies, domestic demand, and prices of certain commodities, and to require the Comptroller General of the United States to analyze and evaluate those reports. Referred to the Committee on Commerce.

By Mr. SAXBE:

S. 2526. A bill to provide for the formulation of a plan for the consolidation of all common carriers by railroad in the United States into one private corporation. Referred to the Committee on Commerce.

By Mr. MONTOYA:

S. 2527. A bill to provide for the construction of a Veterans' Administration hospital in the city of Albuquerque, N. Mex. Referred to the Committee on Veterans' Affairs.

By Mr. MONDALE (for himself, Mr. BENTSEN, Mr. JAVITS, Mr. PACKWOOD, Mr. ABOUREZK, Mr. BAYH, Mr. BURDICK, Mr. CASE, Mr. CHILES, Mr. CLARK, Mr. COOK, Mr. CRANSTON, Mr. EAGLETON, Mr. HART, Mr. HATFIELD, Mr. HUDDLESTON, Mr. HUGHES, Mr. HUMPHREY, Mr. JACKSON, Mr. KENNEDY, Mr. MATHIAS, Mr. McGEE, Mr. McINTYRE, Mr. METCALF, Mr. MOSS, Mr. NELSON, Mr. PERCY, Mr. RANDOLPH, Mr. RIBICOFF, Mr. ROTH, Mr. SCHWEIKER, Mr. HUGH SCOTT, Mr. STAFFORD, Mr. STEVENSON, Mr. TUNNEY, and Mr. WILLIAMS):

S. 2528. A bill to amend the Social Security Act to provide the States with maximum flexibility in their programs of social services under the public assistance titles of that act. Referred to the Committee on Finance.

By Mr. MATHIAS:

S. 2529. A bill for the relief of Angela Rosas Cruz. Referred to the Committee on the Judiciary.

By Mr. HARTKE (for himself and Mr. COOK):

S. 2530. A bill to amend the National Traffic and Motor Vehicle Safety Act of 1966 to prohibit the removal or rendering inoperative of safety related equipment in compliance with motor vehicle safety standards. Referred to the Committee on Commerce.

By Mr. GURNEY (for himself and Mr. CHILES):

S. 2531. A bill to amend title II of the Water Pollution Control Act Amendments of 1972 (Public Law 92,500). Referred to the Committee on Public Works.

By Mr. MOSS:

S. 2532. A bill to amend the Federal Power Act to promote conservation, reduce wastage, and attain greater efficiency in the generation of electrical energy, and for other purposes. Referred to the Committee on Commerce.

STATEMENTS ON INTRODUCED BILLS AND JOINT RESOLUTIONS

By Mr. BELLMON:

S. 2522. A bill to extend the application of the act of March 3, 1891, relating to accommodations for the export of animals by vessels, to aircraft and other means of conveyance, and for other purposes. Referred, by unanimous consent, to the Committee on Agriculture and Forestry.

LIVESTOCK EXPORT HEALTH AND SAFETY ACT OF 1973

Mr. BELLMON. Mr. President, during recent months, a new appreciation of the Nation's agricultural productive capacity has come into the American conscience. This is due to the fact that for the first time in our Nation's history, American consumers have been faced with shortages of certain food products. At the same time, we have seen our Government officials working actively to encourage production of agriculture commodities for export to help solve our balance of payment problems. This is a dramatic change from previously followed governmental policies which have been generally designed to hold down the production of food and fiber to avoid unwanted surpluses.

Americans now realize that the American farmer, blessed as he is with some of the finest natural agriculture resources in the world, plus the finest agriculture technology anywhere, is able to compete successfully with food producers in any part of the globe.

There is general agreement that American agriculture can earn the foreign exchange the United States of America must have in order to buy oil and gas from abroad to cover the shortfall in energy supplies which we face currently and increasingly in the years ahead. For this reason, the development of export markets for American farm products is a matter of top national priority.

Mr. President, one of the most promising areas for the development of new agricultural exports lies in the area of live animal exports. This is true because of the growing world demand for high-quality protein and because many of the older, more densely populated areas, where protein demand is greatest, do not have available the large amounts of land necessary to support of livestock breeding herds. At the same time, the capacity for expansion of American livestock breeding herds is huge. By use of fertilizer and irrigation, by improving grazing lands with better varieties of grasses, by brush and weed control, and through the use of crop residues for forage, our cattle breeding herds can be enormously increased. However, this increase makes no sense unless markets for the animals can be developed.

In countries like Italy, Greece, and Japan, potential markets for literally millions of American feeder cattle and swine already exist. Similar demand is developing in other countries. The Italians and Japanese prefer to import lightweight feeder cattle to be grown out and fattened by local farmers on domestically produced grain and forage supplemented by certain imported feed stuffs, rather than to import processed beef.

Because of this large demand for American feeder cattle a new industry is rapidly developing. I refer to the air transport of live animals. With the development of larger aircraft with greater ranges, it is now economic to fly planeloads of feeder cattle and feeder pigs from producing areas in the United States to foreign countries where these animals are in demand.

Unfortunately, experiences with the air transport of live animals have not been universally successful. The reason is that under present conditions there exists no authority for the U.S. Department of Agriculture or any other Government agency to set animal health and safety standards or to supervise adequately the air transportation of livestock.

Mr. President, I have before me a report from the USDA dated July 24, 1973, relating to losses incurred in the air transport of livestock. This report cites several cases where a large percentage of animals died or were permanently injured because of improper handling dur-

ing loading or air transport. I ask unanimous consent that these reports be made a part of the RECORD at the conclusion of my remarks.

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

(See exhibit 1.)

Mr. BELLMON. Mr. President, I rise today to introduce legislation which is intended to avoid these kinds of tragedies in the future. The bill is brief. I ask unanimous consent that it be printed in full in the RECORD at the end of my statement.

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

(See exhibit 2.)

Mr. BELLMON. So what the cattle producers face is a very uncertain future. Certainly there is a need to develop new markets in order to avoid a disastrous collapse in cattle prices in the months and years ahead.

Mr. President, I recognize that in this day of high food prices to the American consumer, the subject of exporting U.S. livestock abroad can be questioned as to its timeliness. I would call the attention of the Senate to the fact that cattle prices in this country are down 30–40 percent in the last 4 weeks and that cattle numbers are up 7 percent while beef consumption per capita is down.

The fact is that the export of live feeder animals offers an important new market for American producers as production exceeds domestic needs. However, since this is a relatively new field of commerce, unless the serious problems relating to the health and survival of animals being shipped by air are solved, this potential market can never be fully developed.

Mr. President, it is important to assure the American exporter and the purchaser abroad that livestock being exported from this country will be properly handled, both on the ground and in the air, so that the animals will arrive alive and in good condition at the intended destination.

Yet, Mr. President, at present an alarming rate of death losses due to inadequate transportation practices has caused great concern. Obviously, there is a need for legislation in this area where presently there is little authority for establishment of humane or health standards for live animals.

The incidents covered by the reports I am inserting in the RECORD are only a few of the cases reported. Many times it seems that pure negligence was involved. I personally participated in and witnessed the handling and transporting of animals by air for shipment abroad and under extreme conditions, and I can attest that if a conscientious effort is made by the exporter and the air carrier, these kinds of death losses and injuries definitely need not occur. I refer to a pilot shipment of feeder calves to Korea. These animals encountered many difficulties en route and were airborne for longer than such shipments should require, yet every animal arrived in excellent condition.

This was due to the fact that the shipment was supervised by the USDA and due to the fact that the animals were handled by an experienced crew that had available the proper equipment and the proper type of aircraft.

The problems relating to air transport of live animals have been discussed with many exporters and carriers. There is general agreement that regulations and standards need to be established by a proper Government agency. Reports from the U.S. Department of Agriculture clearly show the incidence of animal losses have not decreased and perhaps have even accelerated because of a lack of understanding of the problems related to the handling and transportation of live animals by air.

Some may wonder why we use airplanes for shipping animals rather than shipping them by surface. Experience has shown that animals, particularly young animals, do not thrive when they are shipped by surface and that the survival of these animals is much higher when they are properly handled and shipped by air, even though the costs may be slightly greater for air shipment than by surface. The surface shipment of young, live animals has been tried unsuccessfully for many years, and it is only with the development of larger aircraft that can handle these relatively heavy cargoes at relatively less expense that the commerce in live animals between producers in this country and purchasers abroad has begun to take on major proportions.

Mr. President, the Livestock Export Health and Safety Act of 1973 is being introduced as an amendment to the March 3, 1891 act, which will give the authority to the U.S. Department of Agriculture to assure that livestock destined for export will be transported in a humane and safe manner. Since this legislation concerns the USDA and relates to a strictly agricultural problem, I ask unanimous consent that the bill be referred to the Committee on Agriculture and Forestry.

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

Mr. BELLMON. This act broadens USDA jurisdiction to include air transportation and calls for the establishment of regulations and standards for the construction and maintenance of facilities both on the ground and in the air which are utilized in the process of livestock exporting. It also provides for the establishment of Federal export processing centers whereby the Secretary of Agriculture will assure that all necessary functions with regard to health, handling, processing and transporting of livestock will be properly carried out.

Mr. President, it is unfortunate that the dismal performance of recent months has brought about the need for Federal involvement in this problem. Yet, I see no alternative. Aside from the humaneness standpoint, the ever-increasing incidents of death loss and injury to live animals which need not occur places in jeopardy our valuable export markets which are being developed and which can become a major factor in this Nation's agricultural economy.

EXHIBIT 1

U.S. DEPARTMENT OF AGRICULTURE,
Washington, D.C., July 24, 1973.

Hon. HENRY L. BELLMON,
U.S. Senate

DEAR SENATOR BELLMON: This is in response to your telephone request for a short description of several export livestock shipments transported by air where losses occurred.

1. On May 3, 1970, 307 young calves were loaded in Boston, Massachusetts, for export to Greece. Everything went wrong. The export veterinary inspections were made at a facility at Acushnet, Massachusetts, and the calves were trucked to the Boston Airport in double-decked trucks. One of the upper decks gave way, and a number of calves in the lower deck were killed or injured. Loading of the calves into containers (3-calf containers) was made in the open in cold, rainy weather. The airline had promised that loading would take place under cover but did not comply. A delay of 5 hours occurred at Frankfurt, Germany, where the crew left the plane with doors closed and no auxiliary ventilation provided. Upon unloading in Greece, 50 calves were dead and 20 more died in the next few days. The shipment was met by the Greek Minister of Agriculture and our Agricultural Attache. Our Washington office did not hear of this disaster for nearly a year, and while a report was requested from the airline, it has not materialized.

2. On February 7, 1973, 10 bred Holstein-Friesian heifers and 360 Holstein heifer calves, 3 months of age, were loaded on a DC8–63F at O'Hare International Airport, Chicago, Illinois, for export to Italy. Upon arrival in Milan, Italy, 47 of the calves were dead. According to the consignee and an Italian veterinarian, the animals apparently died from suffocation (lack of oxygen).

3. On July 2, 1973, 239 mixed Charolais bull calves, averaging 326 pounds, were loaded at St. Petersburg, Florida, on a Boeing 707 for export to Italy. Ten positions were double decked and three were single-decked pens. Loading the aircraft was not made in accordance with Department recommendations. Upon arrival for refueling at J. F. Kennedy International Airport, 54 head were dead, 2 were blind (thought to be due to brain damage from lack of oxygen), one had a broken leg, and 5 were down and unable to rise. Most of the animals that died were in the upper deck. It was reported (and later confirmed) that the air-conditioning ground unit attached to the aircraft broke down 2 hours before loading was completed. Upon arrival at JFK, the captain was annoyed and reported that something was wrong with the calves and that the temperature had reached 188° F. The balance of the calves was unloaded and placed in a paddock adjacent to the "Animalport" of the ASPCA with feed and water. In the evening, 175 head of calves were loaded and, according to our Agricultural Attache in Rome, arrived in Milan in good condition.

Sincerely,

J. M. HEJL,
Acting Deputy Administrator, Veterinary Services.

LOSSES IN AIR TRANSPORT OF LIVESTOCK

1. On July 2, 1968, 467 breeding swine were loaded at Chicago, Illinois, on an American Airlines 707 for delivery to J. F. Kennedy International Airport (JFK Airport) for transshipment to Romania. These swine were in 29 to 42 individual containers of varying size on each of 13 pallets. The swine were accompanied by a U.S. Department of Agriculture veterinarian and arrived at JFK Airport at about noon. Some heat buildup was noted, and the flight engineer reported that one of the two freon units was not operating. The

animals were unloaded and placed in a cargo building awaiting transshipment. Two swine were found dead after unloading. In the evening, the pallets were loaded on an Air France 707 flight which left the cargo area at midnight. A representative of the exporter accompanied the flight from New York to Romania and upon his return, reported the following: "Take-off was delayed 1 hour during which time the heat in the cockpit was almost unbearable. Upon unloading in Romania, 99 head were dead. Romanian veterinarians, who conducted the post-mortem examinations, reported death from asphyxiation." It seems obvious, although it cannot be confirmed, that the swine died at the JFK Airport during the delay before take-off.

2. On December 10, 1971, a syndicated thoroughbred horse was to be shipped on a DC8–63F from the John F. Kennedy International Airport to Shannon, Ireland for breeding purposes. The horse, "Never Bow," was reported to be valued at $500,000. The horse would not walk into a regular horse stall (open top); so it was backed in. The horse stall was moved to a pallet transporter and loading began. The stall would not clear the cargo door, so it was moved away from the door about 3 feet. The horse then reared up and got both legs out of the container. Two grooms were able to get one leg back into the container before the horse again reared up and got his body half way out of the container and fell to the ground, hitting a ladder on the way down. The horse struggled to get up but could not rise. After a 1½ hour delay, an ambulance from the Aqueduct Race Track and the race track veterinarian arrived, and the horse was moved to the race track hospital. Upon further examination, the horse was found to have a completely shattered right shoulder blade and a puncture wound in his side. A decision was made to have the horse destroyed, and this was completed in the evening.

3. On January 8, 1972, 527 head of swine shipped by Illinois Produce International, Bloomington, Illinois, were loaded aboard a DC8–63F at Chicago, Illinois, for exportation to South Vietnam. Upon arrival at Anchorage, Alaska, about 25 head were dead, and at least 50 more exhibited severe distress. Airline personnel immediately opened all doors, and improvement in the condition of most of the swine was noted. Unloading was not considered as the ramp temperature was below zero. Upon arrival in Saigon, South Viet Nam, 84 head were found dead, and 20 head more died soon after unloading. Cause of losses was thought to be use of calf containers (used previously for a feeder calf shipment to Korea) which did not permit proper air circulation.

4. On January 21, 1972, 77 Hereford heifers and 2 bulls were loaded on a Boeing 707 at San Francisco, California, for export to Japan. The animals were placed 5 to 6 head in a palletized container, the sides of which were 5 feet high. Only the top of each container, which was a foot higher than the heifers loaded, was open for ventilation. When the cargo door was opened for a refueling stop in Anchorage, Alaska, steam rushed out into sub-zero air outside. Water was dripping from the ceiling of the plane. When a rear door was opened, the cattle were perspiring heavily and showing respiratory distress (mouth breathing). Upon arrival in Tokyo, Japan, a number were noted to be in a weak condition. One animal was dead and one died shortly after unloading. Inadequate containers that did not allow good air circulation were thought to be the primary cause of the problem.

5. On March 7, 1972, 167 swine, averaging 230 lbs. each, were transported from Kansas City, Missouri, to Osaka, Japan, on a DC8–63F. The swine were accompanied by a USDA veterinarian who monitored the condition of the animals during the trip. The swine were single decked in a pen arrangement with each pen the size of a pallet. A walkway fore and aft above the pens was provided so that the animals could be monitored in flight. Cabin temperatures during flight were found considerably higher in pallet positions 11 through 14, and the flow of air in these areas was somewhat reduced. The reduced air flow in pallet positions 11 through 14 was due, at least in part, to the failure of the crew to keep the recirculating fans operating at all times during flight (the crew complained that the fans brought bad odors into the cockpit from the cabin area). During a refueling stop at Anchorage, Alaska, the swine in this area of the aircraft showed considerable stress with labored breathing and evidence of heat prostration. The swine were sprayed with cold water and losses were averted. The cause of the stress to the swine was directly attributable to the failure of the airline crew to reduce the cabin temperature sufficiently before landing, taxiing of the airplane, and their failure to provide a ground air conditioning unit during the refueling operation. A new flight crew boarded the aircraft at Anchorage, they were briefed on the environmental needs of the swine, and as a result, the swine arrived in Japan in excellent condition.

EXHIBIT 1

S. 2522

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Livestock Export Health and Safety Act of 1973".

SEC. 2. The first section of the Act of March 3, 1891, as amended (46 U.S.C. 466a), is amended by inserting after the word "vessels" each time it appears therein a comma and the following: "aircraft, and other means of conveyance".

SEC. 3. The first section of such Act is further amended by inserting "(a)" immediately after "That" at the beginning of such section and by adding at the end thereof the following new subsections:

"(b) The rules, regulations, or orders issued by the Secretary under subsection (a) shall (1) include minimum standards for the construction and maintenance of any container or enclosure and any conveyance system used for exporting any animal referred to in such subsection, and (2) designate ports of export through which the export of any such animal must be made. The Secretary may require, as a condition to designating any port as a port of export for the purposes of this Act, that such facilities as he determines necessary for the humane treatment of such animals in connection with their exportation, be available in the vicinity of such port, including such facilities as may be necessary to insure the healthy condition of such animals upon arrival at their export destination. Ports of export designated by the Secretary under this subsection shall be known as Federal ports of export.

"(c) The Secretary shall furnish necessary facilities at Federal ports of export to the extent that funds are made available for such purposes.

"(d)(1) The Secretary is authorized to designate other ports as ports of export for purposes of this Act if (A) the Secretary determines the designation of such ports would be administratively sound, (B) facilities are provided at such ports by exporters or other persons, and (C) such facilities are approved by the Secretary as adequate to assure the humane treatment of animals in connection with their exportation and are adequate to ensure the healthy condition of such animals upon arrival at their export destination.

"(2) The Secretary is authorized to assist exporters and other persons in providing facilities at any port he designates as a port of export under paragraph (1). He is authorized to enter into a cost-sharing arrangement under which he may furnish 50 per centum of the cost of any such facility or $125,000, whichever is less.

"(3) The failure of any exporter or other person to make facilities constructed with Federal assistance under paragraph (2) available to all members of the public without discrimination, the assessing of unreasonable charges for the use of such facilities, as determined by the Secretary, or the failure to maintain and operate such facilities in accordance with standards prescribed in regulations issued by the Secretary shall be cause for termination of the approval of such facilities and termination of the designation of the port as a port of export. The approval of facilities or designation of any port for purposes of this Act may also be terminated at any time if the continuation of such approval or designation, as the case may be, is determined by the Secretary to be administratively unsound.

"(4) The administration of this Act, including all required Federal personnel, shall be at the expense of the United States.

"(e) Inspectors of the Department of Agriculture shall have authority to issue orders prohibiting the loading or transporting of any animal referred to in subsection (a) of this Act on any means of conveyance which fails to provide accommodations for such animal in accordance with this Act or any rule, regulation, or order issued thereunder and may require the unloading of any such animal from any such means of conveyance."

SEC. 4. Section 2 of the Act of March 3, 1891, as amended (46 U.S.C. 466b), is amended by inserting "(a)" immediately after "That" at the beginning of such section and by adding at the end of such section the following new subsection:

"(b) It shall be a misdemeanor punishable by a fine of not more than $10,000, or by imprisonment for not more than one year, or both, for any exporter, or for any owner or principal operator of any means of conveyance, or the master, aircraft commander, or other agent in charge of any means of conveyance, knowingly to violate, or cause or permit the violation of, any rule, regulation, or order issued under this Act."

SEC. 5. The Act of March 3, 1891, as amended, is further amended by adding at the end thereof the following new sections:

"SEC. 3. As used in this Act the term 'port of export' includes an airport or any other location designated by the Secretary of Agriculture, under the first section of this Act, as a port from which animals referred to in such section may be exported.

"SEC. 4. There are authorized to be appropriated such sums as may be necessary to carry out the provisions of this Act."

By Mr. STAFFORD:

S. 2523. A bill to amend chapter 34 of title 38, United States Code, to make eligible for educational assistance under such chapter certain persons who serve on active duty a total of more than 180 days in any calendar year. Referred to the Committee on Veterans' Affairs.

Mr. STAFFORD. Mr. President, today I am introducing a bill that would amend the term "eligible veteran" under title 38 of chapter 34 of the United States Code to make members of the Air National Guard, Army National Guard, Army Reserve, Navy Reserve, and other Reserve forces eligible for the educational assistance provided veterans who serve voluntarily on active duty a total

of more than 180 days in any calendar year.

This amendment would allow those Reservists and National Guard personnel who are called to active duty or who serve on active alert eligible for veterans benefits if they serve more than 180 days in a calendar year. The eligibility requirement would be renewable each year.

This amendment would give a benefit to those dedicated National Guard Reservists who voluntarily give their time above and beyond the normal in defense of their country.

Mr. President, I ask unanimous consent that the text of this bill be printed in the RECORD at the conclusion of my remarks.

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

S. 2523

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That section 1652(a) of title 38, United States Code, is amended by adding at the end thereof a new paragraph as follows:

"(4) The term 'eligible veteran' also means any member of the Army National Guard, Air National Guard, the Army Reserve, Naval Reserve, Air Force Reserve, Marine Corps Reserve, or Coast Guard Reserve who serves voluntarily on active duty for an aggregate period of more than 180 days in any calendar year and who otherwise qualifies as an eligible veteran under this subsection."

SEC. 2. (a) The first sentence of subsection (a) of section 1661 of title 38, United States Code, is amended by striking out "subsection (c)" and inserting in lieu thereof "subsections (c) and (d)".

(b) Section 1661 of such title is further amended by adding at the end thereof a new subsection as follows:

"(d) In computing the entitlement of any veteran who is an eligible veteran by virtue of section 1652(a)(4), any period of active duty performed in any calendar year less than 180 days shall be disregarded unless (1) such veteran served voluntarily on active duty for a total of more than 180 days in such calendar year, or (2) such period began in the preceding calendar year and such veteran served on active duty for a total of more than 180 days in such preceding calendar year."

SEC. 3. The amendments made by this Act shall not apply in the case of any period of active duty performed prior to January 1, 1973.

By Mr. TUNNEY:

S. 2524. A bill to amend the Economic Stabilization Act of 1970 to provide effective consumer remedies for retail price violations. Referred to the Committee on Banking, Housing and Urban Affairs.

PRICE CONTROL AND CONSUMER REDRESS ACT OF 1973

Mr. TUNNEY. Mr. President, I rise to introduce the Price Control and Consumer Redress Act of 1973.

This legislation will substantially strengthen consumer protection against illegal price gouging. It makes three critical changes in the current system of retail price control enforcement. It requires that, to the maximum extent practicable, specific retail price ceilings shall be established for every product or service sold at retail and subject to price controls. It provides a reward equal to 25 percent of any fine or penalty to citizens who initiate valid complaints against illegal price increases. Finally, it makes clear and unmistakable that misrepresentation of price ceilings and covert price increases are, like charging prices above ceiling levels, violations of law and subject to penalty.

Mr. President, I regret the fact that mismanagement of farm and general economic policies have made price controls a necessary evil. Since price controls are needed they should be administered equitably and effectively. The controls enforcement system should be open and responsive to consumers. It should provide redress against illegal overcharges. It should be easily comprehensible to the average citizen and should encourage consumers to cooperate in monitoring retail price increases. A system that meets these conditions will require the minimum number of enforcement personnel consistent with comprehensive scrutiny of retail pricing practices.

Mr. President, last August I chaired hearings in California for the Senate Commerce Committee on the responsiveness of the Internal Revenue Service to consumers attempting to obtain redress against illegal price increases.

Witness after witness told of difficulties encountered in their efforts to obtain such redress. Perhaps the most difficult obstacle consumers incurred was the inability to identify specific violations because phase IV regulations have made it impossible to determine if one is being illegally overcharged. Since controls are administered only on broad categories of products and services, rather than on an item-by-item basis, phase IV compliance can be monitored only through a complete IRS audit. Consumers are excluded from participation in the enforcement mechanism and redress is, for all practical purposes, unattainable. The legislation I am introducing today would eliminate this problem by requiring a return to pre-phase IV practices under which there was a clearly definable ceiling price for all items subject to price controls.

Another obstacle to consumer redress and participation arose from the absence of rewards or incentives to cooperate in monitoring retail prices. Under current IRS procedures, the most a complainant can hope for is a rollback of prices to the legal level. No provision is made for financial compensation to people illegally overcharged.

The legislation I am introducing today would remedy this deficiency and encourage reporting of violations by providing a reward equal to 25 percent of the fine assessed against a violator. This incentive can be a powerful stimulus to massive public scrutiny of retail pricing policies. The IRS uses, to great effect, a similar device to encourage reporting of tax fraud. Extension of the bounty system to price control enforcement should have similarly beneficial results.

Finally, Mr. President, this legislation would strengthen consumer protection against price control violations by making unmistakably clear a point that escapes enforcement personnel under the present system—that falsification of price ceilings and hidden price increases in the form of quality, quantity, or service reductions, without corresponding price cuts, are illegal and subject to the same penalties as price gouging. The necessity for this legislation was made clear in testimony before hearings of the Commerce Committee last August. Surveys conducted in numerous southern California communities and presented to the committee revealed widespread evasion of controls through covert price increases. Other testimony reported substantial misrepresentation of ceiling prices during the freeze period. Most disturbing, however, was the indifference of IRS personnel toward these violations. In some instances, the IRS was unaware that such practices are illegal. And, in but a few cases, the IRS did not act against such practices.

Mr. President, in these times of unprecedented increases in the cost of the basic necessities of life, the American people need an effective and responsive system of price control enforcement. This legislation is a major step toward attainment of that objective.

At this point, I ask unanimous consent that the bill be printed in the RECORD.

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

S. 2524

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SHORT TITLE

SECTION 1. This Act may be cited as the "Price Controls and Consumer Redress Act of 1973."

RETAIL PRICE CONTROLS

Sec. 2. Section 203 of the Economic Stabilization Act of 1970 is amended by adding at the end thereof the following new subsection:

"(k) To the maximum extent practicable, the authority conferred by this section shall be exercised with respect to retail prices in a manner which clearly establishes a retail price ceiling for each product or service of a retailer which is subject to a stabilizing order or regulation."

REWARDS

Sec. 3. Section 208 of the Economic Stabilization Act of 1970 is amended by adding at the end thereof the following new subsections:

"(c) Twenty-five per centum of the amount of any fine or civil penalty under this section which results from proceedings instituted pursuant to a complaint filed with the agency empowered to enforce price controls shall be paid to the complainant.

"(d) For the purpose of this section and Section 209, a violation of an order or regulation under this title includes any misrepresentation of a price ceiling, any sale at a price in excess of a price ceiling, and any reduction in the quantity or quality of goods or services sold or furnished without corresponding and appropriate reductions in price.

By Mr. TUNNEY:

S. 2525. A bill to require the Secretary of Commerce to prepare and transmit to the Congress periodic reports on export levels, domestic supplies, domestic demand, and prices of certain commodities, and to require the Comptroller General of the United States to analyze and evaluate those reports. Referred to the Committee on Commerce.

THE FOREIGN AND DOMESTIC COMMERCE INFORMATION ACT OF 1973

Mr. TUNNEY. Mr. President, the legislation I introduce is designed to put food on American tables at prices working men and women can afford. Essentially, it will provide Congress the vital information needed to curb the export of agricultural products already in short supply in this country, and it will mean that prices at the corner market are not going to be further skyrocketed by massive foreign purchases. On June 13, 1973, President Nixon made this promise to the American people:

In allocating the products of America's farms between markets abroad and those in the United States, we must put the American consumers first.

I believe this promise should be fulfilled. To do so, Congress must mandate specific restraints on agricultural exports. Before it can act, however, Congress must determine the specific levels of export restraint needed to protect American consumers and farmers. The bill I am now introducing will give Congress precisely the information it needs to legislate an end to food price inflation and will give the American shopper a fair deal at the supermarket.

Mr. President, we are faced with a food emergency in this country. This year was more inflationary than any in our history. If Congress fails to seize the initiative, 1974 will see Americans paying even more to get even less food on their tables. Last month the farm and food price index shot up at a seasonally adjusted rate of 19.3 percent. In annual terms, food prices increased an incredible 231.6 percent. Food today costs 28 percent more than it did at this time last year, and all indicators suggest the trend remains out of control.

Mr. President, unless Congress acts, the American consumer will have to face more than the prospect of higher and higher food prices. How much longer can anyone expect the workers of this country to accept moderate wage increases on the order of 5.5 percent when, in the month of August alone, the wholesale price index rose by 6.2 percent, more than in any month since World War II?

If food prices are not brought under control, we will see a wage explosion far worse than that which triggered the imposition of wage and price controls in 1971. Demand-pull inflation in the food area combined with cost-push inflation from the labor sector will surely mean unprecedented increases in hunger, malnutrition, brain damage among deprived children, and early death for malnourished elderly. It will condemn low- and moderate-income citizens to a depression diet of beans, bread and self-denial. For many millions of middle-class citizens, a lifetime of savings for children's education, a new home or retirement will be swept away. And with that will go their hopes for the future and their belief in the goodness and promise of this country.

If we do not act soon, the food price and wage explosion first will devastate our standard of living and then plunge us into a depression on a scale such as we have not seen since the 1930's.

Mr. President, the crux of the problem is food prices. It is not excessive Federal spending. It is not overly expansive monetary policy. It is the inability of our agricultural sector to provide Americans with adequate nutrition at reasonable prices and, at the same time, function as the marginal supplier of the world's protein and protein equivalent foodstuffs.

Between the first 7 months of 1972 and the first 7 months of this year, American exports of soybeans increased 23 percent; corn exports rose 75 percent. The increase in foreign shipments of wheat was an almost incredible 109 percent. These trends continue and, barring congressional action, we will be short a minimum of 35 million bushels of wheat as early as March of next year.

Soft winter and durum wheat will be totally unattainable by Americans within a few months. I should emphasize that this dismal outlook is predicated on the most optimistic USDA forecasts and do not take into account the effects of developing shortages of fertilizers, fuel for agricultural equipment and boxcars. No one should be surprised if 1974 brings $1-a-loaf bread, bread rationing, or both.

Mr. President, I recently chaired hearings for the Commerce Committee on the impact of skyrocketing food prices. I wish every Member of Congress could have seen and heard the witnesses describe the devastating food prices inflation causes. Every economic policymaker in the administration who dismisses the problem with assurances that Americans spend only 20 percent of their income for food should have heard Ms. Mary Leonard of the Committee for the Rights of the Disabled testify that:

Hunger is again becoming a way of life. The hordes of poor people find spiraling food prices shrinking their limited food money more and more. Today, I have seen people scrounging in garbage bins at local markets.

I wonder who, if anyone, in the administration knows or cares that anemia in the pregnant women and small children of east Los Angeles has increased from 11 percent to 33 percent, tripled between December 1972 and June 1973.

Mr. President, some of the most moving testimony ever given before a congressional committee was spoken by Ms. Betty Drevdall, project director of the Hawaiian Gardens Community Action Council in Los Angeles. After she described in general and statistical terms the many hardships caused by rising food prices for the people in the low-income, predominantly white community of Hawaiian Gardens, I asked her if she could describe any individual instances. Her answer was as follows:

If you have ever been called to the home of a family at five o'clock, with three children, one is a three-month old baby that has starved to death because there are five mouths to feed; there isn't any need to say much more. And that actually happened.

The children were malnourished. The father was malnourished. The mother was malnourished. The baby died in Hawaiian Gardens Hospital one hour after it was admitted.

The Welfare Department gave the parents a large runaround; and they committed murder. . . . That father and that mother were nineteen and eighteen years old.

I have children older than that, Senator Tunney. They don't know, they have no idea . . . they don't know what to do.

Their children are not responsible for what's happening. They have no knowledge of it. The Welfare Department is cold and inhuman. It doesn't care. The President doesn't care. The State doesn't care. Who the hell cares?

Mr. President, the committee heard testimony that the inability to meet rising food prices is increasing premature death among senior citizens. The number of anemic and brain-damaged children is on the increase. As malnutrition and its associated diseases increase, hospitals are forced to curtail services, and some are on the verge of closing under the pressure of ever-rising prices.

Mr. President, I could continue at some length on this subject. Instead, let me invite any who doubt the urgency of remedial action to read the hearings transcripts in their entirety. The case for action, congressional action, has never been more clear.

There are, Mr. President, only two ways to halt or reverse the trend in food prices. One is to increase production. Congress took decisive action in this area when it recently passed the new farm bill and eliminated subsidies for nonproduction. But production increases alone will not end the present crisis. The other solution lies in moderating foreign demand for our scarce food supplies. The Export Administration Act of 1969, as amended, gives the President authority to impose export controls under shortage circumstances such as these we face today. Legislation to expand that authority is currently pending in the Senate. I support that legislation, in principle, but regret to say that I do not believe it will be effective.

Congress can grant the President unlimited authority to curb exports, but will he use it? The administration recently abolished export restraints on soybeans. The Secretary of Agriculture has several times barred the possibility of new export controls unless we experience a monumental harvesting disaster. I think we can assume that if Congress fails to mandate specific export controls, there will be none.

Mr. President, heretofore Congress has responded to the rising demands for export restriction with legislation to increase the President's discretionary authority. Congress has not mandated specific controls because it lacks the information knowledgeably to determine the levels of export restriction needed to balance our domestic and international interests. In view of the food emergency and the administration's deliberate inaction, I am introducing legislation which will enable Congress itself to determine, enact and then change, when necessary, the export restrictions needed to protect American consumers and farmers.

This legislation, "The Foreign and Domestic Commerce Information Act of 1973," requires that, no later than 60 days after enactment and every 90 days thereafter, the Secretary of Commerce report to the Senate and House Commerce Committees on the domestic sup-

ply, demand and price situation and outlook for the protein group equivalent products—wheat, rice, barley, corn, rye, oats, grain sorghums, soybeans and soybean products, and cottonseeds and cottonseed products. More importantly, the Secretary is required to provide an analysis of the effect of various alternative levels of exports of the protein group equivalent foodstuffs on the prices of food products at the retail level. No later than 30 days after delivery of the Secretary's report, the General Accounting Office must provide the Commerce Committees with an independent, expert evaluation of the information and analysis contained in the report.

Congress will then have before it the precise information it needs to legislate specific export restraints. Congress can then impose such restraints, promoting an increase in the domestic food supply and consequently lower retail food prices across this country.

Mr. President, if this legislation were enacted today, Congress would be able to mandate informed and rational export restraints early next year and in time to avert what is clearly an impending disaster. There is little time to waste.

I would like to close by quoting from the testimony of another witness at the Commerce Committee hearings in California. I believe she was speaking for the vast majority of Americans when she said:

The people are angry, and rightfully so. They want action, legislation, and a plan that works. There is a tension in the air; a feeling of revolt; a disenchantment with the American system that no longer comes close to the American dream.

The average American family believed in that dream, and it is failing. When the system fails and when the American people despair, we are in grave trouble.

Mr. President, at this point I ask unanimous consent that the text of the bill be printed in the RECORD.

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

S. 2525

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as "The Foreign and Domestic Commerce Information Act of 1973."

PURPOSE

SECTION 1. It is the purpose of this Act to require the Secretary of Commerce to furnish to the Congress periodic reports relating to levels of demand, supply, export and prices of certain products in interstate commerce and to provide for an evaluation and analysis of such reports, in order that the Congress will be kept fully and currently informed of the impact of these levels on interstate commerce.

APPLICABILITY

SEC. 2. The products to which this Act applies are the following:

Group I—Wheat

Wheat—Hard red winter.
Wheat—Soft red winter.
Wheat—Hard red spring.
Wheat—White.
Wheat—Durum.

Group II—Rice

Rice in the husk, unmilled.
Rice, husked, long grain.
Rice, husked, medium grain.
Rice, husked, short grain.
Rice, husked, mixed.
Rice, parboiled, long grain.
Rice, parboiled, medium grain.
Rice, parboiled, short grain.
Rice, parboiled, mixed grain.
Rice, milled, containing 75 percent or more broken kernels.
Rice, milled, long grain, containing less than 75 percent broken kernels.
Rice, milled, medium grain, containing less than 75 percent broken kernels.
Rice, milled, short grain, containing less than 75 percent broken kernels.
Rice, milled, mixed grain, containing less than 75 percent broken kernels.

Group III—Barley

Barley, unmilled.

Group IV—Corn

Corn, except seed, unmilled.

Group V—Rye

Rye, unmilled.

Group VI—Oats

Oats, unmilled.

Group VII—Grain sorghums

Grain sorghums, unmilled.

Group VIII—Soybeans and soybean products

Soybean oil-cake and meal.
Soybeans.

Group IX—Cottonseeds and cottonseed products

Cottonseed oil-cake and meal.
Cottonseed.

REPORTS BY THE SECRETARY OF COMMERCE

SEC. 3. Not later than 60 days after the date of enactment of this Act, and each 90 days thereafter, the Secretary of Commerce shall transmit to the Committee on Interstate and Foreign Commerce of the House of Representatives, to the Committee on Commerce of the Senate and to the Comptroller General of the United States a report setting forth, with respect to the twelve-month period following the date of such report—

(1) the Secretary's estimates of (A) the domestic supply, (B) the domestic demand, and (C) the domestic wholesale and retail prices, of each product to which this Act applies; and

(2) an analysis of the effect various export levels of such commodities would have on domestic supply, demand, and wholesale and retail prices of each such product and on the prices of all other products sold in interstate commerce whose prices are, directly or indirectly, substantially affected by the prices of the products listed in Sec. 2.

REPORTS BY THE COMPTROLLER GENERAL

SEC. 4. (a) Not later than 30 days after the transmittal of a report in accordance with Section 3, the Comptroller General of the United States shall prepare and transmit to the Committee on Interstate and Foreign Commerce of the House of Representatives and the Committee on Commerce of the Senate a report containing—

(1) the Comptroller General's analysis and evaluation of the report of the Secretary of Commerce; and

(2) the Comptroller General's recommendations with respect to appropriate export levels of products covered by this Act consistent with alternative levels of increase in the retail prices of food products produced in whole or in part from the products listed in Sec. 2.

(b) For the purpose of carrying out his functions under subsection (a), the Comptroller General of the United States is authorized to procure the temporary or intermittent services of experts and consultants at rates not to exceed the maximum rate payable under section 3109 of title 5, United States Code.

ACCESS TO REPORTS

SEC. 5. The Committee on Interstate and Foreign Commerce of the House of Representatives or the Committee on Commerce of the Senate shall, upon written request, make available to any member of the House of Representatives or the Senate, respectively, a copy of any report received by such committee under this Act.

By Mr. SAXBE:

S. 2526. A bill to provide for the formulation of a plan for the consolidation of all common carriers by railroad in the United States into one private corporation. Referred to the Committee on Commerce.

Mr. SAXBE. Mr. President, the American rail system as it is presently constituted, is faced with a disaster. In the East a great number of roads are in bankruptcy. In the Midwest they are operating without producing the profit necessary to invest in capital improvements. In the Far West the deteriorating situation in the rest of the country has produced chaos in the attempts to effectively schedule the rolling stock.

Earlier this year I introduced a bill to provide for the nationalization of the seven bankrupt railroads in the Midwest and Northeastern corridors. My aim at that time was to provide a stimulus for a detailed analyzation of the American railroad system. Since then I have determined that nationalization in any form would be in our worst interests. For this reason, I am today introducing a bill that might serve as a solution to the cancer which is insidiously consuming an industry which enjoyed robust economic health not too many years ago.

This legislation is the first in a two-step process which provides for the establishment of a plan for the consolidation of all class I common carriers in the United States into a single private corporation similar in structure to the Bell telephone system.

The two bills presently before the Senate Commerce Committee take a typical band-aid type approach that, at best, will only briefly retard this growing cancer which is destroying our rail network. We must develop a plan that will be a workable alternative to the inevitable nationalization of our railroads and cost the Federal Treasury billions of dollars. My proposal, by dealing with the problem in totality, avoids the pitfalls of piecemeal approaches to the current rail crisis in the Midwest and Northeast which are presently being advocated, but will actually accomplish very little and will only serve to delay the day of reckoning for the American rail industry.

The objective of this legislation is to establish an American Railroad Consolidation Commission which will, after investigation and study, formulate a plan for the consolidation of all class I, privately owned common carriers by railroad, including their railroad subsidiaries and affiliated terminal companies in the United States; exclusive of Alaska and Hawaii and excluding lines wholly owned and operated by the Canadian National and the Canadian Pacific Railway, into one private corporation. After 1 year the American Railroad Consolidation Commission will make their legislative

recommendations to Congress which will then be able to vote for a well planned solution to not only the problems of a few railroads, but those of the entire Nation.

The commission will assess and determine the value of our domestic rail system as a whole and the value of each individual railroad company and the proper capitalization of the entire system in conjunction with a plan to distribute securities to the holders of debt and equity securities of the component parts.

The deterioration of our railroads is not confined to the seven bankrupt lines that are presently getting so much attention. It is a growing affliction destined to spread throughout the entire rail industry if preventive measures are not taken immediately. The Rock Island line is teetering on bankruptcy, the C. & N.W., the Milwaukee and Katy have been saved by abnormal grain movements and other lines are experiencing difficulties which make their future operation questionable at best. The point is that the malaise of the Northeast and Midwest lines is not local but is only the predecessor of nationwide problems.

Presently all American railroads operate as one system, in the interchange of track usage, cars, tankers, and traffic. Thus, even though there are many separate and distinct lines, they are integrated for operational purposes. The several plans advanced so far have incorporated a core-system theory but there has been no study which could firmly demonstrate whether the core-system could do the job, and more importantly, the effect, which might be disastrous, in its end connections and on the presently solvent lines which would parallel it. If events continue on their present course, we can anticipate a deepening rate of chaos and no solution to the problems of car service, car availability, circuitous and economic routing and a host of other problems which we have been unable to solve. We must also recognize the fact that at a time when this country is in the midst of an energy crisis of the first order, we must further develop the most economic means of transportation possible which is often represented by a fully integrated rail system.

I realize that the lines that are presently prosperous will at first feel that upon consolidation there would be a monetary flow from their railroads to counteract the losses being sustained by the Eastern lines during reorganization. This concern will most assuredly be offset by adequate recognition of the prosperous carriers through security allocations in the private corporation. Therefore, although there may be short-term disadvantages, consolidation, of necessity, will produce a tremendous long-term gain through the enormous economic advantages such as the elimination of duplicate tracks and facilities in the congested East where multiple lines now serve the same communities and shippers. On the other hand, preservation of the status quo most certainly looks toward a long-term loss for even the most prosperous lines as the whole railroad system continues to decay.

The proposed American Railway Consolidation Commission will have 1 year in which to develop a fair and impartial plan to consolidate all U.S. railroads. The Commission's findings and recommendations will be submitted to Congress together with its proposal for legislation necessary to adopt and carry out this proposal. During this time we will have an opportunity to analyze the entire question and what would be the most rational solution for all concerned.

Congress can no longer afford to sit on its hands, or to rely on band-aid programs to keep the railroads operating. Halfhearted solutions will only lead to further complications at a later date. My bill clearly provides a reasonable and practical alternative to disaster on the one hand, or full nationalization on the other. I ask unanimous consent that the text of this bill be printed in the RECORD at the conclusion of my remarks, as well as a comprehensive article dealing with the railroad crisis as it appeared in Business Week magazine.

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

S. 2526

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "American Railroad Consolidation Act of 1973".

ESTABLISHMENT OF COMMISSION

SEC. (a) There is established an American Railroad Consolidation Commission (hereinafter referred to as the "Commission").

(b) The Commission shall consist of nine members appointed and serve at the pleasure of the President, three representing railroad management, three representing railroad labor organizations, and three representing appropriate Government departments and agencies.

(c) The President shall designate a Chairman and a Vice Chairman from among the members of the Commission. Any vacancy in the membership of the Commission shall not affect its powers and shall be filled in the same manner in which the original appointment was made.

(d) Five members of the Commission shall constitute a quorum, but a lesser number shall constitute a quorum for the purpose of conducting hearings.

(e) (1) A member of the Commission who is otherwise an officer or employee of the United States shall serve without additional compensation, but shall be reimbursed for travel, subsistence, and other necessary expenses incurred in the performance of duties of the Commission.

(2) A member of the Commission from private life shall receive $100.00 per day when engaged in the actual performance of duties of the Commission, and shall receive reimbursement for travel, subsistence, and other necessary expenses incurred in the performance of such duties.

FUNCTIONS

SEC. 3. The Commission shall—

(1) After investigation and study, formulate a plan for the consolidation of all Class I, privately owned, common carriers by railroad, including their railroad subsidiaries and affiliated terminal companies, in the United States, exclusive of Alaska and Hawaii, and excluding lines wholly owned and operated by Canadian National and Canadian Pacific Railways, into one private corporation and to assess and determine the value of such railroads as a whole, the value of each separate component and proper capitalization of the entire system and distribution of securities to its components.

(2) after adoption and authorization of such plan by Act of Congress, take such initial steps as are authorized by such Act, to carry out such plan.

POWERS

SEC. 4. (a) The Commission may for the purpose of carrying out this Act—

(1) appoint and fix the compensation of an Executive Director and such additional staff personnel as he deems necessary without regard to the provisions of title 5, United States Code, governing appointments in the competitive service, and without regard to chapter 51 and subchapter III of chapter 53 of such title relating to classification and General Schedule pay rates, but at rates not in excess of the maximum rate for GS–18 of the General Schedule under section 5332 of such title;

(2) procure temporary and intermittent services to the same extent as is authorized by section 3109 of title 5, United States Code, but at rates not to exceed $—— a day for individuals; and

(3) request and accept from any executive department or agency, or congressional committee, any information and assistance deemed necessary to carry out its functions under this Act, and each such department and agency is authorized, to the extent permitted by law and within the limits of available funds, to furnish information and assistance to the Commission.

(b) (1) The Commission, or at its direction, any subcommittee or member thereof, may, for the purpose of carrying out the provisions of this Act, hold such hearings, sit and act at such times and places, administer such oaths, and require by subpoena or otherwise the attendance and testimony of such witnesses and the production of such books, records, correspondence, memoranda, papers, and documents as the Commission or such subcommittee or member may deem advisable. Any member of the Commission may administer oaths or affirmations to witnesses appearing before the Commission or before such subcommittee or member. Subpoenas may be issued under the signature of the Chairman or Vice Chairman and may be served by any person designated by the Chairman or Vice Chairman.

(2) In the case of contumacy or refusal to obey a subpoena issued under paragraph (1) of this subsection by any person who resides, is found, or transacts business within the jurisdiction of any district court of the United States, such court, upon application made by the Attorney General of the United States, shall have jurisdiction to issue to such person an order requiring such person to appear before the Commission or a subcommittee or member thereof, there to produce evidence if so ordered, or there to give testimony touching the matter under inquiry. Any failure of any such person to obey any such order of the court may by punished by the court as a contempt thereof.

REPORT

SEC. 5. Not later than one year, unless said period is extended by order of the President, the Commission shall report to the President and the Congress the plan formulated pursuant to this Act, together with its recommendations for such legislation as is necessary to adopt and carry out such plan.

AUTHORIZATION

SEC. 6. There is authorized to be appropriated such amount, not to exceed $———, as is necessary to carry out the provisions of this Act.

PROBLEMS BUILDING UP FOR YEARS HAVE REACHED THE CRISIS STAGE—THE RAILROAD PARADOX: A PROFITLESS BOOM

American railroads in 1972 enjoyed their biggest year in history, handling a record 780-billion ton-miles. So far in 1973, the

freight business has been even better: up 8% to 10% over the same period last year. According to all the theories of railroad operation, railroads ought to be enjoying their biggest profits in history.

They are not. American railroads are in bad shape despite dream levels of business. The Rock Island is teetering on the edge of bankruptcy; in the Northeast, six railroads have already fallen. In the first six months of 1973, the largest of them, the Penn Central, continued to lose prodigious amounts of money and threatened to plunge from bankruptcy into liquidation. Even rich railroads, such as the Union Pacific and the Burlington Northern, that are blessed with valuable mineral deposits, have to struggle to earn an adequate return from railroad operations.

This inability to earn money in the industry's finest year is more than a knockdown of traditional wisdom. It raises a serious question about the future viability of the entire railroad industry. Instead of enjoying the most profitable year in history, many railroads are worn out and exhausted. This failure is rooted in problems that have been building up for years.

The railroads cannot earn enough money to renew their facilities, partly because their rate structures are outmoded, partly because their physical assets have deteriorated, and partly because their accounting is as obsolete as their roadbeds.

They have the worst credibility in industry. Neither labor unions nor regulators nor the public believe their arguments. Railroads have been threatening collapse for so long without collapsing that nobody listens to them any more. In spite of the direct threats, they are still plugging along, whining but alive.

They have lost their clout in Washington so that they cannot get the federal help they desperately need. Rather, they are likely to get a cure prescribed by labor leaders, bureaucrats, and congressmen.

The stakes in preserving and rehabilitating the nation's railroads go far beyond the near term. Longer-range, railroads provide the best foreseeable way to keep the economy moving without consuming too much scarce energy or unduly upsetting a fragile environment. In the meantime, more of them are on the verge of dying.

The full depths of the industry's collapse were demonstrated this year when the railroads tried to carry two years' grain crops in one year. The result was bottlenecks on the lines and car shortages. At the worst of the crisis, 10,000 cars were waiting to be unloaded near ports, and the unfilled requests for empties were running as high as 42,500 a day.

NO PERCENTAGE IN MORE VOLUME

Even more significant than what happened in one season's grain movement—or nonmovement—is the problem of profitability. "I used to think there was nothing the matter with this industry that 10% more volume couldn't cure," says Stephen G. Ailes, president of the Assn. of American Railroads. "But now I'm not so sure. Last year was the biggest in our history. The railroads handled record ton-miles of freight without much dislocation—and by dislocation, I mean car shortages. This year we are handling about 10% more ton-miles with a good deal of dislocation and no prosperity."

In his rude awakening, Ailes is not alone. Just about anyone who ever worked on or studied railroads has taken it as an article of faith that the railroads are a high-leverage industry. The fixed costs are large, but once traffic has been built up to cover these costs, everything over that level is practically gravy. The example forever being cited was that it cost very little to add a 100th car to a 99-car freight train, so most revenue from that car could be carried down to net.

Furthermore, it was always taken for granted that railroads could handle a lot more theoretically incremental and, therefore, high-profit business, because so much of their trackage is idle so much of the time. This theory did prove correct during World War II and the Korean War.

This year the railroads are getting their best peacetime chance ever to prove that theory right. Instead, they are proving it wrong, because the plant is so run-down. All the years when railroads should have been renewing themselves were spent fighting to stay alive. So yards are inadequate, weary locomotives and cars are breaking down, and speed restrictions are being placed on weakened track. Far from seeing extra profits from the extra business, the railroads face extra costs, because the new business requires extra effort. In every case there were special circumstances, mostly weather related, but some earnings declines in the second quarter of 1973 were staggering: Burlington Northern, down 77% from a year ago; Kansas City Southern, down 53%; Seaboard Coastline, down 34%; and the Frisco, down 63%.

In 1972, the industry had total operating revenues of $13.4-billion; a net income, including that from outside sources such as diversified companies and timber and mineral resources, of just about $500-million; and a rate of return on net investment of only 2.95%. Low as the rate of return was last year, it was the highest it has been since 1966.

With numbers like that, the industry faces an impossible task in generating adequate funds for renewal of its plant. It believes it ought to be spending an average of $3.6-billion a year over the next 10 years to get its plant in shape. This year, which is an unusually high one for railroad capital expenditures, it will spend about $2-billion. In other words, what the industry wants additionally is somewhere between $1.6-billion and, say, $2-billion a year. The problem is where and how it will get the money to meet the needs of today's economy, let alone tomorrow's.

IT TAKES A CRISIS TO GET A DECISION

There are, of course, those who think it will not have to meet those needs. "I have friends—we all do—who think of the railroad business as operating passenger trains, and therefore they think railroads will recede into the twilight and disappear," says William B. Johnson, chairman of IC Industries, parent of the Illinois Central Gulf RR. "And yet the industry can probably offer more to the country of what it needs today than at any time in modern history. Take inflation. One sure way to beat inflation is to increase productivity. We have immense capacity to increase the productivity of transportation. I don't mean we have it today. I mean the potential is there."

Just how important railroads are to the economy was amply demonstrated by the one-day shutdown of the Penn Central Transportation Co. on a Thursday last February. If nothing else, that got the attention of Richard C. Gerstenberg, chairman of General Motors, who fired off a telegram to President Nixon. "If it is not resolved immediately, virtually * * *

Actually, it is crises such as the Penn Central, due to come to a head in Congress within the next two weeks, that are giving railroad leaders their best hope. Impending disruptions are getting the attention of chief executives instead of merely the traffic managers, and they are certainly getting the attention of Congress.

The history of this country is that hard decisions are taken only at the last moment to save somebody or something from a fatal plunge. But if crises force hard decisions and create the opportunity to change directions, they also create haste and the chance of making a mistake. And there is always the danger that whatever is done will have the effect of erecting a fence at the edge of the cliff instead of eliminating the reasons that someone is teetering there.

This is the possibility that frightens most railroad officers. "I'm satisfied that there is going to be meaningful activity by Congress and the regulatory bodies to improve the railroad industry," says William J. Quinn, chairman of the Milwaukee Road. "But my concern is that it is going to be done only with respect to each crisis, that there will be an ad hoc solution to the Northeast crisis, for example, instead of a solution that gets at the fundamentals."

NOT MORE CARS BUT USABLE CARS

A proposed solution to the freight car shortage is another case in point. If there is a car shortage, the general reasoning goes, it follows that the industry needs more cars. And if the industry cannot afford more cars, then the obvious solution is for the federal government to step in either with loan guarantees or, if that does not work, with the creation of a quasi-public corporation to buy cars and lease them to the railroads. The Senate has already passed just such a bill.

* * * short of cars as that they are short of empty cars where these are needed. "I saw what was coming," says Benjamin F. Biaggini, president of the highly profitable and well-managed Southern Pacific. "I got authority from our board of directors to go ahead with the biggest capital improvement program that we've ever had. We bought 13% of all freight cars bought last year in the U.S. And when the time came and we really needed them to take advantage of the booming lumber market in the Pacific Northwest, we found our cars tied up in bottlenecks in the Southeast and East. The net result is that we probably lost 15,000 carloads of lumber simply because our cars were not available when our shippers needed them. If I thought I'd get anywhere with it, I'd file a hell of a big damage suit."

"I'm opposed to calling the experience of the first half of 1973 a car shortage," adds Worthington L. Smith, president of the Milwaukee Road, which, like others in its territory, was swamped with grain business this year. "That implies that adding more cars would have solved things. With ports and terminals backed up, twice the number of cars available for loading would have resulted in twice the number of loaded cars with no place to go."

As the AAR's Ailes puts it: "If Jehovah himself had given us 100,000 more cars this year, it would not have solved the problem. The problem is that the whole industry is anemic, not just the car supply. We have to get healthy enough so we can handle the extra business on an ordinary basis instead of on an extraordinary basis."

THE MONEY BIND: WORSE AND WORSE

The answer, besides more cars, is modern terminals where cars do not get jammed up, modern classification yards, better signaling systems, and industrywide computer control of cars. It makes little sense just to buy more cars when the average freight car spends so much time standing still that it moves, both loaded and empty, only 56 mi. a day. The trick is to get more use out of existing cars. But all this requires the very capital that railroads do not have, and find it currently impossible to raise.

Scratch any railroad president and you get a long list of complaints about unfair treatment at the hands of government. The litany is familiar. While railroads have to build, maintain, and pay taxes on their rights of way, the world's most efficient network of highways, airways, and waterways has been provided and is being maintained by federal and state governments. Putting aside all the peripheral arguments that transportation people love to get mad about, such as trust funds, user charges, and land grants, the railroad people are right. The world they live and work in is unfair.

Last month, the Southern Pacific opened a new, automated classification yard costing $39-million. "We have to try to recover that," says Biaggini. "All that the user of high-

ways or airways has to do is in some small way pay for a little bit of what he uses as he uses it. Now that's a system that is obviously slanted in favor of other forms of transportation. There has to be a way to finance improvements in the rail plant so these massive sums of capital are not needed long before you can begin to realize the benefits from them, or so that capital can be recovered quickly once you invest it.

"We have got to find some way to reverse the flow of capital so it will flow into the industry and not out of it," adds Biaggini. (See box.) "And right now the best way to do that, as I see it, is federal loan guarantees for the people that need it."

But IC Industries' Johnson does not think borrowing more is necessarily such a great idea. "In fact," he says, "it might be the greatest disservice the industry could do to itself, to borrow and overinvest. If the fixed charges get to the point where you can't pay the bill, you've got another crisis, and there are plenty of them in the making."

Johnson points to something that is worrying railroad men throughout the country: All the 3% and 4% debt on the books, negotiated in Depression days, will have to be refinanced at 10% if present conditions in the money market continue. The ICG, for example, has $17-million coming due next year. "And when you've got it refinanced, do you have a better railroad?" Johnson asks. "No, it's precisely the same railroad with interest charges two and a half times as high. And that's why you have bankruptcies." In any case, Wall Street will not lend the railroads a dime these days, even at inflated interest rates, unless the roads provide gilt-edged collateral and the most senior status for the debt.

To Johnson, the answer lies in adopting the Canadian approach to railroad problems. In Canada, if a low-density line cannot pay its way, it is discontinued unless shippers that want service on that line have successfully applied to the government for taxpayer subsidies.

ECONOMICS VERSUS POLITICS

Johnson feels that the present trend in dealing with the symptoms of the Northeast problem leaves Congress with a series of hard economic decisions vs. pleasant political ones. He says: "In every one of the issues—low-density branches, excess labor, you name it—there is the same conflict: the logical, economic decision vs. the difficult political one, or the pleasant political decision that becomes difficult in the context of the logic of economics. If the government resolves all these basic questions in the short-term political interest, then there's only one thing for us to do, and that's to get on the nationalization bandwagon. The only fair thing the government can do is buy all the railroads and return the investment the public has made."

Although Senator Vance Hartke (D-Ind.) is making a point that his proposed solution to the Northeast rail crisis is designed to prevent nationalization, railroad presidents disagree. They characterize his status-quo-while-the-problem-is-studied-approach as just the sort of political waffling that will lead to nationalization. They also distrust the Transportation Dept.'s stated position of providing only minimal federal funds.

Most railroad officials still hope that Congress will want to avoid the huge cost of nationalization and will, instead, provide the necessary $1.6-billion to $2-billion a year to restore the industry's plant. Says Frank E. Barnett, chairman of Union Pacific Corp.: "That's not very much when you consider that federal, state, and local governments spend more than $28-billion annually on all other forms of transportation."

Along with government money, men like Barnett and Johnson want a clearly defined national transportation policy that will more equitably subsidize and regulate the various kinds of transportation. Failing that, they would like to rewrite th Interstate Commerce Act for fairer treatment and greater freedom to lower some rates and raise others.

The question of rates is crucial to the survival of the industry. According to a study by the management consulting firm of Temple, Barker & Sloane, Inc.—a study that the Illinois Central Gulf calls "the gloom and doom book"—something more than 20% of the commodities carried by rail are carried at a loss—among them pulpwood, sand, gravel, and even a lot of perishable produce. Much of this is left over from monopoly days, before truck competition, when railroads carried some raw materials at a loss in the expectation of making this up on the finished goods.

Many railroad presidents insist that the industry is no longer strong enough to carry any kind of freight below cost. The problem is to get everyone to agree with each other's cost figures, and then either to raise the rates or tackle the more difficult job of telling customers that some of their business is no longer wanted.

AN ENORMOUS REBUILDING JOB

If rates and regulations can be made more equitable and if capital can be raised, the rebuilding job to be done is still enormous. Some rich railroads such as the Santa Fe, Southern, and Union Pacific have well-maintained properties, but the industry average is dismal.

"We know of Midwestern railroads where 60% of the mainline track is under slow orders," says Barnett. A slow order is a speed restriction placed on a piece of track found to be in disrepair. In some extreme cases this year, the speed is down to 10 mph. A lot of the trouble in the Midwest was caused by weather, notably this year's floods, but a lot was also caused by wear and tear from the industry's high level of business.

A railroad can keep its rail surface smooth when no more than one tie in four is defective. But if tie replacements are deferred beyond this limit, the entire track structure deteriorates rapidly. According to the Temple, Barker & Sloane report, which also looked at the industry's physical shape:

New rail is being installed at a rate that would be adequate only if rail could last more than 150 years instead of about 20.

The rate of tie replacement would be adequate only if ties could last more than 46 years instead of about 20.

Cash generated per car on most railroads is stagnant or declining.

The cost of a new unit of rolling stock has risen rapidly, surpassing cash generation per car for all railroads except the Union Pacific.

Most railroads are not producing enough cash to pay for existing rolling stock, let alone to retire mortgages or pay cash dividends. Capital expenditures and dividends far exceed net income and depreciation.

Among the men closest to the problem, such as an official of the Roadmasters & Maintenance of Way Assn. of America, the outlook is equally grim: "Many of our members say that in these times of comparatively active business conditions, they are barely able to keep their railroads together and are making little or no progress towards correcting deficiencies left over from leaner years. They fear that should a business recession occur, they will go under."

"Our business is just soaring," says an official of a relatively prosperous railroad, "particularly our container and piggyback business. But that kind of traffic requires fast trains, and we are fighting a losing battle keeping this a high-speed railroad. It doesn't cost twice as much to maintain a railroad for 100 mph as 50 mph—the numbers go up geometrically."

LABOR IS LOSING PATIENCE

If massive infusions of capital are necessary, the chances that these will come from the federal government are not good without substantial support from railroad labor unions. And the chances for that, though considerably brighter than a few years ago, are still poor.

Al H. Chesser, president of the key United Transportation Union, is nothing if not blunt in his position. He describes the scene when railroad management came to him, asking for help in getting relief from discriminatory taxation. "I met with management in February, 1972, and I laid down an ultimatum," he declares. "I told them 'Your soft spot is Washington, D.C., because that's where you've got to go to get help, and you don't have the know-how to do it. But don't come to me crying for help. That day is over. She's come to a close. You've had it until you change the industry, until you change your attitude, until you start treating people the way people should be treated. When you've done that, we'll go to Washington together and do something about this industry. We'll save it. If you don't want to change, let's not prolong the industry's death. The hell with it. I'm through with you.'"

Chesser is perfectly frank about not believing the railroad industry's books. "There's something wrong when an industry works at peak capacity and says it is only making 3% return on investments," he says. "I say that's baloney. I don't believe it." The Illinois Central Gulf has a standing offer with Chesser to let him examine the ICG's books to his heart's content, but he says that his union is too poor to hire the necessary auditors.

For all his tough talk, Chesser is just as opposed to nationalization as management is. "When the British Railways were nationalized in 1947, there were about 20,000 miles of track, train service was good, and the operating employees had the best jobs in England," he says. "Today there are 11,000 miles, and our guys have the sorriest jobs in England with half the force. I don't want to buy any of that for the United States."

But for all his bluntness, Chesser does think management is showing better understanding, largely through close attention to railroad management's allegedly "old-fashioned" method of disciplining and suspending employees found guilty of errors of judgment, mistakes, or causing accidents. He cites the Burlington Northern as a railroad that had bad labor relations but where, thanks to joint efforts, grievances have been cut 60%. Now he thinks the BN is the most improved railroad in the industry, from a labor relations point of view.

BN's Chairman Louis W. Menk agrees. "I think we have made enormous progress in labor-management relationships," he says. Chesser and his top aides have been meeting repeatedly with Menk and his staff to discuss and defuse these grievances.

THE NEED FOR FLEXIBLE REGULATION

Labor-management relations must improve if the rail industry is to meet the needs of the U.S. economy. At present, railroad labor is protected by a host of provisions drawn up in the days of steam-engine technology and of less highway and waterway competition. These provisions determine how many men constitute a train crew, what is road work and what is yard work, and at what geographical boundaries the train crews must be changed. Management desperately wants these provisions relaxed, but in the climate of hostility that grew out of management's charges of "featherbedding," progress toward relaxing them is glacial.

"I don't question the rationale under which the work rules were established as reasonable and justified," says Alan S. Boyd, former Secretary of Transportation and now president of the Illinois Central Gulf. "But the thing that we as managers have not gotten across, in addition to credibility, is that our competitive environment is now different. We cannot react to this changed environment if the bulk of our expenses are

tied to work rules related to an alien environment."

Boyd admits that the same result would not necessarily be true on every railroad, but he is convinced that a relaxation of work rules on the ICG would lead to more employment, not less, because the railroad could then compete for traffic that is now lost to it.

The tendency on railroads today is to run long trains, since the labor costs are the same for a 10-car train as a 100-car train. But this means holding cars back until a long train can be assembled, and also delaying individual cars through repeated switching in classification yards. To an increasing degree, the U.S. economy requires exactly the opposite kind of transportation service; it is requiring quality transportation, not quantity.

The proliferation of brands, styles, and models of consumer products and the diffusion of places where they are sold are putting a premium on reliability and speeding transportation. These two trends are also decreasing the size of shipments. Carload lots of refrigerators, all white and all one size, are not going to meet the marketing demands of Sears, Roebuck in hundreds of shopping centers.

Moreover, record-high interest rates are making the cost of slow transportation of finished goods prohibitively expensive. "All of that inventory a customer has tied up on a railroad that can't handle it efficiently is costing him real money these days," says Arthur E. Leitherer, vice president for traffic at Allied Mills, Inc., and president of the National Industrial Traffic League. "We need transportation by the clock, not the calendar." Computer-aided management procedures also are leading to tighter controls of the distribution system, again putting a premium on reliability.

Products tend to be more valuable per unit of weight as the standard of living improves. Thus, transportation service becomes more important, and its price less so. Improved technology also has led to more specialization of industrial products and components. Once more this means smaller shipments and higher-quality transportation.

IN THE FUTURE NATIONAL INTEREST

This growing requirement for quality transportation, abetted by continuing governmental investment in highways and airways, causes many economists to believe that the share of freight tonnage hauled by rail will continue to decline, as it has done steadily since the end of World War II, and that railroads will, indeed, recede into the twilight.

But this outlook ignores two things: The U.S. is running short of energy, and it is running short of land where people and industry want to exist.

A truly severe shortage of petroleum fuels would bring soaring prices and possibly government-imposed priorities and restrictions. The most efficient user of fuel, therefore, would probably have a priority in acquiring it and would certainly get more for the dollar. And at speeds above about 6 mph, railroads are the most efficient users of fuel in freight transportation. A Rand Corp. study looked at the problem in terms of energy consumption per ton-mile, expressed in British thermal units. Waterways were the most efficient with 500 Btu, railroads were only slightly less efficient with 750, pipelines had 1,850, trucks had 2,400, and air freight came in at 63,000. Another plus for railroads is that they could be electrified much more easily than other forms of transportation. Indeed, several railroads, such as the Burlington Northern and Illinois Central Gulf, are already giving intensive study to the possibility.

Looking further into the future, the outlook for railroads is even brighter if they can only prepare for it. As the standard of living improves, there is dramatic growth in the ton-miles of freight moved per capita. If this number grows in the next 30 years at the same rate as in the past 30, and if the population by the year 2000 reaches the expected 265-million, there will be a need for as much as 7-trillion ton-miles of intercity freight transportation annually, compared with about 2-trillion ton-miles now.

Given finite amounts of land, air, and water for transportation purposes, the clutter would be unbelievable if the present trends were to continue. In fact, if the assumptions are correct, the magnitude of the job to be done will dictate that railroads will haul an increasing share, instead of a decreasing share, of the nation's commerce.

But first the industry must be rescued. As the IGC's Boyd says: "We have a lot to offer, and we don't know how to get to the place where we can offer it."

How railroad accounting eats up the assets these years while loudly proclaiming its own imminent doom? A large part of the answer is that it has been consuming its own assets—and that is one fact of life it does not like to proclaim.

Railroads practice a kind of accounting that is unique in today's state of the accounting art. They do not, for example, take depreciation on their track. Where any other company would depreciate a capital asset over the economic life of that asset, the effect of railroad accounting is to leave the investors' money forever tied up in track.

Track appears on the left-hand side of a railroad balance sheet as an asset figured at the cost of its installation. If a railroad should improve its line by replacing 115-lb. rail with 130-lb. rail, the cost of the new rail goes onto the balance sheet as a betterment, which is why railroad accounting is called betterment accounting. But the labor of putting it there is an expense item, as is the normal replacement of rail, ties, and ballast of the same quality as the track materials they replace, and such activity has no effect whatever on the balance sheet.

No logic. The useful life of rail differs widely, depending on the speed and weight of trains and the local climate. But if 20 years is a good average for mainline track, logic would dictate that every year a prudent management should replace one-twentieth of its track. And, under railroad accounting, the cost of the new track and the cost of putting it there would be listed as an operating expense. But necessity and logic are often not the same thing on railroads. By not replacing rail, management can make their income statements look better—or less horrible—than they otherwise would be. And for years now, railroads have not been maintaining their property adequately.

It is all perfectly legal under the rules of betterment accounting, but the result is that the balance sheet is wrong. Deferred maintenance means that assets that are listed at original cost are no longer worth anywhere near that much. The investors take the beating in the end; it is a sort of 1970s way for railroad management to play robber baron, and the Penn Central management before bankruptcy was a classic case.

In today's stock market, it is not unusual to find companies in many industries with a market price of their stock lower than the book value. But in the railroad industry, this is standard in any kind of market, good or bad. Leonard Spacek, then the managing partner of Arthur Andersen & Co. and the recognized demon among accountants for his disgust with betterment accounting, studied the situation in 1955. He took all the companies that made up the Dow Jones averages and worked out their market price as a percentage of their book value on Dec. 31 that year. The industrials were 230%, the utilities were 145%, and the 20 relatively high-grade railroads that made up the rail index in those days were 47%. Spacek specifically laid the blame for this on Wall Street's distrust of railroad balance sheets.

An even more dramatic example is provided by the Chicago & North Western Ry. When its holding company, Northwest Industries, sold the railroad in 1972 to its officers and employees, Northwest wrote down the railroad's assets by more than $400-million, thereby giving itself a huge capital tax loss carry-forward. This also wiped out years of accumulated uneconomic results of betterment accounting on the road and made the balance sheet honest. Following the sale, the North Western adopted depreciation accounting for its track, the first major U.S. railroad to do so.

Even though the North Western is only marginally profitable, the fact that it does not have ghost assets on its books has caused the book value of its stock, which is not traded, to "rise substantially," according to Larry S. Provo, North Western president, who is proposing a 60-for-1 stock split.

WORLD WAR I RULES

The history of betterment accounting for railroads goes back to 1914, when the Interstate Commerce Commission first prescribed the rules. At that time, of course, income taxes were low and railroads had a practical monopoly of transportation. The reason railroads embraced betterment accounting so eagerly was that the commission determined the industry's revenue requirement as a percentage of its total investment. By not depreciating its track, the industry kept its rate base high.

In other words, if a hypothetical railroad had $1-million invested in property devoted to public service, if it had $600,000 a year in operating expenses, and if the commission decided that 10%, or $100,000, was a reasonable rate of return, that railroad would have been allowed to set rates to bring it $700,000 annually. If, on the other hand, the railroad were to depreciate its track investment, down would go the allowable rates the railroad could charge its customers.

Technology and income taxes changed the world the railroads lived in. But the accounting rules on track depreciation did not. Today, if railroads tried to charge enough to get 10% of their net investment as a rate of return, the rates would be so high that all their business would go to trucks, barges, pipelines, and air cargo. Now it is too late to get the costs of the track back. More important, by not taking depreciation on their track, they are overstating their income and paying unnecessary taxes. The Andersen firm believes railroads should be allowed to recompute their income taxes back to 1913 based on depreciation accounting. For poor and bankrupt railroads the resulting refunds would be fantastic.

* * * * *

William B. Johnson, chairman, IC Industries: "To borrow and overinvest might be the greatest disservice the industry could do to itself."

B. F. Biaggini, president, Southern Pacific: "All that the user of highways or airways does is pay for a little bit of what he uses."

W. J. Quinn, chairman, Milwaukee Road: "My concern is that action will be taken only with respect to each crisis instead of to fundamentals."

W. L. Smith, president, Milwaukee Road: "I'm opposed to calling it a car shortage. That implies that adding cars would have solved things."

Alan S. Boyd, president, Illinois Central Gulf: "We cannot react to a changed environment if the bulk of our costs are tied to old work rules."

Al H. Chesser, president, U. T. U.: "I told them don't come to me crying for help, you've had it until you change your attitude."

Louis W. Menk, chairman, Burlington Northern: "I think we have made enormous progress in labor-management relationships."

By Mr. MONTOYA:

S. 2527. A bill to provide for the construction of a Veterans' Administration hospital in the city of Albuquerque, N. Mex. Referred to the Committee on Veterans' Affairs.

Mr. MONTOYA. Mr. President. I am introducing a bill today to provide for the construction of a new Veterans' Administration hospital in Albuquerque, N. Mex.

The present veterans' hospital in Albuquerque is the only Veterans' Hospital in New Mexico. It was designed as a chronic, extended care facility and was opened in 1932 as a long-term, tuberculosis hospital. Today, however, we must consider the needs of a facility where the average hospital stay is 15 days. The present facility is in need of major restoration and expansion to bring it up to present needs and standards. Such basic needs as air conditioning, adequate space for outpatient and clinical areas, teaching facilities, upgrading of the electrical support systems, and heating systems are anticipated to cost approximately $14 million. And these changes are only to bring the present facility up to standards to meet today's needs. Tomorrow's needs are left untouched.

Medical science and technology has made amazing advances since 1932, but New Mexico veterans are making do with a 40-year-old, out-of-date facility. I am proud of the mutually beneficial partnership that has developed between the Veterans' Administration hospital and the University of New Mexico Medical School. I am also hopeful that a beneficial partnership will develop between the new Albuquerque Cancer Center and the Veterans' hospital. This Cancer Center, working in conjunction with the Los Alamos Meson Physics Facility, will explore revolutionary modalities for the treatment and cure of cancer. This partnership would prove beneficial not only to New Mexico veterans, but to national veterans as well.

Funding for a replacement center has been discussed since 1966. I feel we can wait no longer. I urge that this matter be given serious consideration at the earliest opportunity possible.

By Mr. MONDALE (for himself, Mr. BENTSEN, Mr. JAVITS, Mr. PACKWOOD, Mr. ABOUREZK, Mr. BAYH, Mr. BURDICK, Mr. CASE, Mr. CHILES, Mr. CLARK, Mr. COOK, Mr. CRANSTON, Mr. EAGLETON, Mr. HART, Mr. HATFIELD, Mr. HUDDLESTON, Mr. HUGHES, Mr. HUMPHREY, Mr. JACKSON, Mr. KENNEDY, Mr. MATHIAS, Mr. MCGEE, Mr. MCINTYRE, Mr. METCALF, Mr. MOSS, Mr. NELSON, Mr. PERCY, Mr. RANDOLPH, Mr. RIBICOFF, Mr. ROTH, Mr. SCHWEIKER, Mr. HUGH SCOTT, Mr. STAFFORD, Mr. STEVENSON, Mr. TUNNEY, and Mr. WILLIAMS):

S. 2528. A bill to amend the Social Security Act to provide the States with maximum flexibility in their programs of social services under the public assistance titles of that act. Referred to the Committee on Finance.

SOCIAL SERVICES AMENDMENTS OF 1973

Mr. MONDALE. Mr. President, I am pleased to introduce this morning—on behalf of myself and Senators BENTSEN, JAVITS, and Packwood, together with Senators JAMES ABOUREZK, Democrat of South Dakota; BIRCH BAYH, Democrat of Indiana; QUENTIN N. BURDICK, Democrat of North Dakota; CLIFFORD P. CASE, Republican of New Jersey; LAWTON CHILES, Democrat of Florida; DICK CLARK, Democrat of Iowa; MARLOW W. COOK, Republican of Kentucky; ALAN CRANSTON, Democrat of California; THOMAS F. EAGLETON, Democrat of Missouri; PHILIP A. HART, Democrat of Michigan; MARK O. HATFIELD, Republican of Oregon; WALTER D. HUDDLESTON, Democrat of Kentucky; HAROLD E. HUGHES, Democrat of Iowa; HUBERT H. HUMPHREY, Democrat of Minnesota; HENRY M. JACKSON, Democrat of Washington; EDWARD M. KENNEDY, Democrat of Massachusetts; CHARLES MCC. MATHIAS, Republican of Maryland; GALE W. MCGEE, Democrat of Wyoming; THOMAS J. MCINTYRE, Democrat of New Hampshire; LEE METCALF, Democrat of Montana; FRANK E. MOSS, Democrat of Utah; GAYLORD NELSON, Democrat of Wisconsin; CHARLES H. PERCY, Republican of Illinois; Mr. RANDOLPH, Democrat of West Virginia; ABRAHAM RIBICOFF, Democrat of Connecticut; WILLIAM V. ROTH, JR., Republican of Delaware; RICHARD S. SCHWEIKER, Republican of Pennsylvania; HUGH SCOTT, Republican of Pennsylvania; ROBERT T. STAFFORD, Republican of Vermont; ADLAI E. STEVENSON III, Democrat of Illinois; JOHN V. TUNNEY, Democrat of California; and HARRISON A. WILLIAMS, Jr., Democrat of New Jersey, the Social Services Amendments of 1973.

Mr. President, our bill has the support of Governor Evans, Chairman of the National Governors Conference. It was unanimously endorsed by the Southern Governors at their meeting last week. It is endorsed by organizations including the AFL–CIO, National Council of State Public Welfare Administrators, Child Welfare League of America, Council on Social Work Education, League of Women Voters, National Council of Community Mental Health Centers, National Association for Retarded Children, National Association of Counties, National Association of Social Workers, United Auto Workers, United Methodist Church, and United Methodist Church Women's Division, Washington Research Project Action Council, American Parents Committee, and the Legislature of the State of Michigan.

Mr. President, this legislation represents an impressive, hopeful, and thoroughly bipartisan effort—on the part of members of the Senate, State, and local government, and interested private groups—to rescue the social services program from regressive regulations scheduled to go into effect next November 1.

This bill does not cost more money; it leaves unchanged the $2½ billion congressional ceiling earlier imposed.

The social services program—first established 17 years ago—is among our oldest human service programs. It is a Federal-State partnership, with Federal matching of State contributions on a 3 to 1 basis. By law, it is directed to past, present, and potential welfare recipients. Through provision of services by the States—such as day care for children of working mothers, help for drug addicts and alcoholics, education and training, hot meals and other services for elderly persons at home—the social services program is designed to reduce and prevent welfare dependency, to strengthen families, and to provide alternatives to institutionalization for the aged, blind, and disabled.

Last year, as part of the Revenue Sharing Act—Public Law 92–512—the Congress, at the request of the administration, adopted a $2.5 billion ceiling and other reforms for the social services program—to prevent abuses and to require States to more carefully order their priorities.

The social services program, with its strong role for decisionmaking and ordering of priorities on the State level, closely resembles the strategy of "revenue sharing" which the administration has advocated in other areas. It is designed to reduce welfare dependency by helping the poor, the elderly, and the disabled to lead more independent, productive lives.

Yet, last January 16 the Department of HEW issued new regulations, which would cut the heart out of the program. The Department proposed to sharply limit the range of services open to the States, and to prohibit the use of privately-contributed funds. Most important, they proposed to limit services to the poorest of the poor, well below the maximum welfare support level.

These new regulations would reverse the basic thrust of the services program. By confining services to those below the welfare level, they would create a positive incentive to get on welfare and stay there.

With great accuracy the Washington Post described these regulations as "impoundment by redtape."

Last June 30, the Congress adopted legislation prohibiting implementation of new social services regulations before November 1 without approval of the Senate Finance and House Ways and Means Committees. No regulations have been submitted to the committees for approval; but DHEW has announced its intention to put revised regulations into effect on November 1.

It is a great disappointment that despite the concern of the Nation's Governors and local officials, an outpouring of mail from concerned persons and organizations throughout the country, days of hearings by the Senate Finance Committee, and formal action by the Congress to suspend the new regulations, the basic problems remain. The proposed regulations have been revised three times since last January, and improvements have been made. Private contributions are allowed, under severe restrictions. Additional services have been added to the laundry list. The "redtape" involved in reporting on individual cases as often as every 3 months has been reduced.

But important services continue to be

excluded. Education is perhaps the single most effective means of rehabilitation. The HELP program at the University of Minnesota now serves 300 welfare mothers. These women, with success rates above their class average, go on to become productive, taxpaying citizens. Yet education would be excluded from the social services program.

Comprehensive foster care home group programs are among the most promising approaches to the care of many emotionally disturbed children. Yet the HEW regulations would prohibit this comprehensive approach.

Day care for mentally retarded children would in many States be limited to children of one-parent families—and would not be available to children who are severely mentally retarded.

The new regulations prohibit recreational and rehabilitative services for the aged in senior citizen centers.

These are only a few of the problems with the latest set of HEW regulations.

Most disappointing of all, the November 1 regulations continue to ignore the goal of reducing and preventing welfare dependency. They limit services to past welfare recipients to 3 months, and services to potential recipients to those likely to be on welfare within 6 months. And for most services, they provide that a family is not likely to be on welfare within 6 months if family income exceeds 150 percent of the welfare payment standard—with a disregard of $60 per month of earned income. In most States this will limit services to families below the maximum welfare level, creating a tremendous disincentive toward leaving welfare. In many States this formula will prohibit any assistance to intact, two-parent families. It will prohibit any aid to elderly persons under 64½ years old.

I find these regulations incredible from an administration that claims to believe in granting more discretion to the States, that claims to be in favor of work, and in favor of reducing the welfare load. I cannot understand why, after the great bipartisan expression of concern from the Congress, the Nation's Governors, and local officials, the administration has refused to modify this callous and counterproductive approach.

Do we want to deny day care services to low-income mothers who find work? What sense does it make to offer an alcoholic help only after he loses his job?

The lines are clearly drawn. In a Finance Committee hearing last May, Chairman LONG expressed the concern of the Congress:

> In these hearings, the committee will want to be sure that the regulations are not pennywise and pound foolish. We don't want to cut off low-income working persons from the day care, family planning or other services they need to stay off welfare.

The legislation which we propose today will resolve the argument.

This bill, which was drafted with the help of State and local officials and others from throughout the country, states in legislative form the four broad goals of the social services program:

First. Self-support goal: To achieve and maintain the maximum feasible level of employment and economic self-sufficiency.

Second. Self-care or family-care goal: To strengthen family life and maintain maximum personal independence, self-determination and security in the home, including, for children, the achievement of maximum potential for eventual independent living, and to prevent or remedy neglect, abuse, or exploitation of children.

Third. Community-based care goal: To secure and maintain community-based care which approximates a home environment, when living at home is not feasible and institutional care is inappropriate.

Fourth. Institutional care goal: To secure appropriate institutional care when other forms of care are not feasible.

It contains a list of 23 specified services, carefully drawn to preserve the full flexibility of the States while preventing abuse, and requires the Secretary to approve any other services consistent with the goals of the program.

It guarantees that private contributions may be included in the State's share for Federal matching, so long as the State is free to choose the provider of services or to provide the services itself.

It assures that hot meals and medical costs not reimbursed under medicaid may be included where appropriate in service programs, and provides for improved reporting and accounting procedures.

It provides additional flexibility to the States to serve potential welfare recipients, and adds child protective services to the list of services available on an unrestricted basis to potential recipients.

Most important, it returns to the approach of the existing regulations, allowing the States to serve past recipients who have been on welfare within 2 years, and potential recipients likely to be on welfare within 5 years. And it provides that the Secretary cannot challenge a State's determination that a person or family is a potential welfare recipient, so long as family or person income is below the Bureau of Labor Statistics' Minimum Living Standard Budget—adjusted regionally and for family size—or, in the case of child care, below 150 percent of the BLS standard.

We are hopeful that our bill will be enacted as an amendment to H.R. 3153, the Welfare Technical Amendments, so that the future of the social services program may be congressionally determined before HEW's proposed regulations go into effect November 1.

Mr. President, I wish to express my special thanks to Alan Jensen of the staff of the National Governors' Conference, whose work in consulting with State officials has added so much to this bill.

I ask unanimous consent that a telegram from Governor Evans of Washington, a telegram from the members of the Conference of Southern Governors, the text of my press release describing our bill, and the text of our bill may appear at this point in the RECORD.

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

TO ALL GOVERNORS:

I urge you to immediately contact your Senators to encourage them to join as a co-sponsor to the Social Services Amendments of 1973 to be introduced next Tuesday, October 2.

The bill embodies the essential provisions of a Social Services legislative proposal that all States have had an opportunity to participate in developing through a series of regional meetings initiated by the National Governors' Conference.

Senators Mondale, Bentsen, Packwood and Javits wrote to all their fellow Senators on September 26, seeking co-sponsors for the bill which they intend to introduce on Tuesday, October 2. The bill will be titled the "Social Services Amendments of 1973."

Copies of the bill to be introduced are being distributed to States by those States who were convenors of the regional meetings. A copy is also being sent directly to you by the Washington Office of the National Governors' Conference.

HEW is scheduled to put into effect new regulations affecting the 2.5 billion dollar Social Services program, which will restrict the ability of States to provide Social Services to meet the priority needs in a State on November 1, unless legislation is enacted. These regulations are not responsive to the concerns that we Governors expressed to the Social Services regulations during the annual meeting of the National Governors' Conference at Lake Tahoe. In response to the States' concerns, Congress acted in June to delay until November implementation of the Social Services regulations HEW published on May 1.

Once again, I urge you to contact your Senators to encourage them to join as a co-sponsor of this legislation. It represents the result of a major effort to have States develop and initiate federal legislation which will allow States adequate flexibility to establish priorities to meet the priority needs for Social Services in each State.

Also, you will wish to know that I have talked with Senator Mondale and have telegraphed Senators Long and Bennett offering the assistance of the National Governors' Conference in every way possible. Should hearings be called on this important issue, I shall be in direct communication with some of you to join me in a panel presentation before the Senate Finance Committee.

My warm personal regards.

Sincerely,

DANIEL J. EVANS,
Chairman, National Governors' Conference.

Senator WALTER MONDALE,
Capitol Hill, Washington, D.C.:

We commend you and other members of the Senate Finance Committee for your leadership in obtaining congressional action to delay until November 1, implementations of the social services regulations HEW published on May 1.

However, the social services regulations now scheduled to go into effect on November 1 would still severely restrict the ability of States to meet the priority needs of the people in each State. The regulations are particularly discriminatory against the southern States as to those people who would be eligible for social services.

Because of obvious congressional interests in the State's role in this program and since the HEW regulations are not adequately responsive to our collective concern, the States, through a series of regional conferences, have agreed on a basic legislative proposal. We further commend you for drafting a legislative proposal which embodies the essential provisions of the State's proposal and which would insure that each State have adequate flexibility in the use of their allocation under the 2.5 billion dollar social services program.

We hope that the Senate Finance Com-

mittee will approve and report this legislation as soon as possible.

Governor Reuben O'D. Askew, Florida, Governor Christopher S. Bond, Missouri, Governor Dolph Briscoe, Texas, Governor Dale Bumpers, Arkansas, Governor Jimmy Carter, Georgia, Governor Winfield Dunn, Tennessee, Governor Edwin W. Edwards, Louisiana, Governor Wendell H. Ford, Kentucky, Governor David Hall, Oklahoma, Governor James E. Holshouser, Jr., North Carolina, Governor Linwood Holton, Virginia, Governor Marvin Mandel, Maryland, Governor Arch A. Moore, Jr., West Virginia, Governor George C. Wallace, Alabama, Governor William L. Waller, Mississippi, Governor John C. West, South Carolina.

BIPARTISAN GROUP OF SENATORS INTRODUCES SOCIAL SERVICES AMENDMENTS OF 1973

WASHINGTON, D.C., October 3.—Senators Walter F. Mondale (D-Minn.), Lloyd M. Bentsen (D-Tex.), Jacob K. Javits (R-N.Y.), and Bob Packwood (R-Ore.) will introduce legislation today designed "to rescue the Social Services program from regressive regulations scheduled to go into effect next November."

At a news conference today, Mondale, chief sponsor of the legislation—known as the Social Services Amendments of 1973—characterized it as "an impressive, hopeful, and thoroughly bipartisan effort on the part of members of the Senate, State and local government and interested private groups."

The bill has received the support of Washington Governor Daniel J. Evans, Chairman of the National Governors Conference; the Southern Governors; and organizations including, as of 2:30 p.m. yesterday, the AFL–CIO, National Council of State Public Welfare Administrators, Child Welfare League of America, Council on Social Work Education, League of Women Voters, National Council of Community Mental Health Centers, National Association for Retarded Children, National Association of Counties, National Association of Social Workers, United Auto Workers, United Methodist Church and United Methodist Church Women's Division, Washington Research Project Action Council, American Parents Committee and the Legislature of the State of Michigan.

Mondale noted that "improvements have been made" in the HEW Social Services regulations issued January 16, but, he said, "basic problems remain."

To resolve those problems, Mondale said, he has introduced the Social Services Amendments of 1973. The legislation contains the following provisions:

"It guarantees that private contributions may be included in the State's share for federal matching, so long as the State is free to choose the provider of services or to provide the services itself.

"It returns to the approach of the existing regulations, allowing the States to serve past recipients who have been on welfare within two years, and potential recipients likely to be on welfare within five years.

"And it provides that the Secretary cannot challenge a State's determination that a person or family is a potential welfare recipient, so long as family or personal income is below the Bureau of Labor Statistics' Minimum Living Budget or, in the case of child care, below 150% of the BLS standard."

It would provide additional flexibility to serve potential welfare recipients and add child protective services to the list of services including employment-related day care; services for the mentally retarded, alcoholics and drug addicts; family planning; child foster care; and services for the aged, blind and disabled—available to the working poor as well as those on welfare.

The proposed legislation contains a list of statutorily defined services and requires HEW to approve other programs related to four legislatively stated goals. These are, according to Mondale:

(a) "Self-support goal: To achieve and maintain the maximum feasible level of employment and economic self-sufficiency;

(b) "Self-care or family-care goal: To strengthen family life and maintain maximum personal independence, self-determination and security in the home, including, for children, the achievement of maximum potential for eventual independent living, and to prevent or remedy neglect, abuse or exploitation of children;

(c) "Community-based care goal: To secure and maintain community-based care which approximates a home environment, when living at home is not feasible and institutional care is inappropriate;

(d) "Institutional care goal: To secure appropriate institutional care when other forms of care are not feasible."

Along with Mondale, Bentsen, Javits and Packwood, other sponsors of the bill, as of 2:30 p.m. yesteday, are: James Abourezk (D-S.D.), Birch Bayh (D-Ind.), Quentin N. Burdick (D-N.D.), Clifford P. Case (R-N.J.), Dick Clark (D-Iowa), Alan Cranston (D-Cal.), Thomas F. Eagleton (D-Mo.), Philip A. Hart (D-Mich.), Mark O. Hatfield (R-Oreg.), Walter D. Huddleston (D-Ky.), Harold E. Hughes (D-Iowa), Hubert H. Humphrey (D-Minn.), Henry M. Jackson (D-Wash.), Marlow W. Cook (R-Ky.), Edward M. Kennedy (D-Mass.), Charles McC. Mathias, Jr. (R-Md.), Gale W. McGee (D-Wyo.), Thomas J. McIntyre (D-N.H.), Lee Metcalf (D-Mont.), Frank E. Moss (D-Utah), Gaylord Nelson (D-Wis.), Charles H. Percy (R-Ill.), Abraham Ribicoff (D-Conn.), William V. Roth, Jr. (R-Del.), Richard S. Schweiker (R-Pa.), Hugh Scott (R-Pa.), Robert T. Stafford (R-Vt.), Adlai E. Stevenson, III (D-Ill.), John V. Tunney (D-Cal.), and Harrison A. Williams, Jr. (D-N.J.).

S. 2528

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Social Services Amendments of 1973".

PURPOSES AND GOALS

SEC. 2. Title XI of the Social Security Act is amended by the insertion of the following new section 1131.

SEC. 1131 Funds payable to the 50 States, the District of Columbia, Puerto Rico, the Virgin Islands, and Guam under titles I, IV–A, X, XIV, and XVI of the Social Security Act or under title VI of the Social Security Act effective January 1, 1974, for any fiscal year for services (other than support services for the Work Incentive Program, emergency assistance in the form of services and staff training activities) may be used as provided in section 3 for programs to be directed to the following specific goals, as appropriate for particular families and individuals:

(a) Self-support goal: To achieve and maintain the maximum feasible level of employment and economic self-sufficiency.

(b) Family-care or self-care goal: To strengthen family life and to achieve and maintain maximum personal independence, self-determination and security in the home, including, for children, the achievement of maximum potential for eventual independent living, and to prevent or remedy neglect, abuse, or exploitation of children.

(c) Community-based care goal: To secure and maintain community-based care which approximates a home environment, when living at home is not feasible and institutional care is inappropriate.

(d) Institutional care goal: To secure appropriate institutional care when other forms of care are not feasible.

STATE RESPONSIBILITY

SEC. 3. Title XI of the Social Security Act is amended by the insertion of the following new section 1132.

1132. In implementing the services program established under section 3(a)(4)(A), section 403(a)(3)(A), section 603(a)(1)(A), section 1003(a)(3)(A), section 1403(a)(3)(A), and section 1603(a)(4)(A), the Secretary shall assure maximum freedom for each State to determine which services (beyond mandatory services) it will make available, the persons eligible for such services, the manner in which such services are provided, and any limitations on the receipt of such services. The State, in cooperation with local governments where local funds are used, may delegate determination of eligibility to agencies from whom services are purchased pursuant to written instructions from the State, provided that such determination shall be monitored quarterly by the State.

ELIGIBILITY FOR SERVICES

SEC. 4. (a)(1) Section 3(a)(4)(A) of the Social Security Act is amended by striking out "individuals who, within such period or periods as the Secretary may prescribe, have been or are likely to become applicants for or recipients of assistance" in clause (iii), and inserting in lieu thereof: "individuals who within the past two years have been, or within the next five years are likely to become, applicants for or recipients of assistance".

(2) Section 403(a)(3)(A) of the Social Security Act is amended by striking out "who, within such period or periods as the Secretary may prescribe, has been or is likely to become an applicant for or recipient of such aid" in clause (ii), and inserting in lieu thereof: "who within the past two years has been, or within the next five years is likely to become, an applicant for or recipient of such aid".

(3) Section 603(a)(1)(A) is amended by striking out "who, within such period or periods as the Secretary may prescribe, have been or are likely to become applicants for or recipients of supplementary security income benefits" in clause (iii) and inserting in lieu thereof: "individuals who within the past two years have been, or within the next five years are likely to become, applicants for or recipients of aid".

(4) Section 1003(a)(3)(A) of the Social Security Act is amended by striking out "individuals who, within such period or periods as the Secretary may prescribe, have been or are likely to become applicants for or recipients of aid" in clause (iii) and inserting in lieu thereof: "individuals who within the past two years have been, or within the next five years are likely to become, applicants for or recipients of aid".

(5) Section 1403(a)(3)(A) of the Social Security Act is amended by striking out "individuals who, within such period or periods as the Secretary may prescribe, have been or are likely to become applicants for or recipients of aid" in clause (iii), and inserting in lieu thereof: "individuals who within the past two years have been, or within the next five years are likely to become, applicants for or recipients of aid".

(6) Section 1603(a)(4)(A) of the Social Security Act is hereby amended by striking out "individuals who, within such period or periods as the Secretary may prescribe, have been or are likely to become applicants for or recipients of aid" in clause (iii) and inserting in lieu thereof: "individuals who within the past two years have been, or within the next five years are likely to become, applicants for or recipients of aid".

(b) Title XI of the Social Security Act is amended by the insertion of the following new Section 1133.

SEC. 1133. (a) For purposes of sections

3(a)(4) and (5), 403(a)(3), 603(a)(1) and (2), 1003(a)(3) and (4), 1403(a)(3), and (4), and 1603(a)(4) and (5), the Secretary shall in no case limit the discretion of the several states to determine those individuals likely to become applicants for or recipients of aid or assistance, except or provided under section 4 of the Social Services Amendments of 1973; and for purposes of section 403(a)(3), the Secretary shall in no case limit the discretion of the several states to determine those individuals likely to become applicants for or recipients of aid or assistance, so long as the incomes of such individuals are at or below the minimum living standard budget determined by the Bureau of Labor Statistics of the Department of Labor, adjusted regionally and for family size, or, with respect to provision of child care services, at or below 150% of such budget.

(b) For the purposes of such sections, group eligibility may be extended, at the discretion of the State, to migrants and Indians and may, with the approval of the Secretary, be extended to other groups defined by the State.

SERVICES

SEC. 5. Title XI of the Social Security Act is amended by the addition of the following new Section 1134.

SEC. 1134. Services designated by the Secretary to be offered at the option of the States to all eligible persons under Sections 3(a)(4)(A), 403(a)(3)(A), 603(a)(1)(A), 1003(a)(3)(A), 1403(a)(3)A), and 1603(a)(4)(A) shall include:

(1) Day Care Services for children, to meet the needs of a child for personal care, protection and supervision but only in the case of a child where the provision of such services is needed (i) in order to enable a member of such child's family to accept or continue in employment, or to participate in education or training to prepare such member for employment or (ii) because of the death, continued absence from the home, incapacity or inability of the child's mother and the inability of any member of such child's family to provide adequate care and supervision for such child;

(2) Day Care Services for Children with Special Needs, including services provided when appropriate, as determined by the State, for eligible children who are mentally retarded or otherwise have special social and developmental needs which parents cannot meet.

(3) Service for Children in Foster Care, including services provided to a child who is under or awaiting foster care and including preventive diagnostic and curative physical and mental health services not furnished under the States' Title XIX plan, provided to or on behalf of the child who is or has within 90 days been receiving maintenance, care and supervision in the form of foster care in the foster family or who is awaiting placement in such a home or institution, or provided to a child in or by a nonresidential diagnostic or treatment facility whether such services are rendered directly by the providers of foster care or by the nonresidential facility, or otherwise provided or obtained for the child by the State when such services are needed in order for the child to return to or remain in his own home, the home of another relative, or an adoptive home, or to continue in foster care as appropriate, and also including services to free children for adoption and to place children in adoptive homes, and activities to develop and recruit, study, approve, and subsequently evaluate out of home care resources for foster care.

(4) Protective Services for Children, including multidisciplinary (medical, legal, social and other) services for the following purposes: identification, investigation, and response to incidents or evidence or neglect, abuse, or exploitation of a child; helping parents and others to recognize the causes thereof and strengthening the ability of families to provide acceptable care; or, if that is not possible, bringing the situation to the attention of appropriate courts or law enforcement agencies, furnishing relevant data, and providing follow up services as directed by the court;

(5) Family planning services, including social, educational and medical services, provided that individuals must be assured choice of method and that acceptance of any such services must be voluntary on the part of the individual and may not be a prerequisite or impediment to eligibility for any other service;

(6) Protective Services for Adults, including identifying and helping to correct hazardous living conditions or situations of potential or actual neglect or exploitation of an individual who is unable to protect or care for himself;

(7) Services for adults in foster care include services not available under Titles XVI, XVIII, and XIX, for adults in 24 hour foster homes or group care for reasons other than medical, including assessment of need for such care, finding of foster homes and institutional resources, making arrangements for placement, supervision, and periodic review while in placement, counseling services for the adult individuals and their families, services to assist adults in leaving foster care to attain independent living;

(8) Homemaker Services for individuals in their own homes, including helping individuals to overcome specific barriers to maintaining, strengthening, and safeguarding their functioning in the home, through the services of a trained and supervised homemaker;

(9) Chore services including the performance of household tasks, essential shopping, simple household repairs, and other light work necessary to enable an individual to remain in his own home when he is unable to perform such tasks himself and they do not require the services of a trained homemaker or other specialist;

(10) Home Delivered or Congregate Meals, including the preparation and delivery of hot meals to an individual in his home or in a central dining facility, as determined by the State, to assist the individual to remain in his home, and to assure sound nutrition;

(11) Day Care Services for Adults, including meal preparation and serving, companionship, educational and recreational activities and incidental helpfulness including rehabilitation activity when provided for less than a 24 hour period in a group or family setting;

(12) Health Related Services, including helping individuals to identify health (including mental health) needs and assisting individuals to secure diagnostic, preventive, remedial, ameliorative, and other needed health services and helping to expedite return to community living from institutional care when discharge is medically recommended;

(13) Home Management and Other Functional Educational Services, including formal or informal instruction and training in management of household budgets, maintenance and care of the home, preparation of food, nutrition, consumer education, child rearing, and health maintenance;

(14) Housing Improvement Services, including helping families and individuals to obtain or retain adequate housing, and minor repairs necessary for adult protection, provided that housing and relocation costs, including construction, major renovation or repairs, moving of families or individuals, rent, deposits, and home purchase may not be claimed as service costs;

(15) A full range of legal services, at the option of the State, for persons desiring assistance with legal problems, including services to establish paternity and child support and services related to adoption;

(16) Transportation services necessary to travel to and from community facilities or resources for receipt of services;

(17) Educational and Training Services, including the provision of such services for adult family members, where there are special needs not met by the Work Incentive Program or other state and federal programs, and services to assist children to obtain education and training to their fullest capacities;

(18) Employment Services to enable individuals to secure paid employment or training leading to such employment, including vocational, educational, social, and psychological diagnostic assessments to determine potential for job-training or employment; provision of job development, placement and work experience; and provision of vocational rehabilitation services (other than medical or subsistence items except as provided in Section 1135(a)(19) as defined in the Vocational Rehabilitation Act, when provided pursuant to an agreement with the state agency administering the vocational rehabilitation program);

(19) Information, referral, and determination of eligibility and the need for services, without regard to individual eligibility criteria;

(20) Special Services for the Mentally Retarded, or special adaptations of generic services, directed towards alleviating a developmental handicap or towards the social, personal or economic habilitation of an individual of sub-average intellectual functioning associated with impairment of adaptive behavior as defined and determined by the state agency, with such services including but not limited to personal care, day care, training, sheltered employment, recreation, counseling of the retarded individual and his family, protective and other social and socio-legal services, information and referral, follow along services, transportation necessary to deliver such services, and diagnostic and evaluation services;

(21) Special Services for the Blind to alleviate the handicapping effects of blindness through: training in mobility, personal care, home management, and communication skills; special aids and appliances; and special counseling for caretakers of blind children and adults;

(22) Services for Alcoholism and Drug Addiction for an individual who is becoming dependent on or is addicted to alcohol or other drugs as determined by the standards set by the state agency designated by the State under the Comprehensive Alcohol Abuse and Treatment Act of 1970 and the Drug Abuse and Treatment Act of 1972, if such services are needed as part of a program for prevention or treatment of addiction or the conditions arising from misuse of alcohol or other drugs, including but not limited to social and rehabilitative services for resident patients receiving services in a supportive environment (such as a halfway house, hostel, or foster home) and including medical services (such as psychiatric services) incidental to the provision of a social service;

(23) Special Services for the emotionally disturbed as defined by the State;

(24) Special Services for the physically handicapped as defined by the State;

(25) Any other proposed services at the request of a State, which shall be approved by the Secretary, except upon finding that such service is inconsistent with the purposes of the services program.

ADMINISTRATIVE PROVISIONS

SEC. 5. Section 1130 of the Social Security Act is amended by the addition of the following section 1135.

SEC. 1135. (a) States are entitled to Fed-

eral financial participation for the delivery of mandatory and optional social services under the State plan to the extent of the appropriations allocated by the Congress, including the following:

(1) Salary, fringe benefits, and travel costs of staff engaged in carrying out service work or service related work;

(2) Costs of related expenses, such as equipment, furniture, supplies, communications, and office space;

(3) Costs of services purchased in accordance with provisions of this Act;

(4) Costs of State, area, and local advisory committees, including expenses of members in attending meetings, supportive staff, and other technical assistance;

(5) Costs of agency staff attendance at meetings pertinent to the development or implementation of Federal and State service policies and programs;

(6) Costs for volunteers;

(7) Costs for operation of agency facilities used solely for the provision of services, except that appropriate distribution of costs is necessary when other agencies also use such facilities in carrying out their functions, as might be the case in comprehensive neighborhood service centers;

(8) Costs of administrative support activities furnished by other public agencies or other units within the single state agency which are allocated to the services program in accordance with an approved cost allocation plan or an approved indirect cost rate as provided in OMB circular A-87;

(9) Costs of obtaining technical assistance, surveys, and studies performed by other public agencies or other units within the single State agency, private organization, or individuals to assist the State agency in developing, planning, monitoring, and evaluating the services program;

(10) Costs of emergency assistance in the form of services;

(11) Costs of public liability and other insurance protection;

(12) Costs of advice and consultation furnished by experts in such matters as medical (including psychiatric), social, legal, educational, psychological, nutritional, and employment problems of individuals, for the purpose of assisting staff in diagnosis and in developing individual service plans;

(13) Additional liability insurance for family foster parents, and agency staff providing direct services;

(14) Costs of recruitment, development and coordination of day care and foster care resources for children and adults;

(15) Costs of staff and technical assistance connected with development, mobilization and consultation to community resources;

(16) Costs connected with coordination and integration of social services with other human services at state and local levels to improve effectiveness of service or achieve administrative efficiencies;

(17) Costs of medical examinations for persons caring for children under agency auspices, when not otherwise available or not included in purchase arrangements;

(18) Costs of medical and mental health diagnosis and consultation when necessary to carry out service responsibilities, e.g. for recipients under consideration for referral to training and employment programs;

(19) Medical costs under the following conditions:

(A) When such items are provided as essential components of a comprehensive program or facility and the services are provided as part of an individual service plan; and

(B) Where the service facility is one of the following types: maternity home for unwed mothers; home for emotionally disturbed or mentally retarded children (which is not a public mental institution); emergency shelter and care facility for abandoned, abused, neglected, homeless, or exploited children; rehabilitation center, residential treatment center (non-hospital) or halfway house for alcoholism or drug addicts; day care facilities; halfway house or group home for persons requiring transitional services to the community from mental or penal institutions, or who require the services of a halfway house or group home as part of a plan to preclude such institutionalization, family planning clinics; and

(C) When such items are provided within the following time limits for each stay of an individual at such service facility:

maternity home for unwed mothers—as needed;

home for emotionally disturbed children and mentally retarded children (which is not a public mental institution)—6 months;

emergency shelter and care facility for abandoned, abused, neglected, homeless, or exploited children—30 days;

rehabilitation center—as specified in the individual's rehabilitation plan;

residential treatment center (non-hospital) or halfway house for alcoholics—60 days; for drug addicts—90 days;

day care facilities—as needed;

other halfway houses—1 year; and

family planning clinics—as needed.

(D) When the service facilities are not a part of a full-time residential mental or penal institution (where the facility is being administered by the same organization that administers a mental or penal institution, complete separation of facilities is required).

(20) Other costs, upon approval by the Secretary.

(b)(1) For purposes of the services program conducted under sections 3(a)(4)(A), 403(a)(3)(A), 603(a)(1)(A), 1003(a)(3)(A), 1403(a)(3)(A), and 1603(a)(4)(A) of the Social Security Act, donated private funds (including in-kind contributions as defined in OMB circular A-102) for services shall be considered as State funds in claiming Federal reimbursement where such funds are transferred to the State or local agency and under its administrative control and are donated on an unrestricted basis (except that funds donated to support a particular kind of activity in a named community shall be acceptable).

(2) Effective July 1, 1974, Federal financial assistance shall be available for a new purchase of services from a public agency only for services beyond those represented by the expenditures for the previous fiscal year of the provider agency (or its predecessors) for the type of service and type of persons covered by the agreement;

(3) State plans submitted with respect to the services program conducted under sections 3(a)(4)(A), 403(a)(3)(A), 603(a)(1)(A), 1003(a)(3)(A), 1403(a)(3)(A), and 1603(a)(4)(A) shall contain provision for a fair hearing, under which applicants and recipients may appeal denial of or exclusion from a service program failure to take account of recipient choice of service or a determination that individuals must participate in the service. All applicants and recipients must be advised of their right to appeal and the procedures for such appeal.

(4) State plans submitted with respect to the services program shall provide for the establishment of a Social Services Advisory Committee, which may include the Committee established under section 422(a)(1)(C)(ii), at the State level, and at local levels where programs are locally administered, which shall have adequate opportunity for participation in policy development and program administration. Such Committee shall include representatives of appropriate State agencies, public and private organizations, and interested members of the public; not less than ⅓ of the membership, and not less than ⅓ the membership of committee established under section 422(a)(1)(C)(ii), shall be representative of recipients of services;

(5) Federal financial participation shall be available for costs of subsistence which are essential components of a service program.

(6) Child care services provided under the Social Security Act shall meet the following standards:

(A) In-home care shall meet standards established by the State, reasonably in accord with recommended standards of national standards-setting organizations (such as the Child Welfare League of America and the National Council of Homemaker—Home Health Aid Services).

(B) Out of home day care facilities shall be licensed by the State or approved as meeting the standards for such licensing, and shall comply with the provisions of the Interagency Day Care Standards of 1964 and the requirements of Section 422(a)(1) of the Social Security Act.

SEC. 6. (a) Section 1130 of the Social Security Act is amended by striking out "not more than 10 per centum" in subsection (a) and inserting in lieu thereof "not more than 25 per centum".

(b) Section 1130(a)(2) is amended—

(1) by striking out "and" at the end of subparagraph (D);

(2) by adding "and" at the end of paragraph (E); and

(3) by adding after subparagraph (E) the following new subparagraph (F):

(F) Protective Services for Children, including multidisciplinary (medical, legal, social and other) services for the following purposes: identification, investigation, and response to incidents or evidence of neglect, abuse, or exploitation of a child; helping parents and others to recognize the causes thereof and strengthening the ability of families to provide acceptable care; or, if that is not possible, bringing the situation to the attention of appropriate courts or law enforcement agencies, furnishing relevant data, and providing follow-up services as directed by the court;

Mr. HART. Mr. President, there is no need to reiterate all the developments that have led to our conclusion that legislation is needed to set further guidelines for the public assistance social services programs.

Last year, fears of runaway costs were allayed when a $2.5 billion annual ceiling was placed on the Federal contribution to program costs. Following this, the Department of Health, Education, and Welfare issued a series of regulations which were widely criticized as out of compliance with the law and congressional intent and unresponsive to the needs the programs were designed to meet. In fact many have suggested that, contrary to the purposes of the social services programs, the regulations would actually encourage dependency and expansion of welfare rolls.

By gradually enlarging the list of approved services that could be matched with Federal funds, by permitting continued Federal matching for privately donated funds, and by dropping the assets requirements, the Department has to some degree responded to expressions of public and congressional concern. However, the proposed regulations still do not go far enough in offering the desired flexibility and service options, especially to the marginal and working poor for whom the availability of social services often spells the difference between the opportunity to maintain eco-

nomic and personal independence and forced reliance on welfare assistance.

This summer Congress postponed implementation of the regulations until November 1. At this point it is clear that further legislation is needed to get an adequate, revised social services program into operation. For this reason, I am pleased to join Senators MONDALE, BENTSEN, JAVITS, PACKWOOD and others today in submitting these social services amendments.

Under this plan, a broad range of services would be available to both welfare and nonwelfare clients, and the States would have the necessary flexibility to continue to provide services to those who might otherwise have no alternative but to seek welfare assistance.

The amendments proposed today would keep the present definitions of former and potential recipients so that an individual who has received welfare assistance within the past 2 years, or who is likely to go on the rolls within 5 years, may be eligible for social services.

Current law mandates, with certain exceptions, that at least 90 percent of the social services funds be spent on services for welfare clients or applicants for assistance. We propose the allocation for nonrecipient services be increased from 10 to 25 percent.

Services for the elderly, blind, disabled, mentally retarded, drug addicts, alcoholics, and family planning and employment-related child care services are exempt from the 90-percent requirement. The bill would, in addition, include protective services for children in the exempt categories.

Briefly, I would point out that direct educational, health-related, nonemployment related day care, and a full range of legal services would also qualify, among others, as approved services. Further, the 1968 Federal Day Care Standards would be retained, a fair hearings and appeal process would be provided, and program participants would be guaranteed representation on State and local advisory committees.

This approach, it seems to me, offers a reasonable and humane solution to the effort to set new ground rules for the social services program.

Mr. JACKSON. Mr. President, today, I am joining as a cosponsor of S. 2528, the Social Services Amendments of 1973, because I believe we must work to eliminate welfare dependency and to encourage self-sufficiency among the aged poor and low-income handicapped citizens of our country.

This legislation is necessary because the administration, in proposing new social services regulations for the States, has once again shown its interest in false fiscal savings at the expense of the less fortunate members of our country. The administration does not want the States to spend the $2.5 billion authorized by the Congress for social services. As many may remember, we in the Congress last year recognized that abuses were apparent in the open-ended social services funds given to the States. Consequently, we established a $2.5 billion ceiling on the fund and adopted several other reform provisions which require the States to more carefully supervise the distribution of their funds and services. We allowed the States to have as much flexibility as possible—while discouraging abuses—in assisting families to leave the welfare rolls and in helping to prevent the institutionalization of aged and handicapped citizens. Three times this year the Department of Health, Education, and Welfare has issued regulations limiting this flexibility provided the States by the Congress. Although the Department claims that the new regulations are designed to further discourage abuses by the States, the real intent of the regulations—to make sure that the States spend under the $1.9 billion provided for social services in the President's budget—is most apparent.

Faced with strong criticism from the Congress, the States, and the public, HEW has each time made token changes in their regulations. But as will be noted in the following analysis of the new regulations issued September 7, 1973, and scheduled to take effect November 1, 1973, the administration's disinterest in the working poor and aged and handicapped citizens of this Nation still comes through very clear.

The HEW regulations forbid the States from providing any social services to persons who have not been on welfare within 3 months or who do not have the potential of going on welfare within 6 months. An additional regulation allows the States to provide services only to persons who have income below 1½ times the State's welfare payment. In many States this amount is well below the current poverty level for a family of four of $4,275. Day care services may be provided only to persons who meet the 3 months to 6 months eligibility requirement and have income up to two and one-third times the welfare payment in each State. In some States working poor citizens with incomes below the $4,275 poverty level will be excluded from receiving day care services even when it is provided on a sliding fee basis. The proposed regulations further limit the type of services to be provided by the States. The HEW list excludes such services as hot meals for the elderly and services for physically and emotionally handicapped children even when such services cannot be provided by other State or Federal programs.

I believe these regulations will have an adverse effect on the States in their efforts to encourage self-sufficiency among low-income citizens. Numerous letters from my constituents have reinforced this belief. One young woman told me of her own personal plight. Ms. X had gotten married young; her husband had left her with two small children to support. Without skills she ended up on public assistance. Through the help of her welfare office, she received training and obtained her first job. After subtracting taxes and a $50 payment for a car, Ms. X had an income of $329 per month. The Department of Public Assistance arranged child care for her children so she could work. With this help, Ms. X was finally able to get on her feet and to contribute to the improvement of her family's economic status. But she told me fearfully:

If I am forced to pay for child care out of my own pocket, I would have to return to public assistance.

The new HEW regulations would in fact force her to do just that.

What is the incentive for such a young woman and many others like her in this country to seek training and then get a job only to find out that after subtracting the cost of child care and transportation to her new job from her low income, she has less money than she had as a welfare recipient. If day care is provided to her on a sliding fee scale long enough to allow her to assume the full burden for all her expenses, I believe we will not have this young woman rejoining the welfare rolls. In order to encourage self-sufficiency of such persons as Ms. X, I believe adoption of the Social Services Amendments of 1973 is necessary.

The Social Services Amendments of 1973 preserve the essential elements of the existing social services program. Services may be provided to any person who has been on welfare within 2 years or has the potential of going on welfare within 5 years and who also has income below the minimum living standard budget established by the Bureau of Labor Statistics. Child care may be provided on a sliding fee basis to persons who have incomes below 150 percent of the BLS minimum standard and who meet the 2-year to 5-year eligibility test. The States are also allowed to provide whatever services they deem are necessary to help a person become self-supporting and to keep aged and handicapped persons from being institutionalized. This legislation further increases the percentage of the social services fund which is to be used for services for nonwelfare recipients.

I believe that passage of this measure is necessary in order to restore to the States the flexibility to determine and meet the problems of its citizens. With a $2.5 billion ceiling established by Congress, not all services will be able to be provided to all persons who meet the maximum eligibility schedule established by this bill. However, this legislation allows the States to determine on an individual basis the merits of each case, instead of placing stringent restrictions on the States and requiring applicants to fit into boxlike categories.

I urge my colleagues to join in the support of this legislation so that we may continue to help older and disabled citizens live useful lives outside of institutions and may also continue to encourage welfare recipients to become members of the working class.

Mr. PACKWOOD. Mr. President, it is with mixed emotions that I am today, with Senators MONDALE, JAVITS, and BENTSEN, offering for the Senate's consideration our legislation concerning the social services program. I am gratified that we have been able to come up with a proposal, endorsed by the Governor's Conference, which will enable the States to meet the purposes of the social services program as enacted by Congress. I regret, however, that this same purpose could not have been achieved through the departmental regulatory process.

Mr. President, before I get into the details of our bill, and events leading up to it, let me refer back to the early origins of the social services program. Back in 1962, in response to swiftly ris-

ing welfare costs, Congress focused on the need to expand and improve supportive and rehabilitative services for welfare recipients and potential recipients. In order to encourage States to provide such services, the Federal matching effort was increased from 50 to 75 percent, with the explanation that the increase—

Is designed to improve the rehabilitative aspects of the public assistance programs particularly in stimulating constructive services designed to help families and individuals to attain self-sufficiency . . . in an effort to encourage the prevention of dependency . . . the states may receive federal participation in the cost of providing social services to persons who have been or are likely to become recipients." (Senate Finance Committee report on Public Welfare Amendments of 1962, Senate report 87–1589)

By way of further explanation of its intent, the Senate Finance Committee specified its hope that the provision of necessary services may avoid the need for cash assistance."

Congress' explicit reference to the need for expanded supportive services called for the drafting of very broad regulations, allowing each State and locality to serve those on welfare, and those in danger of requiring welfare without the necessary services. Congress recognized then, and I believe we still do, that preventing welfare dependency is far preferable—in both human and financial terms—than trying to remedy it. Similarly, welfare recipients, with few exceptions, would far rather be self-sufficient, contributing members of society, given just the little bit of help that is frequently needed to get them on their own two feet, or stay on their own two feet. In the case of our handicapped citizens, supportive services frequently mean the difference between an individual leading a meaningful life—contributing to both his own self-support and society in general—and the individual in abject poverty and despair, entirely dependent upon meager welfare cash assistance, unable without help to contribute either to his own self-support or to society. I believe the choice is clear.

Mr. President, during the decade following expansion of the social services program, millions of Americans were helped off the welfare rolls, and millions more helped in their effort to stay off welfare through the provision of a variety of supportive services. However, two serious problems developed. First, because this was an open-ended program, with mandatory Federal matching of any expenditures at the State level, the Federal Government retained absolutely no control over the program level, and we were suddenly faced last year with the prospect of a $4.7 billion program in fiscal year 1973. A second problem was the failure of HEW officials to enforce prescribed regulations governing the program, so as to insure that dollars planned for social services programs were in fact being spent on legitimate social services consistent with the purpose of helping people get off or stay off welfare. The open-ended feature and lack of regulatory enforcement led to serious and expensive abuses of the program in many areas of the country, with the result that those Congress intended to receive support were receiving in fact only a fraction of the program's thrust. Compounding the problem was the fact that the States had no incentive to set priorities or maximize the effectiveness of social service dollars, since Federal dollars flowed forth virtually without limit.

Responding to this potential fiscal crisis, and to the fact that in spite of the large expenditures, many needy were not receiving services, Congress last year imposed a $2.5 billion spending ceiling on the social services program. Additionally, Congress emphasized five types of services which were felt to be crucially important elements of the social services supportive program: child care services, services provided to a mentally retarded individual, services related to the treatment of drug addicts and alcoholics, services provided a child in foster care, and family planning services.

Following our action imposing the $2.5 billion overall ceiling, HEW published new revised regulations which had the unfortunate effect of virtually strangling the social services program and hobbling our mandate of helping people get off welfare or stay off welfare. In response to a loud public outcry, and intense congressional opposition, HEW revised its regulations in May, and again in September. Although the revisions have met a number of the objections voiced originally, they have failed unfortunately to come into conformity with the congressional intent concerning the social services program. Hence, our bill which is introduced today.

Mr. President, before I get to the details of the bill we are today introducing, let me describe in part the impact of the proposed regulations on social services programs in Oregon. In fiscal 1972, Oregon received $17.5 million in Federal funds for services to children and families, and $4.4 million for supportive services for adults. In addition, Oregon received $2.5 million for services for adults in nursing homes, for a total of $24.4 million Federal dollars. For 1973, Oregon budgeted $30.9 million Federal dollars for these programs, a figure which was cut back to $26.2 million under the $2.5 billion ceiling. Keeping in mind, now, that Oregon was already preparing to make some hard priority decisions, I should mention that the proposed HEW regulations, because of their inflexibility and harsh restrictiveness, would have required Oregon to cut back on the program even further, below our authorized allocation of $26.2 million.

In Oregon, as around the Nation, those who would suffer from the narrowly drawn regulations would be children, the mentally retarded, the handicapped, emotionally disturbed youngsters, the poor aged, blind, and disabled, and others similarly disadvantaged in relation to the rest of society. Regulations which restrict the supportive social services program tend to be counter-productive; whereas broadly drawn regulations tend to maximize the benefits of supportive services to allow a maximum number of individuals to attain or retain a certain degree of self-sufficiency. Since February, when the original HEW regulations were published, thousands of Oregonians have contacted me to relate their personal experiences with various aspects of the social services program, and to point out the weaknesses and pitfalls in the regulations. As has already been mentioned, we have spent months trying to work out with HEW a satisfactory resolution of the specific issues, but for reasons I am unable to understand, HEW has held firm in refusing to allow the individual States greater flexibility to deal with their particular needs and problems. In spite of near unanimous opposition to the 6-month eligibility tests, accompanied by the 150-percent income standard, HEW retains these two strict requirements in the latest published regulations. If we do not wish welfare to be a vicious circle for our lowest income Americans, we must allow greater flexibility at the State and local levels to deal with specific problem areas as they develop. The States must be allowed the discretion to determine which services are most appropriate in any given case, so long as those services are directed toward the self-sufficiency-related goals.

Numerous other aspects of the proposed regulations have been widely discussed, and I need not reiterate those concerns. Let me simply go on to emphasize why I believe our approach to the social services issue is a desirable one, and why it will work to maximize the intent of Congress in authorizing a 75-percent matching program.

The first point to keep in mind is that the social services program is now operating under a $2.5 billion ceiling. We are therefore not talking about levels of authorization or appropriations for this program, we are simply talking about how the $2.5 billion will be spent and where the responsibility shall lie for allocating each State's share of the $2.5 billion.

Second, our bill will firm-up the definitions of services to clarify the kinds of services Congress intends to be furnished, and will further provide for specific goals as appropriate for both families and individuals, as follows:

First. Self-support goal: To achieve and maintain the maximum feasible level of employment and economic self-sufficiency.

Second. Self-care or family-care goal: To achieve and maintain maximum personal independence, self-determination and security in the home, including, for children, the achievement of maximum potential for eventual independent living, and to prevent or remedy neglect, abuse, or exploitation of children.

Third. Community-based care goal: To secure and maintain community-based care which approximates a home environment, when living at home is not feasible and institutional care is inappropriate.

Fourth. Institutional care goal: To secure appropriate institutional care when other forms of care are not feasible.

The States will therefore have clear direction from Congress that their expenditures are designed to meet these four objectives.

Third. Because States have a clear self-

interest in keeping welfare budgets at the lowest possible level, it goes without saying that States have a similar clear interest in keeping welfare rolls at the lowest possible level. This can be translated into two objectives, to help people on welfare get off at the earliest possible moment, and to keep those in danger of falling into welfare dependency from actually moving onto the welfare rolls. Both objectives are tied in closely with the provision of social services. Obviously, a State will have a distinct incentive to maximize its social service allowance dollars to help as many people as possible stay off welfare.

What this boils down to, Mr. President, is the same old question, whether we here in Washington, whether the HEW bureaucrats, are superior decisionmakers to those people in our respective States who are themselves having to make some hard priority decisions. My choice is clearly for State responsibility, a choice I believe to be consistent with the administration's revenue-sharing approach in many areas. It seems to me that the social services program is in fact a particularly appropriate one for the revenue-sharing approach, and I am hopeful that Senators on both sides of the aisle will see the advantages of this approach and support our bill.

Mr. JAVITS. Mr. President, I am pleased to join with Senator MONDALE, Senator PACKWOOD, and Senator BENTSEN in introduction of the Social Security Amendments of 1973, a bill to preserve the flexibility of the States in conducting the Social Services programs under the Social Security Act.

We are joined by 31 Senators, including the following Republicans: Senators CASE, COOK, HATFIELD, MATHIAS, PERCY, ROTH, SCHWEIKER, HUGH SCOTT, and STAFFORD.

Mr. President, last February 16, the Department of Health, Education, and Welfare issued new regulations to govern the social services programs. These include: Title I—Old Age and Medical Assistance for the Aged—title IV–A—Aid to Families With Dependent Children—title VI—Aid to Aged, Blind and Disabled—Individuals—title X—Aid to the Blind, title XIV—Aid to the Permanently and Totally Disabled—and title XVI—Aid to the Aged, Blind and Disabled—State. Since they would have so radically changed the provision of such services and contained, in many of our opinions, very counter-productive provisions, they met almost immediately with considerable opposition.

Senator MONDALE and I, joined by 43 other Senators, introduced on March 14, S. 1220, a bill to limit the authority of the Secretary of Health, Education, and Welfare to impose, by regulations, certain additional restrictions upon the programs.

In response to these and other initiatives, the Senate Committee on Finance subsequently reported as a part of the debt ceiling bill, a provision preventing the Secretary of Health, Education, and Welfare from issuing regulations effective prior to January 1, 1974; this was modified to October 31 of this year and included in the Renegotiation Act Amendments of 1973, signed by the President on July 10.

On September 10, the Department of Health, Education and Welfare modified its original proposals—with some concessions—and indicated its intent to make them effective November 1. However, these new regulations are still designed to limit eligibility for families to those below the maximum level at which direct welfare support may be provided: And they continue severely to limit State flexibility to determine the services that may be offered. This approach is contrary to the basic purpose underlying the social services program—to help those who can to leave the welfare rolls, and to help others avoid welfare dependency.

Our bill would preserve the flexibility of State government—within the $2.5 billion ceiling established by the Congress—to serve those likely to become recipients of welfare assistance if help is not furnished and would protect the broad range of services which States may now offer—while preventing abuse.

I am pleased to say that our bill is supported both by Governor Nelson Rockefeller, of New York, and by Administrator Jule Sugarman of the Human Resources Administration for the city of New York, as well as by Governor Evans, chairman of the National Governors Conference and members of the Southern Governors Conference.

The basic elements of our bill and their effect on areas in New York State are as follows:

First. Eligibility. The proposed legislation would follow the current approach permitting States to serve persons who have been on welfare within 2 years, or who are likely to be on welfare within 5 years, as well as those on welfare. Moreover, the Secretary of Health, Education, and Welfare would have no discretion to interfere with State-established eligibility standards below the level of the Bureau of Labor Statistics' minimum living standard budget—$7,841 for a family of four in New York City—adjusted regionally and for family size, or, in the case of child care, below 150 percent of the BLS standard.

In contrast, the HEW regulations would limit eligibility to those actually receiving welfare, those who have been on welfare within 3 months and those likely to be on welfare within 6 months. In addition, the regulations would permit States to offer services only to persons with incomes up to 150 percent of the State's welfare payment standard—with a deduction of $60 a month—under the title IV–A program to families—approximately $6,768 for a family of four in the city of New York—and to persons with incomes of up to 150 percent of the combined Federal and State benefit levels under the services program to the aged, blind, and disabled. In the case of day-care services for children, services could be made available on a sliding fee basis up to 233⅓ percent of the welfare payment standard. The latest regulation revisions provide for an unspecified adjustment to account for the high cost of services to the mentally retarded.

New York State advises that should HEW's latest proposed regulations go into effect without modification, more than 70,000 New York State citizens now benefiting from $38.7 million in services programs, could become ineligible. For example, in New York State the income level established under the pending Federal regulations could deny day care services to about 7,500 children or 15 percent of the current total and force a redirection of $15 million—$11.3 million Federal share—in day care expenditures. Eligibility restrictions could deny services to 5,000 elderly persons.

However, under our bill, New York State and its local governments could continue virtually all current coverage without disruption.

Second. Services. The proposed legislation contains a list of statutorily defined services, carefully designed with the help of State officials from throughout the Nation; in contrast, the proposed HEW regulations would prohibit States from offering education services, services for physically and emotionally handicapped children, hot meals for the elderly and those in day care centers, and would severely limit medically related services and child care.

It is very important that areas like New York City and New York State maintain flexibility to provide these services; for example, hot meals for the elderly are so very key as older persons face inflation generally and rising food costs particularly. New York State advises that program restrictions could deny 30,000 elderly persons of senior citizens programs not meeting services requirements.

Third. Privately Donated Funds. Our proposed legislation would allow States to include any private contributions, including in-kind contributions donated on an unrestricted basis—except that funds may be designated for a particular kind of activity in a named community, as under present regulations—the modified HEW regulations would permit privately donated funds to be used in forming the State matching share; however, in-kind private contributions may not be included; while this would permit donations from larger groups such as the United Way, the regulations may prohibit donations from smaller groups.

Of course, the utilization of such a change will depend largely on whether or not the $2.5 billion ceiling on Federal expenditures continues. New York City advises that if additional Federal funds for matching were made available, as much as $10 million in contributed funds "in-kind" could be solicited.

Fourth. The "90–10" formula. The proposed legislation would modify the "90–10" formula to "75–25" and add an additional exempt category: Protective services for children. Present law requires that 90 percent of funds be used for services to present welfare recipients except for the following services: Employment-related day care, services for the mentally retarded, alcoholics, and drug addicts, foster care, and self-support services for the aged, blind, and disabled.

At the present time, in New York City, most protective services—such as those dealing with child abuse—are funded on a matching basis between

the social services. By including protective services for children as an exempted service, the city and State could move to increase these essential services for families other than those on welfare. Actually, there were 55,000 incidents of child abuse reported in New York City last year, and these involved children from all socioeconomic levels.

Fifth. Additional Provisions. In addition the bill would provide guidelines for administrative provisions for advisory committees and continued minimum Federal standards for child care services.

Each of these is very important as a matter of continued Federal concern; in New York City the use of advisory committees is extensive and necessary to ensure the relevancy of programs to those served.

In the case of child care, while the States should have general flexibility in basic types, certain standards should pertain and the standards maintained by our legislation follow those established for all Federal programs generally.

Mr. President, in light of the substantial support given to this measure, we hope very much that the Subcommittee on Finance, which is about to go into markup—perhaps today—will seek to provide for the future of social services programs through legislation, rather than by the disrupting administrative actions of the administration alone. In my opinion, this is another situation where the Congress should be fully heard.

Mr. President, in closing, I register my continued objections to the $2.5 billion ceiling, which has had the effect of reducing New York State social services funds from approximately $800 million annually to $220 million and I hope to develop separate legislation to deal with that problem.

By Mr. HARTKE (for himself and Mr. COOK):

S. 2530. A bill to amend the National Traffic and Motor Vehicle Safety Act of 1966 to prohibit the removal or rendering inoperative of safety related equipment in compliance with motor vehicle safety standards. Referred to the Committee on Commerce.

Mr. HARTKE. Mr. President, the legislation which I am introducing today and cosponsoring with my colleague from Kentucky (Mr. COOK) is designed to increase the effectiveness of the National Traffic and Motor Vehicle Safety Act of 1966. It would prohibit the removal or rendering inoperative of safety-related equipment or designs mandated by the Department of Transportation pursuant to authority delegated by Congress in the Motor Vehicle Safety Act.

Mr. President, it makes little sense to me for the Federal Government to invest millions of dollars to mandate safety standards, for manufacturers to design and equip vehicles to comply with those standards and for consumers to pay for the safety devices only to have the device rendered inoperative. They are designed to save lives and prevent injuries: Not only for the benefit of the owner of the vehicle, but also for the other passengers of the vehicle and other motorists on the highways. We must now insure that the Department of Transportation has the enforcement powers necessary to prevent the circumventing of the intent and spirit of the law.

Each year, over 55,000 Americans are killed on the highway and 2,000,000 are injured. At least 20 percent of those lost in traffic accidents could be saved if only they would wear their seat belts. In a major effort to increase belt usage, the Department has mandated the use of a sequential ignition interlock system in all 1974 cars. We must act quickly on this legislation in order to discourage motorists from defeating this life-saving device.

The legislation which I am proposing is not unique. In fact, it is modeled after a similar provision in the Clean Air Act which prohibits the modification of emission control devices. The House is also considering a similar proposal. I urge quick action on this proposal.

By Mr. GURNEY (for himself and Mr. CHILES):

S. 2531. A bill to amend title II of the Water Pollution Control Act amendments of 1972 (Public Law 92–500). Referred to the Committee on Public Works.

Mr. GURNEY. Mr. President, today, along with Florida's distinguished junior Senator (Mr. CHILES), I wish to introduce a bill which would amend the Federal Water Pollution Control Act Amendments of 1972, Public Law 92–500.

Mr. President, as presently written, section 206(f)(1) of Public Law 92–500 specifically states that:

> The administrator may not approve an application under this subsection unless an authorization is in effect for the future fiscal year for which the application requests payment, which authorization will insure such payment without exceeding the State's expected allotment from such authorization.

I am sure that all of my colleagues agree that Public Law 92–500 has been a significant advancement in our fight to clean up rivers, lakes, and oceans. However, the present language of this act has caused many communities to delay their efforts in this direction for fear that, should they proceed on their own initiative, their efforts would not be eligible for subsequent Federal reimbursement.

Senator CHILES and I have both received numerous letters from local officials in Florida stating their desire to begin immediate construction of waste treatment facilities. However, they stress their reluctance to do so unless they are assured of eligibility for future Federal reimbursement.

To highlight the importance of their fears, the State of Florida Pollution Control Board has contacted both Senator CHILES and myself urging that legislation be introduced to correct this problem. I would like to ask that the resolution of the Florida Pollution Control Board be printed in the RECORD at the conclusion of my remarks.

Mr. President, the House of Representatives has already entertained such a bill introduced by Congressman PARRIS. It is our understanding that Congressman PARRIS has received endorsement of this proposal from over 20 State legislatures. It is a companion measure to Congressman PARRIS' bill that Senator CHILES and I are introducing at this time.

At this point I would like to briefly state what this bill would do. Mr. President, as you know, the State presently sets up the priority list for these projects and, as a consequence, there are dealings on the State level to determine which projects will get funded first. This bill would allow the cities to proceed with the construction of the waste facilities after their plans have been approved by the State and the EPA without sacrificing their eligibility for reimbursement at a later date. However, this bill states clearly that approval of such projects does not constitute a commitment or obligation on the part of the United States to provide funds.

Mr. President, I hope that favorable action on this proposal will be forthcoming in the near future.

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

STATE OF FLORIDA,
DEPARTMENT OF POLLUTION CONTROL,
Tallahassee, Fla., September 27, 1973.

Hon. EDWARD J. GURNEY,
U.S. Senator, Senate Office Building, Washington, D.C.

DEAR SENATOR GURNEY: Pursuant to the direction of the State of Florida Pollution Control Board, I am transmitting to all members of the Florida Congressional Delegation a copy of Resolution No. 73–57 which was adopted by the Pollution Control Board on September 25, 1973.

I hereby certify that the enclosed Resolution is a true and correct copy of the original Resolution contained in the official records of the State of Florida Department of Pollution Control.

Thank you for your immediate and careful consideration of this matter.

Sincerely,

HAMILTON S. OVEN, JR.,
(For Peter P. Baljet, Executive Director.)

BEFORE THE STATE OF FLORIDA POLLUTION CONTROL BOARD—RESOLUTION NO. 73–57

Whereas it is the view of the Department, on the basis of legal opinions of its staff, that passage of House Bill 8602 in the House of Representatives, 93rd Congress, would further the continuing fight against pollution in Florida and the nation by expediting the construction of publicly owned wastewater treatment facilities through federal reimbursement grants, and

Whereas present federal law does not permit reimbursement for construction begun prior to receipt of a grant offer, which tends to discourage such construction, and House Bill 8602 would authorize such reimbursement, and

Whereas the Department is desirous that the Florida Congressional delegation be apprised of the Department's view and assist in such passage,

Now, therefore, be it resolved by the Department of Pollution Control of the State of Florida that a certified copy of this resolution with a copy of House Bill 8602 attached to it be sent to each member of the Florida Congressional delegation urging him to work for the early passage of House Bill 8602 or one substantially the same.

Mr. CHILES. Mr. President, I am delighted to join with the distinguished senior Senator from Florida, Senator GURNEY in introducing this bill to help

expedite the construction of publicly owned wastewater treatment facilities through Federal reimbursement grants.

The 1972 amendments, by increasing water quality goals, increased the need for construction of these waste treatment facilities. However the language of these amendments, as Senator GURNEY has pointed out, failed to provide eligibility for future Federal reimbursement to any project in which construction was initiated after January 1, 1973, and which did not receive Federal grant support as authorized by section 202(a).

The language of our bill would provide that any such projects approved by the appropriate State water pollution control agency and by the administration as meeting all applicable requirements of the law would not insure a commitment of the Federal Government to provide funds to reimburse, but would merely insure that eligibility for reimbursement funds was extended.

Senator GURNEY and I have sent a joint letter to the Chairman of the Public Works Committee, Senator RANDOLPH, and the ranking minority Member, Senator BAKER, urging early action on this proposal.

We believe, as we are sure our colleagues will agree, that we must do everything possible to expedite construction and encourage local communities to take initiative in this matter.

Mr. President, I ask that at this point in our remarks that following the resolution adopted by the Florida State Legislature, that our letter be printed, as well as the text of our bill.

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

U.S. SENATE, COMMITTEE ON GOVERNMENT OPERATIONS,
Washington, D.C., October 3, 1973.

Senator JENNINGS RANDOLPH,
Chairman, Senate Committee on Public Works.

DEAR MR. CHAIRMAN: On October 3, 1973 we introduced a bill to help expedite the construction of publicly owned wastewater treatment facilities through federal reimbursement grants.

As you know the 1972 amendments, by increasing water quality goals, also increased the need for the construction of treatment facilities. But the amendment language failed to provide eligibility for future Federal Reimbursement to any project in which construction was initiated after January 1, 1973 and which did not receive federal grant support as authorized by section 202(a).

Our proposal would provide that any such projects approved by the appropriate State water pollution control agency and by the Administration as meeting all applicable requirements of the law would not ensure a commitment of the Federal government to provide funds to reimburse, but would merely ensure that eligibility for reimbursement funds was extended.

The purpose of our letter is to urge your Committee's early consideration of this much needed legislation.

Sincerely,

EDWARD GURNEY,
LAWTON CHILES.

S. 2531

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That section 206 of "TITLE II—GRANTS FOR CONSTRUCTION OF TREATMENT WORKS" of the Water Pollution Control Act Amendments of 1972 (Public Law 92-500) is hereby amended by adding a new subsection as follows:

(g)(1) Any project in which construction was initiated after January 1, 1973, and which did not receive Federal grant support as authorized by section 202(a) shall be eligible for future reimbursement to the same extent that could have been provided under section 202(a) if all funds authorized by section 207 had been appropriated and allotted to the States in accordance with the provisions of section 205(a): *Provided, however,* That such projects must be approved by the appropriate State water pollution control agency and by the Administration as meeting all applicable requirements of this title. A finding by the Administrator that a project meets the requirements of this title shall not be construed to constitute a commitment or obligation of the United States to provide funds to make or pay any grant for such a project except to the extent that such funds were appropriated by the Congress pursuant to the provisions of section 207.

SEC. 2. Section 212 of title II of the Water Pollution Control Act Amendments of 1972 (Public Law 92-500) is amended to read as follows:

"(2)(A) The term 'treatment works' means any devices and systems or elements and components thereof including foundations and excavations, used in the storage, treatment, recycling, and reclamation of municipal sewage or industrial wastes of a liquid nature to implement section 201 of this Act, or necessary to recycle or reuse water at the most economical cost over the estimated life of the works, including intercepting sewers, outfall sewers, sewage collection systems, pumping, power, and other equipment, and their appurtenances; extensions, improvements, remodeling, additions, and alterations thereof; elements essential to provide a reliable recycled supply such as standby treatment units and clear well facilities; and any works, including site acquisition of the land that will be an integral part of the treatment process or is used for ultimate disposal of residents resulting from such treatment.

"(B) In addition to the definition contained in subparagraph (A) of this paragraph, 'treatment works' means any other method or system, or elements and components thereof including foundations and excavations, for preventing, abating, reducing, storing, treating, separating, or disposing of municipal waste, including storm water runoff, or industrial waste, including waste in combined storm water and sanitary sewer systems. Any application for construction grants which includes wholly or in part such methods or systems shall, in accordance with guidelines published by the Administrator pursuant to subparagraph (C) of this paragraph, contain adequate data and analysis demonstrating such proposal to be, over the life of such works, the most cost efficient alternative to comply with sections 301 or 302 of this Act, or the requirements of section 201 of this Act.

By Mr. MOSS:

S. 2532. A bill to amend the Federal Power Act to promote conservation, reduce wastage, and attain greater efficiency in the generation of electrical energy, and for other purposes. Referred to the Committee on Commerce.

ELECTRICAL ENERGY CONSERVATION ACT

Mr. MOSS. Mr. President, I introduce for appropriate reference, a bill to amend the Federal Power Act to promote conservation, reduce wastage, and promote greater efficiency in the generation of electrical energy.

The energy crisis facing the Nation manifests itself in every walk of life. In the past few years, several regions of the Nation have suffered power blackouts or brownouts. Last winter, the scarcity of diesel oil forced the curtailment of bus operations in several major cities, and schools had to be closed because of a lack of heating fuel. This summer, we have witnessed shortages of gasoline for automobiles and of fuel for farm equipment.

We hear many proposals from the energy-producing industries that the way to relieve the energy crisis is to increase energy supply by measures such as deregulation of natural gas, increasing the oil depletion allowance, or relaxation of environmental safeguards. These are not completely convincing, for increasing the supply by raising cost is not the only solution. There are other options available.

Several governmental analyses and numerous private investigations have demonstrated that a significant easing of the energy shortage can be achieved by elimination of shamefully wasteful uses of energy. Improvement in efficiency of certain other uses can reduce substantially our energy requirements with no decrease in the standard of living. Perhaps through an energy conservation program, the possibilities of continuous energy shortages for the next 20 years will be greatly diminished, while the environment and the quality of life are improved at the same time.

There are many potential areas in which Congress might act in creating a national policy of energy conservation. But most of our attention has not been focused on the possibilities for reducing the future demand for energy. The projections for continued increase in energy consumption of 4.5 percent annually—with electricity usage projected to increase at an annual rate of 7 percent—have caused a few experts to examine seriously energy conservation measures as a means of reducing the growth rate of energy consumption in this country.

Dr. S. David Freeman, former White House Energy Adviser and currently director of the Ford Foundation energy policy project, stated:

> If the existing trend of accelerated growth in energy use is not turned off, then the existing projections may even understate the future rates of growth. But such a course of action is most likely to place society on a collision course with itself.

Former Secretary of the Interior Stewart Udall recently wrote—

> The era of "cheap power" is over; a new era of energy thrift must be inaugurated. I am convinced that we can combine conservation and technology to redefine progress—and produce lifestyles that are cleaner and more fulfilling.

In an expanding industrial society, the objective of providing low-cost power to stimulate growth and development is a rational policy. This has been the trademark of the utility industry in this country. However, with the onset of the energy crisis, these policies are no longer appropriate. We must institute conservation measures in the operations of utilities and encourage utility customers to do likewise.

Historically, advertisements of utility companies have focused on the theme of the good life that the customer could enjoy if he only would use more electricity. Because of the availability of different forms of energy for uses such as space heating, the competition between the various suppliers has intensified the advertising of the specific advantages to the consumer of choosing the "right" way to heat his home.

In 1970, however, the utility industry spent 2 percent of its gross revenues on advertising and sales, more than eight times the amount spent on research and development. That is not a very good track record. In a period of short supply of energy, continued advertising to increase use is counterproductive.

Government must bear some of the responsibility. The manner in which the Federal Power Commission and the State utility commissions calculate the allowable financial return for a utility company encourages the utility to continue to expand its facilities; and in order to justify this expansion the utility must continue to stimulate demand through advertising.

Let us look at the utility rate system—particularly the declining block rate structure. This is the system under which the more electricity used, the less the price per unit. Rate structures such as these were justified on the basis of economy of scale, and savings in distribution costs, and were instituted in an era in which the public policy was to promote the use of energy. However, recent analysis has questioned whether the "scale" factor in powerplants has gone past the point of providing economy in the sense that it is the large centralized powerplants and the enormous transmission line requirements that cause the greatest environmental costs. This fact, coupled with the results of studies which show that the biggest users are the ones most sensitive to price changes, dictate that reducing the slope of the declining block rate structure is an important energy conservation measure. Suffice it to say, at this point, that at a period of power shortages and increasingly more brownouts and blackouts, advertisements which try to sell more electricity can only aggravate the problem.

A startling example of the effect of certain advertising practices in the utility industry is a request by the Los Angeles Water and Power Department to obtain a variance from the local emissions standards in order to build an additional powerplant. The California Superior Court denied the petition on the grounds that the high local growth rate of electricity consumption was—"due primarily to the aggressive advertising of the department, urging a greater use of electricity by every resident."

The court also found, "there will be no danger of blackouts, total or partial, for the city of Los Angeles if the department of water and power will stop its advertising programs and cease urging customers and potential customers to use more electricity."

Fortunately, in some places, electric companies have adopted energy conservation advertising campaigns. Utah Power and Light, Boston Edison, and Georgia Power have stopped promotional advertising.

In 1971, America Electric Power, Virginia Electric Power, and Baltimore Gas and Electric announced temporary halts to consumer advertising. Consolidated Edison, the butt of Johnny Carson's monolog nightly through the late sixties, converted its entire advertising budget to a "save-a-watt" energy conservation program in 1971. In addition to media advertising, the program included brochures on energy conservation mailed with electric bills to all customers. If advertising can sell consumption, it can also sell conservation, and I believe that the Con Edison program contributed to the 2.5 percent drop in consumption which New York City experienced in 1971. There were only 6 days of voltage cuts in 1971, compared with 23 in 1970, although some may suggest that milder weather played an important factor.

The New York State Public Service Commission policy requiring utilities to justify promotional advertising expenditures, and disallowing as operating expenses to be charged against profits, promotional advertising expenditures which cannot be justified, should be a damper on promotional advertising practices. Admittedly, this is rather drastic, but is definitely justified in view of a deepening energy crisis.

Other promotional practices undertaken by the utility industry aimed at large institutional and corporate users, foster increased energy consumption. These must be restricted. Practices such as installation allowances, service and merchandising subsidies, financing assistance, cash payments, and other similar practices would be unlawful in many other businesses. In today's energy crunch, it is unethical. The report of the House of Representatives entitled, "Promotional Practices by Public Utilities and Their Effect on Small Business," demonstrates some of these efforts.

One example cited is that in which discriminatory pricing is used as a promotional practice for those customers who utilize electricity for heating purposes. Let us face it; electric space heating has to be less efficient than with gas or fuel oil. Even more shocking is the complicity of Government agencies. Con Edison offered $150,000 bonus payment to New York State to insure the installation of electric heat in a new public housing development.

Vepco ads in 1970 read:

> We'll do everything in our power to help industry find a home here. We'll survey potential sites, prepare topographical maps . . . compile dossiers on local taxes, labor supply, and zoning laws; arrange for soil and water analysis; even set up free job training.

The National Association of Regulatory Utility Commissioners studies of promotional practices issued in March 1970, and a more recent one of which I have seen the June 5, 1973 draft, document many promotional practices which are unconscionable in a period of energy shortage.

Mr. President, the Electrical Energy Conservation Act, which I introduce today, will be an important step in insuring that regulations are issued covering advertising, and promotional practices which lead to wasteful uses of energy. The bill would also have the FPC report back to us on the impact of rate structures on consumption and conservation.

I ask unanimous consent that the text of the "Electrical Energy Conservation Act" be printed in the RECORD at the conclusion of my remarks.

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

S. 2532

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act shall be cited as the "Electrical Energy Conservation Act."

DECLARATION OF POLICY

SEC. 2. (a) FINDINGS.—The Congress hereby finds and declares that—

(1) An abundance of low-cost electrical energy has helped produce the present high standard of living in the United States.

(2) Continued availability of abundant low-cost electrical energy and minimization of power failures and brownouts are essential to the future of the economy and the public welfare of the Nation,

(3) Such continued availability is jeopardized today by inefficiency, profligate usage, and uneconomic wastage of electrical energy.

(b) PURPOSES.—It is therefore declared to be the purpose of the Congress in this Act to—

(1) declare that henceforth it shall be the policy of the Nation to conserve electrical energy, reduce wastage of electrical energy, and maximize efficiency in the generation, distribution, and use of electrical energy; and

(2) direct the Federal Power Commission to study and implement better ways and more efficient methods of electric power generation and electrical energy conservation.

INFORMATION DISCLOSURE

SEC. 3. (a) Section 4(a) of the Federal Power Act (16 U.S.C. 797(a)) is amended by adding the following new sentence at the end thereof: "The Commission shall allow responsible members of the public reasonable access to investigations, collections of data, and any reports thereon proposed under this subsection".

(b) Section 4(d) of the Federal Power Act (16 U.S.C. 797(d)) is amended by striking out in the first sentence thereof the phrase "from time to time" and inserting in lieu thereof the phrase "as soon as practicable".

(c) Section 206(b) of the Federal Power Act (16 U.S.C. 824e(b)) is amended by adding the following new sentence at the end thereof: "Such information shall be made public as soon as practicable.".

(d) The first sentence of section 209(c) of the Federal Power Act (16 U.S.C. 824h(c)) is amended to read as follows:

"The Commission shall make available to the several State commissions such information and reports as may be of assistance in State regulation of public utilities; the commission shall also make available all information and reports, other than that material which it has for good cause classified, to responsible members of the public except persons specifically excluded under this Act.".

ENERGY CONSERVATION

SEC. 4. (a) Section 206 of the Federal Power Act (16 U.S.C. 824e) is amended by adding the following new subsection at the end thereof:

"(c) Within six months after the date of enactment of this subsection, the commission shall by rule, in accordance with the

provisions of section 553 of title 5, United States Code, issue regulations governing the promotional practices of all electric and gas public utilities. Such regulations shall disallow as part of the rate base and may further restrict any public utility expenditures for advertising and promotional practices which the commission determines are likely to promote unnecessary or wasteful energy consumption. In the course of preparing such regulations, the commission shall consult the Model State Commission Rules and Regulations Governing Promotional Practices of Electric and Gas Utilities promulgated by the National Association of Regulatory Utility Commissioners."

(b) Section 209 of the Federal Power Act (16 U.S.C. 824h) is amended by adding the following new subsection at the end thereof:

"(d) The commission may confer with any State commission regarding the relationship between rate structures, costs, accounts, charges, practices, classifications, and regulations of public utilities subject to the jurisdiction of such State commission and of those subject to the jurisdiction of the commission. The commission shall confer with the State commissions regarding the relationship between such subjects and the conservation of electrical energy. The commission is authorized to consult and work with the State commissions to develop methods and procedures with respect to rate structures, costs, accounts, charges, practices, classifications, and regulations of public utilities which will promote and create economic and other incentives for the conservation of electrical energy. The commission, or any member or duly designated employee of the commission, may hold joint hearings with any State commission on any subject as to which the commission is authorized to act. In the administration of this Act, the commission shall avail itself of such cooperation, services, records, and facilities as may be afforded by any State commission.".

(c) Section 311 of the Federal Power Act (16 U.S.C. 825j) is amended to read as follows:

"(a) In order to secure information necessary or appropriate as a basis for legislative recommendations, the commission is authorized and directed to conduct investigations regarding the generation, transmission, distribution, promotion, sale and use of electrical energy, however produced, throughout the United States, whether or not otherwise subject to the jurisdiction of the commission, including such generation, transmission, distribution, promotion, sale and use by any agency, authority, or instrumentality of Federal, State, or local government. So far as practicable, the commission shall obtain and maintain complete and current information regarding—

"(1) the ownership, operation, management, and control of all facilities for generation, transmission, distribution, and sale of electrical energy, however produced, in the United States;

"(2) the capacity and output of each such facility and the relationship between the two;

"(3) the costs of generation, transmission, and distribution at each such facility;

"(4) the rates, charges, rate structures, accounts, practices, classifications, and contracts regarding the sale of electrical energy to residential, rural, commercial, and industrial consumers and other purchasers by private and public suppliers of electrical energy;

"(5) methods of more efficient generation, distribution, and conservation of electrical energy; and

"(6) the relation of any and all such facts to the development of navigation, industry, commerce, environmental quality, and national security. The commission shall report to Congress on September 15 of each year on the results of investigations made and information obtained under this section. Such reports shall be submitted to Congress without any prior submission, review, or clearance by any other agency or officer of the United States.

"(b) The commission, the Bonneville Power Administration, the Tennessee Valley Authority, and any other instrumentality of the Federal Government which produces or sells electrical energy shall prepare and submit to the Congress, not more than eighteen months after the date of enactment of this subsection, a comprehensive report detailing the results of a study and investigation conducted by it of the impact of rate structures on the efficiency of generation and on consumption and conservation of electrical energy. Such studies shall evaluate all relevant factors, including but not limited to—

"(1) an identification of subsidies and other incentives which promote inefficient generation and unnecessary and wasteful energy consumption;

"(2) an indication of how various rate structures and methods of pricing might affect the efficiency of generation and consumption within the regions studied. Such methods shall include fuel cost adjustments, marginal cost pricing, and other pricing measures which may encourage increased efficiency of generation or decreased consumption of electrical energy;

"(3) an exploration of the price elasticity of electrical energy consumption within each region studies;

"(4) an analysis of the rate structure within each region studied, including its effect on design and use of less efficient power generation equipment;

"(5) an indication of whether metering or other measures might be improved or instituted to inform purchasers of electrical energy of their cost and of peak demand responsibilities;

"(6) an estimate of the impact various rate changes might have on regional consumption and efficiency of generation; and

"(7) recommendations for legislative, executive, and administrative actions in furtherance of the national policy declared in the Electrical Energy Conservation Act."

JURISDICTION

SEC. 5. Section 19 of the Federal Power Act (16 U.S.C. 812) is amended by adding the following new sentence at the end thereof: "Nothing in this section shall be construed as negating any specific authority given the commission in any other section of this Act.".

ADDITIONAL COSPONSORS OF BILLS AND JOINT RESOLUTIONS

S. 1147

At the request of Mr. DOMINICK, the Senator from Tennessee (Mr. BAKER), the Senator from Oklahoma (Mr. BARTLETT), the Senator from Nevada (Mr. BIBLE), the Senator from New Hampshire (Mr. COTTON), the Senator from South Carolina (Mr. HOLLINGS), and the Senator from Georgia (Mr. NUNN) were added as cosponsors of S. 1147, a bill to amend the Occupational Safety and Health Act of 1970.

S. 1687

At the request of Mr. PROXMIRE, the Senator from Michigan (Mr. HART) was added as a cosponsor of S. 1687, a bill to repeal the act terminating Federal supervision over the property and members of the Menominee Indian Tribe of Wisconsin.

S. 1708

At the request of Mr. CRANSTON, the Senator from Oregon (Mr. HATFIELD) was added as a cosponsor of S. 1708, a bill to amend title X of the Public Health Service Act to extend appropriations authorizations for 3 fiscal years and to revise and improve authorities in such title for family planning services programs, planning, training and public information activities, and population research.

S. 2400

At the request of Mr. BELLMON, the Senator from Wyoming (Mr. HANSEN) was added as a cosponsor of S. 2400, a bill to amend section 202 of the Clean Air Act with respect to motor vehicle emission standards.

S. 2420

At the request of Mr. BAYH, the Senator from Minnesota (Mr. MONDALE) was added as a cosponsor of S. 2420, a bill to amend the Economic Stabilization Act of 1970 to adjust ceiling prices applicable to certain petroleum products and to permit retailers of such products to pass through increased costs.

S. 2422

At the request of Mr. MATHIAS, the Senator from Maryland (Mr. BEALL) and the Senator from Oregon (Mr. HATFIELD) were added as a cosponsor of S. 2422, a bill to establish a National Center for the Prevention and Control of Rape and provide financial assistance for a research and demonstration program, into the causes, consequences, prevention, treatment, and control of rape.

SENATE CONCURRENT RESOLUTION 49—ORIGINAL CONCURRENT RESOLUTION REPORTED AUTHORIZING THE PRINTING OF PRAYERS OF THE CHAPLAIN OF THE SENATE

Mr. CANNON, from the Committee on Rules and Administration, reported the following original concurrent resolution:

S. CON. RES. 49

Resolved by the Senate (the House of Representatives concurring), That there be printed with an illustration as a Senate document, the prayers by the Reverend Edward L. R. Elson, S.T.D., the Chaplain of the Senate, at the opening of the daily sessions of the Senate during the Ninety-second Congress, together with any other prayers offered by him during that period in his official capacity as Chaplain of the Senate; and that there be printed two thousand additional copies of such document, of which one thousand and thirty would be for the use of the Senate and nine hundred and seventy would be for the use of the Joint Committee on Printing.

SEC. 2. The copy for the document authorized in section 1 shall be prepared under the direction of the Joint Committee on Printing.

SENATE RESOLUTION 177—ORIGINAL RESOLUTION REPORTED TO PAY A GRATUITY TO NANCY O. VAIL

Mr. CANNON, from the Committee on Rules and Administration, reported the following original resolution:

S. RES. 177

Resolved, That the Secretary of the Senate hereby is authorized and directed to pay, from the contingent fund of the Senate, to

Nancy O. Vail, widow of Thomas L. C. Vail, an employee of the Senate at the time of his death, a sum equal to one year's compensation at the rate he was receiving by law at the time of his death, said sum to be considered inclusive of funeral expenses and all other allowances.

AMENDMENT OF THE SOCIAL SECURITY ACT—AMENDMENT

AMENDMENT NO. 599

(Ordered to be printed and referred to the Committee on Finance.)

Mr. BENTSEN. Mr. President, I am today introducing an amendment to the Social Security Act which will allow occupational therapists to receive equal treatment with other health specialists in regard to having their services covered under medicare.

Occupational therapists have long filled a vital role in the health field. They have a wide range of tasks, including training amputees in the use of new muscles and prosthetic devices, providing rheumatoid arthritics with splinting devices, and helping the blind compensate for loss of sight.

Occupational therapy is also frequently required in the treatment of spinal cord injuries, cerebral palsy, kidney disorders, and in assisting persons weakened by the aging process.

In fact, occupational therapists are highly trained to do tasks that physical and speech therapists cannot perform, such as helping newly handicapped persons adjust to their new environments. The Nation's 14,000 occupational therapists are performing services frequently critical for newly discharged patients either in an outpatient department or in his home.

Yet under the present medicare law, occupational therapists suffer from discrimination. While speech therapy or physical therapy can be considered primary health care services under part A of medicare and can, therefore, be covered unconditionally, occupational therapy can be covered under part A only if the patient is receiving either skilled nursing care, physical, or speech therapy at the same time. I believe that the conditions imposed on this coverage are unwarranted.

Under medicare part B, occupational therapy suffers from a similar downgrading of its importance. Occupational therapy services are covered only if they are "incident to physician services." And that phrase has been defined to mean that when the services are performed on an outpatient basis, direct personal supervision of a physician must be rendered. Thus, if an occupational therapist goes from the hospital to a patient's home to give treatment, and no physician accompanies him, the therapist's services are not covered under medicare.

In my view, these restrictions are unfair and unrealistic.

My amendment would accomplish two purposes: first, it would include occupational therapy along with skilled nursing care, physical therapy, or speech pathology as a primary health care service under parts A and B of medicare. That means that occupational therapy would stand on its own; it would not be tied to physical or speech therapy.

Second, it would cover occupational therapy in the home or other outpatient facilities for patients receiving care from approved providers. It would not, then, be necessary for a physician to accompany the therapist.

Mr. President, I believe it is time we recognized occupational therapy as an equal among the health professions. I shall work for the passage of this amendment this year.

At this point, I ask unanimous consent to insert a copy of my amendment in the RECORD.

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

AMENDMENT NO. 599

On page 9, line 6, insert the following: "the preceding provisions of" immediately after "made by".

On page 9, after line 10, insert the following new section:

SEC. 6. (a) Section 1814 (a) (2) (D) of the Social Security Act is amended by inserting ", occupational," immediately after "physical."

(b) Section 1835 (a) (2) (A) (i) of such Act is amended by inserting ", occupational," immediately after "physical".

(c) Section 1835(a)(2) of such Act is amended——

(1) by striking out the period at the end of clause (D) and inserting in lieu thereof "; and ", and

(2) by adding after clause (D) the following new clause:

"(E) In the case of outpatient occupational therapy services, (i) such services are or were required because the individual needed occupational therapy services, (ii) a plan for furnishing such services has been established and is periodically reviewed by a physician, and (iii) such services are or were furnished while the individual is or was under the care of a physician."

(d) The last sentence of section 1861 (p) of such Act is amended by inserting "and occupational therapy services" after "speech pathology services".

(e) The amendment made by the preceding provisions of this section shall be applicable in the case of services furnished on and after the first day of the first month which begins not less than 30 days after the date of enactment of this Act.

FAIR CREDIT REPORTING ACT—AMENDMENT

AMENDMENT NO. 600

(Ordered to be printed and referred to the Committee on Banking, Housing and Urban Affairs.)

Mr. KENNEDY. Mr. President, I am submitting today amendments that will help safeguard the privacy and fair treatment of Americans in the area of medical information. S. 2360 takes a major step toward this end by requiring that medical information be disclosed along with other data from an individual's credit record. My amendments would go further, by requiring that medical data stored by central reporting agencies be disclosed by insurers who make any use whatever of that data in their consideration of an applicant for insurance, and by requiring insurers to obtain the applicant's specific permission before giving access to any third party to the patient's medical records.

Last year, I participated in hearings before the Judiciary Committee, where it was brought out that there are private agencies that stockpile medical information on Americans for the use by hundreds of insurance companies. Mr. Wilburding, president of the Medical Information Bureau, indicated that his organization stored medical and other data on over 12½ million Americans for use by over 700 life and accident and health insurance companies. The file grows by almost 400,000 persons each year as the member companies send in data they acquire from applicants for life or health insurance.

The data are obtained from physicians, hospitals, diagnostic laboratories, and other health care providers. An applicant for insurance signs an authorization for the insurer to obtain medical data on him, and this data in turn is sent by the insurer to the Medical Information Bureau for all 700 member companies to use.

How do they use it? When a person applies for life or health insurance, the company sends his name to the Medical Information Bureau. Then the computer goes to work, spewing forth the relevant details of the applicant's medical record. For if the person has ever had an insurance examination by a member company, there will be a magnetic tape record containing medical information obtained in that examination.

If there is data indicating important health or other problems, even if the condition was temporary or misdiagnosed, the company is alerted to proceed with caution—and may ultimately deny the application for insurance.

The Medical Information Bureau was started by life insurance companies and its members all sell life insurance. There are no members that sell health insurance alone, but 87 percent of all the health and accident insurance coverage in the country is sold by life insurance companies. So it becomes clear that the companies that sell most of the health insurance in America are in a position to use the Medical Information Bureau to check up on applicants for health insurance.

Medical information is particularly sensitive in several ways. First, most Americans consider it a private matter that they may currently suffer a disease or disability or may have suffered it in the past. Some illnesses, such as emotional disorders, carry an unfortunate social stigma, and many diseases or disorders, for various reasons, are very private matters known only to a person's physician, or most intimate associates. In deference to this fact, there are strong legal protections of the doctor-patient relationship, and clear principles of professional ethics among health care providers against revealing medical information on a patient. Medical information is simply a very personal and private matter.

Second, medical information is used by institutions in our society to make decisions about people that affect their entire lives. Indeed, if you are among 50 million Americans who rely on nongroup or individual policies, your med-

ical problems can keep you from getting health insurance or can result in excluded or waived benefits in the policy you do get.

During hearings before the Health Subcommittee over the last few years, I have heard cases where people without insurance have had to make large deposits before they are treated and cases where the cost of the treatment has bankrupted families because their insurance had limitations or waivers.

I recall the case of a Los Angeles insurance executive, Mr. Sumner Cotton. He was covered by a group health policy in his company for 12 years, then he decided to go into business for himself. That meant that he had to apply for an individual health insurance policy for himself and his wife.

Unfortunately, despite his contacts and knowledge of the insurance business, Mr. Cotton could not get a policy from anyone. It seems his wife had had an episode of unexplained illness that was never diagnosed. He was told to wait several years to apply, then if she had no further problems he could get insurance. Unfortunately, she was stricken with a cerebral aneurysm a year later. Mr. Cotton's wife survived, but he is now in debt $13,000.

I recall another case of Mrs. Grace Bartlett in West Virginia, who had Addison's disease. She, of course, cannot obtain any insurance. In fact, an official with one of the leading companies told her, and I am quoting Mrs. Bartlett:

> Do not make an application. You may get well enough someday. If you have been turned down once, then you will not be acceptable for insurance. So do not make an application. Make an inquiry, but not an application, because once you do, it is on the record and you will no longer be considered at any time.

It is a catastrophe if a person does not have health insurance in America, and yet many Americans are excluded totally from health insurance coverage, and innumerable others have waivers or exclusions in their policies that preclude them from being treated for precisely the health problem for which they need it the most.

The point is this: Medical information is used to make decisions that are so important to a person's life and health that it deserves special safeguards to assure the accuracy and currency of the information, and the fair treatment of the consumer.

Medical information is particularly sensitive in yet another respect—namely, people have little control over whether they are stricken with illness or injury—yet they can be penalized for their problems by being denied insurance, and even the health care it helps to purchase.

I believe most Americans feel that health care is a right. The insurance industry claims to share this belief. One reason for this belief is that blind chance usually determines whether a person is stricken with illness—and Americans generally believe that blind chance should not keep anyone from pursuing a full life if health care can help them.

Yet, in our current system of providing health insurance, Americans are denied insurance because they are or have been sick.

I believe we need to take extraordinary care to protect those who are accused of being sick. Because indeed, many insurance carriers seem to see it as a crime, and treat those who are sick, or have been, as cheaters if they try to get insurance.

I am on record as opposing our existing system of health insurance which leads to this mentality. I deplore the competition among insurers to skim off the good risks from the insurance market—and exclude the bad risks. And of course the agencies which store medical information ultimately are helping keep the so-called "bad risks" out of insurance programs.

I believe insurance should be provided to every American at a cost proportionate to their ability to pay. The cost of including those unlucky enough to be "bad risks" is really very low when they are included in an insurance group that includes the entire population. As you know, I advocate a program of national health insurance, the health security program, that would do exactly this—and I believe our Nation will only solve our problems in the area of health insurance when we enact such a program.

In the meantime, however, as long as Americans are dependent on the private insurance industry, I believe we must take extraordinary measures to assure their privacy and fair treatment.

If medical information can result in a person's being refused health insurance it should be accurate, current, and complete. If this information is to be pooled in permanent data banks of consumer reporting agencies, it is even more critical that it be accurate, current, and complete.

Moreover, since this is extraordinary personal information, the applicant and his physician should know exactly who will see the data, how it will be used, and should give their permission for its use by anyone other than the company to which application is being made.

The amendments I propose—which I have introduced today and appended to my testimony—would do the following:

First. An applicant who is denied credit or insurance would have to be shown all data relevant to that denial even if that data only served as an "alert" following which the consumer conducted an investigation of its own.

Second. Insurance carriers would be required to obtain the authorization of the applicant to forward his medical records or information from them to any third party, including consumer reporting agencies. In addition, every doctor or other provider from whom the insurance carrier obtains medical data would have to be informed of the carrier's intent to forward any of the data to any third party.

The purpose of the disclosure of all medical data is to allow the applicant to examine what is in the record and make corrections. It is possible that a suspicious condition noted in the record has been diagnosed and cured, or that the applicant can produce medical opinion that contests data stored in the record. The applicant has the right to know what is in the record and to challenge its accuracy or currency.

Last year, Mr. Wilburding, who will testify later today, argued that insurers are motivated by two things to check for themselves the accuracy and currency of data in the reporting agency's files.

First. They want to sell insurance, and

Second. They promise the Medical Information Bureau they will do their own investigation, and use the reporting agency's data only as an "alert."

I suggest these are weak and inadequate assurances. There is no way to guarantee that the insurance company makes its own check, and when one individual health policy is involved it may not seem worth the cost of an independent investigation. The consumer is the only party highly motivated enough to assure the currency and accuracy of the data and he should have that right to review that data.

The purpose of requiring insurers to obtain authorization before sharing data with third parties is to protect the right to privacy of the individual in this area.

I do not think Americans understand that when they sign an authorization for a life or health insurance company to look at their medical records, they may be making medical data available to over 700 life and health insurers in the Nation. I do not believe they intend to authorize such a thing. If offends their sense of privacy and it seems very risky. The applicant has business after all with only the company in question—not the entire insurance industry.

I believe the applicant has the right to refuse use of his medical data to anyone but the company he is applying to without jeopardizing his chances of being insured. My amendment protects this right, and also insures that the physician is informed of what use is made of the data.

Mr. President, I ask unanimous consent that the text of my amendment be printed in the RECORD at this point.

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

AMENDMENT No. 600

On page 1, line 6, immediately after "ACT" insert "; DEFINITIONS".

On page 1, line 7, after "Sec. 2.", insert "(a)".

On page 2, between lines 7 and 8, insert the following:

(b) Section 603 (1) of such Act is amended—

(1) by inserting "(1)" after "means"; and

(2) by inserting between the period at the end thereof a comma and the following: "and (2) any other information or records which are available to a consumer reporting agency from any source, and which cause such an agency to obtain or seek to obtain additional information or records referred to in clause (1)".

On page 2, line 12, after "reports" insert "; disclosures with respect to medical information".

On page 2, line 13, before "A person" insert "(a)".

On page 2, line 24, strike out the quotation marks and the period at the end of the line.

On page 2, after line 24, insert the following:

"(b) In the event that an investigative consumer report authorized in accordance

with subsection (a) contains medical information relating to a consumer, the person who procures or causes to be prepared that report may not furnish any such medical information to any other person unless the consumer to whom such information relates has given a specific, dated, and separately signed affirmative written indication of his authorization of such action after receiving clear and conspicuous written disclosure of the name of any other person to whom, and any other purpose for which, such information may be furnished. Such disclosure shall clearly inform the consumer that his authorization is optional and that his refusal to give such authorization is not grounds for denial of credit or insurance.

"(c) A consumer reporting agency may not request medical information relating to a consumer from a licensed physician, medical practitioner, hospital, clinic, or other medical or medically related facility, or other person, unless that agency first discloses to the physician, practitioner, hospital, clinic, or other facility, or other person, as the case may be, the purpose for which and person to whom such information will be furnished and the possible other purposes for which and other persons to whom such information may be furnished.".

CONGRESSIONAL BUDGET CONTROL AND REFORM ACT OF 1973—AMENDMENT

AMENDMENT NO. 601

(Ordered to be printed and referred to the Committee on Government Operations.)

Mr. MONDALE. Mr. President, I am pleased to submit today, on behalf of myself and the Senator from New York (Mr. JAVITS) the Congressional Budget Control and Reform Act of 1973.

There will be few questions before the 93d Congress as important to the Nation as the question of congressional control of the budget process.

This is not because the Congress has proven irresponsible with the taxpayer's dollar. In fact, the opposite is true. As the report of the Joint Committee on Budget Control observes, over the past 5 years the Congress has cut the administration's requests for appropriated funds by approximately 30 percent, and has increased funding for so-called "back door" spending by only a little more.

And a major share of these back door increases have come in the social security and medicare programs which are self-funded through the payroll tax and which, therefore, do not contribute to the growth of the Federal deficit. Congress has had a dampening effect on the growth of the Federal deficits, proposed by the executive branch largely in order to finance spending for a war in Southeast Asia without a wartime tax.

But strengthened congressional participation in the budget process is crucial to the health of our system of government because it goes to the heart of the relationship between Congress and the executive branch.

It is becoming increasingly clear that, in both domestic and foreign policy, the commitment of our Government to traditional American values—and above all its ability to respond to the wishes and hopes of the American people—depend on a strong congressional voice in public policymaking.

Yet, through the device of impoundment, the executive branch has moved to assume the same power to decide questions affecting the domestic health of our society that it has assumed in the area of foreign affairs.

A report prepared at my request by the Legislative Reference Service of the Library of Congress indicates that during the last fiscal year, the executive branch has impounded an incredible 29 percent of controllable nondefense expenditures. And this figure does not include other executive actions which do not amount to impoundment in the technical sense—such as the withholding of $6 billion provided by the Congress for water pollution control.

We are rapidly moving toward a domestic system under which the Congress proposes and the President disposes—precisely the opposite of the system proposed in our Constitution. The administration strategy is unlawful. But, except where lawsuits have been brought—an expensive, time-consuming procedure—they are getting away with it.

Only full congressional participation in both domestic and foreign policy decisionmaking can assure the complete and open public debate which is necessary if the American people, through the electoral process, are to make the basic decisions about the future of this country.

The Congress has recognized the danger. Last May 10, the Senate adopted S. 373, the Federal Impoundment Control Procedure Act, to establish congressional control over Executive impoundments.

This measure was accompanied by a procedure to reduce spending approval by the Congress—on a pro rata basis—to the level of $268 billion. The Impoundment Control Procedures Act guarantees that priorities established through the appropriation process—and signed into law by the President—will be maintained for the next year within a noninflationary spending ceiling.

Similar legislation was adopted by the House last July 25.

No legislation which we enact this year will be more important than this bill, developed through the leadership of the distinguished senior Senator from North Carolina (Mr. ERVIN). I hope very much that the President will reconsider his opposition and support this landmark proposal.

The Congress is taking responsible short-term action with respect to the crucial problem of budget control.

But the Congress now faces legislation designed to establish a permanent procedure, S. 1541 and H.R. 7130, modeled after the recommendations of the Joint Committee on Budget Control, which issued its final report last April 18.

Both the Government Operations Committee of the Senate and the Rules Committee in the House are considering these bills, and variations on their general approach.

In my view, enactment of this legislation would be a tragic mistake. Far from increasing the effectiveness of the Congress, these bills would place unprecedented authority in the hands of a single committee, weaken the appropriations process, and in so doing severely weaken the opportunity of individual Senators and Congressmen to represent their constituents on the floor of the House and Senate.

I strongly support the development of sound congressional budget control procedures. We need to take a clear look at questions of fiscal policy—the size of overall expenditures, appropriate revenue levels, the appropriate level of surplus or deficit. These are questions which the Congress as a whole has never considered. Yet, they have a tremendous impact on inflation and employment, on the lives and on the pocketbooks of all Americans. And I believe we can improve our procedures for weighing national priorities against one another.

But I cannot and will not support legislation which, in the name of reform, would fundamentally disenfranchise individual Members of Congress and through them, the people they represent.

These proposals would virtually replace the appropriations procedure with a single complex budget bill, early in the year, placing ceilings on appropriations subcommittees and—at the option of the budget committees—on individual programs and projects, before detailed hearings could be held.

They would create a complicated procedure, limiting the participation of individual Congressmen and Senators. And so they would deliver immense influence on the most important questions of national policy to powerful budget committees in the House and Senate.

Any proposal which calls for adoption of a detailed, binding congressional budget in advance of the appropriations process—with its hearings and consideration of individual items—will inevitably weaken, not strengthen, the debate over national priorities.

We are proposing an alternative approach, which will preserve the establishment of a strong and binding spending ceiling without weakening the appropriations process.

Our bill contains the proposal of the distinguished Senator from Washington (Mr. MAGNUSON) for conversion of the Federal Government to a calendar year fiscal year, to permit more detailed consideration of the President's budget, and to permit appropriations to be complete before the fiscal year begins.

It would establish budget committees in the House and Senate, but with rotating membership, on which no Member would serve more than a 6-year term, to assure full participation and responsiveness to the wishes of the Congress as a whole.

It would provide for the enactment of an overall congressional ceiling, with recommended subceilings before July 1 of each year. This would create the great fiscal debate over the appropriate expenditure and deficit, in view of the condition of the economy, that the Congress now lacks.

Our amendment would provide that the appropriations process may proceed as at present, but that in case appropriations exceed the ceiling, all appropria-

tions items should be reduced pro rata, so that congressionally established priorities would be preserved. It would provide for a second budget resolution, before the end of each session, to make any departures from the impact of pro rata cuts of changes in the overall spending limit. This would permit a reasoned debate over priorities, against the backdrop of appropriations actions and after full hearings.

It would provide for the establishment of a Congressional Office of the Budget, both to assist the Budget Committees and Members of Congress in dealing with budget questions and to provide assistance in assessing the social impact of the budget and the success of social programs.

And it would provide for conversion to congressional adoption of budgets on a 2-year basis so that the long-term consequences of initial commitments may be better understood and debated.

Mr. President, establishment of procedures for improved congressional budget control is a complex task. It involves fundamental changes in congressional procedures developed over nearly 200 years.

Other thoughtful proposals—such as amendment No. 559 sponsored by Senators MUSKIE, MAGNUSON, and BROCK—deserve the close attention of the Senate. And many worthwhile features are included in the bill now before the Government Operations Committee.

It is my profound hope that the committees charged with this task will look long and hard at the impact of their proposals on the ability of individual Congressmen and Senators to effectively represent their States and districts, and the national interest.

Mr. President, I ask unanimous consent that the text of our amendment may appear at this point in the RECORD.

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

AMENDMENT NO. 601 (IN THE NATURE OF A SUBSTITUTE)

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Congressional Budget Control and Reform Act of 1973".

DEFINITIONS

SEC. 2. For purposes of this Act—

(1) The terms "budget outlays" and "outlays" mean, with respect to any fiscal year, expenditures of funds under budget authority during the fiscal year.

(2) The term "budget authority" means authority provided by law to enter into obligations which will result in immediate or future outlays.

(3) The term "permanent budget authority" means budget authority which becomes available from time to time without further action by the Congress.

TITLE I—ESTABLISHMENT OF SENATE AND HOUSE BUDGET COMMITTEES

BUDGET COMMITTEE OF THE SENATE

SEC. 101. (a) Paragraph 1 of Rule XXV of the Standing Rules of the Senate is amended by adding at the end thereof the following new subparagraph:

"(r)(1) Committee on the Budget, to which committee shall be referred all proposed legislation, messages, petitions, memorials, and other matters relating to the following subjects:

"(A) The establishment of limitations on the total amount of outlays to be made during each fiscal year and on the total amount of new budget authority which is to be available for each fiscal year.

"(B) If any reservations of outlays or new budget authority are necessary in order to meet the limitation on the total amount of outlays or the total amount of new budget authority for a fiscal year, the determination of the programs or activities from which such reservations should be made.

"(C) The determination of the amount, if any, by which budget outlays should exceed revenues, or revenues should exceed budget outlays, for each fiscal year considering economic conditions and such other factors as may be relevant to such determination.

"(2) Such committee shall have the duty—

"(A) to report during each regular session of Congress at least two bills dealing with the matters specified in subparagraph (1), and

"(B) to make continuing studies of the effect on budget outlays of existing and proposed legislation and to report the results of such studies to the Senate on a recurring basis.".

(b) Rule XXV of the Standing Rules of the Senate is amended by adding at the end thereof the following new paragraph:

"8. (a) The Committee on the Budget shall consist of fifteen members.

"(b) For purposes of paragraph 6, service of a Senator as a member of the Committee on the Budget shall not be taken into account.

"(c) (1) Membership on the Committee on the Budget shall be divided into three classes with five seats in each class. The members first elected to the committee shall, by lot, determine the class to which their seats are assigned. Thereafter, members elected to the committee shall be elected to a seat in one of the three classes.

"(2) A member serving on the committee in a seat of the first class during the 95th Congress, or during any third Congress following the 95th Congress, shall not be eligible to serve on the committee during the Congress following such 95th Congress or following any such third Congress, as the case may be.

"(3) A member serving on the committee in a seat of the second class during the 96th Congress, or during any third Congress following the 96th Congress, shall not be eligible to serve on the committee during the Congress following such 96th Congress or following any such third Congress, as the case may be.

"(4) A member serving on the committee in a seat of the third class during the 97th Congress, or during any third Congress following the 97th Congress, shall not be eligible to serve on the committee during the Congress following such 97th Congress or following any such third Congress, as the case may be.

"(c) For carrying out the purposes set forth in clause 5 of rule XI, the Committee on the Budget or any subcommittee thereof is authorized to sit and act at such times and places within the United States, whether the House is in session, has recessed, or has adjourned, to hold such hearings, to require the attendance of such witnesses and the production of such books or papers or documents or vouchers by subpena or otherwise, and to take such testimony and records, as it deems necessary. Subpenas may be issued over the signature of the chairman of the committee or of any member of the committee designated by him, and may be served by any person designated by such chairman or member. The chairman of the committee, or any member thereof, may administer oaths to witnesses."

(c) Rule XI of the Rules of the House of Representatives is amended by redesignating clauses 5 through 33, inclusive, as clauses 6 through 34, respectively, and by inserting after clause 4 the following new clause:

"5. Committee on the Budget

"(a) The establishment of limitations on the total amount of outlays to be made during each fiscal year and on the total amount of new budget authority which is to be available for each fiscal year.

"(b) If any reservations of outlays or new budget authority are necessary in order to meet the limitation on the total amount of outlays or the total amount of new budget authority for a fiscal year, the determination of the programs or activities from which such reservations should be made.

"(c) The determination of the amount, if any, by which budget outlays should exceed revenues, or revenues should exceed budget outlays, for each fiscal year considering economic conditions and such other factors as may be relevant to such determination.

"(d) The committee shall have the duty—

"(1) to report during each regular session of Congress at least two bills dealing with the matters specified in paragraphs (a), (b), and (c), and

"(2) to make continuing studies of the effect on budget outlays of existing and proposed legislation and to report the results of such studies to the House on a recurring basis."

CONFORMING AMENDMENTS TO STANDING RULES OF THE SENATE

SEC. 103. Paragraph 1 of rule XXV of the Standing Rules of the Senate is amended—

(1) by inserting after "Government" in subparagraph (c) ", except as provided in subparagraph (r)(1),";

(2) by striking out "Revenue" in sub-

paragraph (h)(1) and inserting in lieu thereof "Except as provided in subparagraph (r)(1), revenue";

(3) by striking out "The" in subparagraph (h) 2 and inserting in lieu thereof "Except as provided in subparagraph (r)(1), the"; and

(4) by striking out "Budget" in subparagraph (j)(1)(A) and inserting in lieu thereof "Except as provided in subparagraph (r)(1), budget".

CONFORMING AMENDMENTS TO HOUSE RULES

SEC. 104. (a) Rule XI of the Rules of the House of Representatives is amended by inserting immediately below clause 21 thereof the following new clause:

"21A. The respective areas of legislative jurisdiction under this rule are modified by title I of the Congressional Budget Control and Reform Act of 1973."

(b) Subparagraph (6) of paragraph (f) of clause 27 of Rule XI of the Rules of the House of Representatives is amended by inserting immediately before the period at the end thereof the following: "or to hearings by the Committee on the Budget on the congressional budget, matters listed in this rule under such committee, or the operation of the Congressional Budget Control and Reform Act of 1973".

(c) Paragraph (g) of clause 27 of Rule XI of the Rules of the House of Representatives is amended by adding at the end thereof the following new subparagraph:

"(5) The preceding provisions of this paragraph concerning hearings on the budget by the Committee on Appropriations shall have similar application, insofar as relevant and practicable, to hearings of the Committee on the Budget described in paragraph (f)(6) of this clause.".

(d) Paragraph (c) of clause 28 of Rule XI of the Rules of the House of Representatives is amended by inserting "the Committee on the Budget," immediately after "the Committee on Appropriations,".

(e) Clause 31 of Rule XI of the Rules of the House of Representatives is amended by inserting "the Committee on the Budget," immediately after "the Committee on Appropriations,".

(f) Paragraph (a) of clause 32 of Rule XI of the Rules of the House of Representatives is amended by inserting "and the Committee on the Budget" immediately after "the Committee on Appropriations".

AMENDMENTS TO LEGISLATIVE REORGANIZATION ACT OF 1946

SEC. 105. (a) Section 133 of the Legislative Reorganization Act of 1946 (2 U.S.C. 190a) is amended—

(1) by inserting "and the Committee on the Budget" after "Appropriations" in subsections (d) and (f), and

(2) by inserting "or the Committee on the Budget" after "Appropriations" in subsection (h).

(c) Section 134(c) of such Act (2 U.S.C. 190a–1) is amended by inserting "and the Committee on the Budget" after "Appropriations" each place it appears in such section.

(c) Section 134(c) of such Act (2 U.S.C 190b) is amended by inserting "or the Committee on the Budget" after "Appropriations".

(d) Section 136(c) of such Act (2 U.S.C. 190d) is amended by striking out "Committee on Appropriations of the Senate and the Committees on Appropriations," and inserting in lieu thereof "Committees on Appropriations and the Budget of the Senate and the Committees on Appropriations, the Budget,'.

AMENDMENTS TO LEGISLATIVE REORGANIZATION ACT OF 1970

SEC. 106. (a) Section 232 of the Legislative Reorganization Act of 1970 (31 U.S.C. 1172) is amended by renumbering paragraphs (2) and (3) as (3) and (4), respectively, and by inserting after paragraph (1) the following new paragraph:

"(2) the Committees on the Budget of the Senate and House,".

(b) Section 236 of such Act (31 U.S.C. 1176) is amended by inserting "and the Budget" after "Appropriations" in paragraph (2).

(c) Section 242(a) of such Act (2 U.S.C. 190h) is amended by inserting "or the Committee on the Budget" after "Appropriations".

(d) Section 243 of such Act (2 U.S.C. 190i) is amended by inserting "(a)" immediately after "243" and by adding at the end thereof the following new subsection:

"(b) The provisions of subsection (a) shall also apply to the Committee on the Budget of the Senate."

TITLE II—CONGRESSIONAL OFFICE OF THE BUDGET

ESTABLISHMENT OF OFFICE

SEC. 201. (a) IN GENERAL.—There is hereby established an office of the Congress to be known as the Congressional Office of the Budget (hereinafter in this title referred to as the "Office").

(b) DIRECTOR.—The Office shall be headed by a Director who shall be appointed jointly by the Majority Leader of the Senate and the Speaker of the House of Representatives and confirmed by a majority vote of each House. The Director shall be appointed without regard to political affiliation and solely on the basis of his fitness to perform his duties, and shall receive the same compensation as the Comptroller General of the United States. The terms of office of the Director first appointed shall expire on January 31, 1977. The term of office of Directors subsequently appointed shall expire on January 31 every four years thereafter. The Director may be removed at any time by a resolution of the Senate or the House of Representatives. A vacancy occurring during the term of the Director shall be filled by appointment, as provided in this section. Except in the case of his removal under the provisions of this paragraph, a Director may serve until his successor is appointed.

(c) PERSONNEL.—The Director shall appoint and fix the compensation of such professional, technical, clerical, and other personnel as may be necessary to carry out the duties and functions of the Office. All personnel of the Office shall be appointed without regard to political affiliation and solely on the basis of their fitness to perform their duties.

(d) UTILIZATION OF SERVICES, ETC.—In carrying out its duties and functions, the Office may utilize the services, information, facilities, and personnel of the General Accounting Office and the Library of Congress and of the departments and establishments of the Government, and may procure the temporary (not to exceed one year) or intermittent services of experts or consultants or organizations thereof by contract as independent contractors, or in the case of individual experts or consultants by employment at rates of pay not in excess of the daily-equivalent of the highest rate of basic pay set forth in the General Schedule of section 5332 of title 5, United States Code.

(e) APPROPRIATIONS.—There are hereby authorized to be appropriated to the Office for each fiscal year such sums as may be necessary to enable it to carry out its duties and functions. Until sums are first appropriated to the Office pursuant to the preceding sentence, the expenses of the Office shall be paid, upon vouchers approved by the Director, one-half from the contingent fund of the Senate and one-half from the contingent fund of the House of Representatives.

DUTIES AND FUNCTIONS

SEC. 202. (a) ASSISTANCE TO COMMITTEES AND MEMBERS OF THE TWO HOUSES.—It shall be the duty and function of the Office to provide information to the Committees on the Budget of both Houses with respect to the budget, appropriation bills, other bills authorizing or providing budget authority, revenues, receipts, and estimated future revenues and receipts, and changing revenue conditions and such other information as may be deemed appropriate by the Committee on the Budget of either House. At the request of any other committee of either House, any joint committee of the Congress, or any Member of the Senate or House, the Office shall provide to such committee, joint committee, or Member any information compiled by the Office in carrying out the preceding sentence. At the request of the Committee on the Budget of either House, the Director shall assign, on a temporary basis, personnel of the Office to assist such committee.

(b) NATIONAL GOALS AND PRIORITIES REPORT.—The Office shall submit to the Congress on March 1 of each year a national goals and priorities report and copies of such report shall be furnished to the Committee on the Budget of the Senate and of the House of Representatives, the Joint Economic Committee, and other interested committees. The report shall include, but not be limited to—

(1) an analysis, in terms of national goals and priorities, of the programs in the annual budget submitted by the President, the Economic Report of the President, and the Social Report of the President;

(2) an examination of resources available to the Nation, the foreseeable costs and expected benefits of existing and proposed Federal programs, and the resources and cost implications of alternative sets of national priorities; and

(3) recommendations concerning spending priorities among Federal programs and courses of action, including the identification of those programs and courses of action which should be given greatest priority and those which could more properly be deferred.

In addition to the national goals and priorities report and other reports and studies which the Office submits to the Congress, the Office shall provide upon request to any Member of the Congress further information, data, or analysis relevant to an informed determination of national goals and priorities.

(b) TRANSFER OF FUNCTIONS OF JOINT COMMITTEE ON REDUCTION OF FEDERAL EXPENDITURES.—The duties and functions of the Joint Committee on Reduction of Federal Expenditures are transferred to the Office, and the Joint Committee is hereby abolished.

(A) REVENUE ESTIMATES.—The Office shall make estimates of the tax revenues and other revenues expected to be received by the United States Government with respect to each fiscal year, including an itemization by major revenue sources. The Office may thereafter revise such estimates from time to time as it considers appropriate. Such estimates, and revisions thereof, shall be made available to the Committees on the Budget of both Houses.

(e) ECONOMIC CONDITIONS.—Not later than May 1 preceding the beginning of each fiscal year, and, based on the estimate of the Office of revenues expected to be received by the United States Government during such fiscal year, the Office shall report to the Committees on the Budget of both Houses on the condition of the economy and considerations with respect to the amount, if any, by which budget outlays of the United States Government should exceed revenues expected to be received, or the amount, if any, by which such revenues should exceed such budget outlays, in order to provide for appropriate growth and stability of the economy of the United States.

(f) PROJECTIONS OF BUDGET OUTLAYS.—The Office shall develop information with respect to existing and proposed legislation which will form the basis of estimating the effect of such legislation on budget outlays during the current fiscal year and the ensuing four fiscal years.

USE OF COMPUTERS AND OTHER TECHNIQUES

SEC. 203. The Director may equip the Office with up-to-date computer capability, obtain the services of experts and consultants in computer technology, and develop techniques for the evaluation of budgetary requirements.

ADDITIONAL POWERS TO OBTAIN DATA

SEC. 204. (a) SECURING OF DATA.—The Director, with the approval of the chairman of the Committee on the Budget of either House, is authorized to secure directly from any executive department, office, board, bureau, agency, independent establishment, or instrumentality of the Government, information, data, estimates, and statistics relating to the functions of the Office.

(b) FURNISHING OF DATA.—Executive departments, offices, boards, bureaus, agencies, independent establishments, and instrumentalities are authorized and directed to furnish such information, data, estimates, and statistics directly to the Director, upon request made pursuant to this section.

TITLE III—CHANGE OF FISCAL YEAR

CALENDAR YEAR AS NEW FISCAL YEAR

SEC. 301. Section 237 of the Revised Statutes (31 U.S.C. 1020) is amended to read as follows:

"SEC. 237. (a) The fiscal year of the Treasury of the United States, in all matters of accounts, receipts, expenditures, estimates, and appropriations—

"(1) shall, through June 30, 1974, commence on July 1 of each year and end on June 30 of the following year;

"(2) shall for the period commencing July 1, 1974, and ending on December 31, 1974, be for such period; and

"(3) shall, beginning on January 1, 1975, commence on January 1 of each year and end on December 31 of that same year.

"(b) All accounts of receipts and expenditures required by law to be published annually shall be prepared and published for each fiscal year as established by subsection (a)."

SPECIAL APPROPRIATION

SEC. 302. For the fiscal year commencing July 1, 1974, and ending December 31, 1974, there are appropriated, out of any money in the Treasury not otherwise appropriated, for any projects or activities conducted in the fiscal year ending June 30, 1974, for which authority to conduct such project or activity did not expire prior to June 30, 1974, an amount equal to 50 per centum of the amount appropriated for that project or activity for such fiscal year ending on June 30, 1974. Appropriations made under this section shall be available to the extent and in the manner appropriations were made available for that project or activity during the fiscal year ending on June 30, 1974.

TRANSMITTAL OF BUDGET AND EXPENDITURE MESSAGES

SEC. 303. Section 201 of the Budget and Accounting Act, 1921 (31 U.S.C. 11), is amended—

(1) by striking out of that matter of subsection (a) preceding clause (1) the phrase "during the first fifteen days of each regular session" and inserting in lieu thereof "at the time specified in subsection (e)(1)";

(2) by striking out in subsection (a)(5) "on or before October 15 of each year," and inserting in lieu thereof ", at the time specified in subsection (e)(2),";

(3) by striking out in subsection (b) "on or before June 1 of each year, beginning with 1972," and inserting in lieu thereof "at the time specified in subsection (e)(3)";

(4) by striking out in subsection (c) "on or before June 1 of each year, beginning with 1972," and inserting in lieu thereof "at the time specified in subsection (e)(4)"; and

(5) by adding at the end thereof the following new subsections:

"(d) In addition to the information required by subsection (a), the budget shall contain a statement, in such form and detail as the President may determine, of the capital assets of the Government, and their value, as of the end of the last completed fiscal year.

"(e)(1) In accordance with subsection (a) the President shall transmit each budget to the Congress as follows:

"(A) for the fiscal year ending on June 30, 1974, during the first fifteen days of that regular session of the Congress which assembles under section 2 of article XX of the articles of amendment to the Constitution prior to the commencement of the fiscal year; and

"(B) for each fiscal year beginning on or after January 1, 1975, on or before April 15 of the year preceding the commencement of that fiscal year.

"(2) In accordance with subsection (a)(5), estimated expenditures and proposed appropriations for such legislative branch and Supreme Court shall be transmitted to the President, for each fiscal year commencing on and after January 1, 1975, not later than January 15 of the year preceding that fiscal year.

"(3) In accordance with subsection (b), the President shall transmit each supplementary summary of the budget to the Congress, for each fiscal year beginning on or after January 1, 1975, on or before October 1 of the year preceding that fiscal year.

"(4) In accordance with subsection (c), the President shall transmit summaries of estimated expenditures on June 1, 1974, and November 1 of each year thereafter.

"(f) No budget, supplementary summary of the budget, or estimated expenditures and proposed appropriations for such legislative branch and Supreme Court shall be transmitted for the fiscal year commencing July 1, 1974, and ending on December 31, 1974. For purposes of subsection (a)(7), the phrase "last completed fiscal year" shall mean for the budget to be transmitted to the Congress on or before April 15, 1975, for the fiscal year commencing on January 1, 1976, those fiscal years ending on June 30, 1974, and December 31, 1974. The fiscal year ending on December 31, 1974, shall not be considered a fiscal year for purposes of subsection (c).

"(g) If the Congress is not in session on the day on which the President submits a budget, a supplementary summary of the budget, or a summary of estimated expenditures, such budget or summary shall be transmitted to the Clerk of the House of Representatives and shall be printed as a document of the House of Representatives."

ACCOUNTING PROCEDURES

SEC. 304. (a) Subsection (a)(1) of the first section of the Act entitled "An Act to simplify accounting, facilitate the payment of obligations, and for other purposes," approved July 25, 1956 (as amended (31 U.S.C. 701), is amended to read as follows:

"(1) The obligated balance shall be transferred, at the time specified in subsection (b)(1) of this section, to an appropriation account of the agency or subdivision thereof responsible for the liquidation of the obligations, in which account shall be merged the amounts so transferred from all appropriation accounts for the same general purposes; and".

(b) Subsection (b) of such section is amended to read as follows:

"(b)(1) Any obligated balance referred to in subsection (a)(1) of this section shall be transferred as follows:

"(A) for any fiscal year or years ending on or before June 30, 1974, on that June 30 which falls in the first month of June which occurs twenty-four months after the end of such fiscal year or years; and

"(B) for any fiscal year commencing on or after July 1, 1974, on December 31 of the second fiscal year following the fiscal year or years for which the appropriation is available for obligation.

"(2) The withdrawals required by subsection (a)(2) of this section shall be made—

"(A) for any fiscal year ending on or before June 30, 1974, not later than September 30 of the fiscal year immediately following the fiscal year in which the period of availability for obligation expires; and

"(B) for any fiscal year commencing on or after July 1, 1974, not later than March 1 following the fiscal year in which the period of availability for obligation expires."

ECONOMIC REPORTS

SEC. 305. (a) Section 3 of the Employment Act of 1946 (15 U.S.C. 1022), is amended by striking out "The President shall transmit to the Congress not later than January 20 of each year" and inserting in lieu thereof the following: "Not later than January 20 of each year before 1975, and not later than April 15 of each year after 1974, the President shall transmit to the Congress".

(b) Section 5(b)(3) of such Act (15 U.S.C. 1024) is amended by striking out "(beginning with the year 1947)" and inserting in lieu thereof "before 1975 and not later than June 1 of each year after 1974,".

CONVERSION OF AUTHORIZATION OF APPROPRIATIONS

SEC. 306. Any law providing for an authorization of appropriations commencing on July 1 of a year shall, if that year is any year after 1973, be considered as meaning January 1 of the year following that year. Any law providing for an authorization of appropriations ending on June 30 of a year shall, if that year is any year after 1974, be considered as meaning December 31 of that same year. Any law providing for an authorization of appropriations for the fiscal year 1975 or any fiscal year thereafter shall be construed as referring to that fiscal year commencing on January 1 and ending on December 31 of the calendar year having the same calendar year number as the fiscal year number.

REPEALS

SEC. 307. The following provisions of law are repealed:

(1) the ninth paragraph under the headings "Legislative Establishment", "Senate", of the Deficiency Appropriation Act, fiscal year 1934 (48 Stat. 1022; 2 U.S.C. 66); and

(2) the proviso to the second paragraph under the headings "House of Representatives", "Salaries, Mileage, and Expenses of Members", of the Legislative-Judiciary Appropriation Act, 1955 (68 Stat. 400; 2 U.S.C. 81).

TECHNICAL AMENDMENT

SEC. 308. (a) Section 105 of title 1, United States Code, is amended by striking out "June 30" and inserting in lieu thereof "December 31".

(b) The provisions of this section shall be effective with respect to Acts making appropriations for the support of the Government for any fiscal year commencing on or after January 1, 1975.

TITLE IV—ANNUAL CEILINGS ON OUTLAYS AND NEW BUDGET AUTHORITY

CEILINGS ESTABLISHED BY LAW

SEC. 401. (a) CONGRESSIONAL ACTION BY JULY 1.—After the President submits the budget for a fiscal year pursuant to section 201 of the Budget and Accounting Act, 1921, the Congress shall, by law, prescribe—

(1) a limitation on the total amount of outlays to be made during that fiscal year, and

(2) a limitation on the total amount of new budget authority which is to be available for that fiscal year. A bill prescribing such limitations shall be passed by the Congress and submitted to the President not later than July 1 preceding the beginning of the fiscal year.

(b) ADDITIONAL PROVISIONS.—A law described in subsection (a) may also contain provisions—

(1) setting forth the amount, if any, by which revenues should exceed outlays or outlays should exceed revenues for the fiscal year in order to promote the general welfare and to provide maximum employment, production, and purchasing power consistent with national economic stability, and

(2) specifying the manner in which the President may exercise the authority conferred by sections 501(a) and 502(a) with respect to outlays and new budget authority authorized for the fiscal year, and the extent to which the provisions of sections 501(b) and 502(b) shall or shall not apply to programs or activities for the fiscal year.

(c) VIEWS AND RECOMMNDATIONS OF OTHER COMMITTEES.—Before May 15 of each year, the Committees on Appropriations and Finance of the Senate shall submit their views and recommendations to the Committee on the Budget of the Senate, the Committees on Appropriations and Ways and Means of the House of Representatives shall submit their views and recommendations to the Committee on the Budget of the House, and the Joint Economic Committee and the Joint Committee on Internal Revenue Taxation shall submit their views and recommendations to the Committees on the Budget of the Senate and House, with respect to all matters set forth in subsections (a) and (b) which relate to matters within the respective jurisdictions or functions of such committees and joint committees. Any other standing, joint, or special committee of the Congress may submit its views on the matters enumerated.

REVISION OF CEILINGS

SEC. 402. Any of the provisions described in subsections (a) and (b) of section 401 of a law enacted for a fiscal year may be changed by one or more subsequent laws, enacted before the close of the fiscal year, which amend or supersede any of such provisions contained in any prior law enacted for such fiscal year or which enact any of the provisions described in subsection (b) of section 401 not contained in any such prior law.

TIME FOR REPORTING AND ACTING IN EACH HOUSE OF FIRST BILL ESTABLISHING CEILINGS FOR A FISCAL YEAR

SEC. 403. (a) REPORTING.—On or before June 1 of each year, the Committee on the Budget of each House shall report to its House a bill containing the provisions described in section 401(a) (and which may contain the provisions described in section 401(b)) for the fiscal year beginning on January 1 of the following year. The report accompanying such bill shall include, but not be limited to, a comparison of the limits on total budget authority and total budget outlays established in such bill with total budget authority requested and total budget outlays estimated in the budget submitted by the President.

(b) FLOOR ACTION.—On or before June 15 of each year, each House shall complete action on a bill described in subsection (a) for the fiscal year beginning on January 1 of the following year (except for action on any conference report on such bill).

(c) EXTENSION WHERE SPECIFIED DATE FALLS ON SATURDAY, SUNDAY, OR HOLIDAY.—For purposes of subsections (a) and (b), when June 1 or June 15 falls on a Saturday, Sunday, or legal holiday in the District of Columbia in any year, there shall be substituted for that date the next succeeding date which is not a Saturday, Sunday, or legal holiday in the District of Columbia.

RULES FOR CONSIDERATION OF BILLS ESTABLISHING OR REVISING CEILINGS

SEC. 404. (a) BUDGET LIMITATION BILL.—For purposes of this section, the term "budget limitation bill" means only a bill described in section 401 or 402.

(b) REFERENCE OF BILLS TO COMMITTEE.—All budget limitation bills shall be referred to the Committee on the Budget of the Senate by the President of the Senate, or shall be referred to the Committee on the Budget of the House of Representatives by the Speaker, as the case may be.

(c) PROCEDURE AFTER REPORT OF COMMITTEE.—

(1) A budget limitation bill reported in either House shall be highly privileged. It shall be in order at any time after the third day following the day on which such a bill is reported to move to proceed to its consideration (even though a previous motion to the same effect has been disagreed to). Such a motion shall be highly privileged and shall not be debatable. An amendment to the motion shall not be in order, and it shall not be in order to move to reconsider the vote by which the motion is agreed to or disagreed to.

(2) Debate on any budget limitation bill, and all amendments thereto, shall be limited to not more than 60 hours, which shall be divided equally between the majority and minority parties. A motion further to limit debate is not debatable. A motion to recommit the bill is not in order, and it is not in order to move to reconsider the vote by which the bill is passed or not passed.

(d) DECISIONS WITHOUT DEBATE ON MOTION TO POSTPONE OR PROCEED.—

(1) Motions to postpone, made with respect to the consideration of any budget limitation bill, and motions to proceed to the consideration of other business, shall be decided without debate.

(2) Appeals from the decisions of the Chair relating to the application of the Rules of the Senate or the House of Representatives, as the case may be, to the procedure relating to any budget limitation bill shall be decided without debate.

(e) PROCEDURE AFTER PASSAGE BY ONE HOUSE.—If, prior to the passage by one House of a budget limitation bill of that House, that House receives from the other House a budget limitation bill of such other House, then—

(1) the procedure with respect to the bill of the first House shall be the same as if no bill from the other House had been received; but

(2) on any vote on final passage of the bill of the first House the bill from the other House shall be automatically substituted.

(f) ACTION ON CONFERENCE REPORTS.—

(1) The conference report on any budget limitation bill shall be highly privileged in each House. It shall be in order at any time after the third day following the day on which such a conference report is reported to move to proceed to its consideration (even though a previous motion to the same effect has been disagreed to). Such a motion shall be highly privileged and shall not be debatable. An amendment to the motion shall not be in order, and it shall not be in order to move to reconsider the vote by which the motion is agreed to or disagreed to.

(2) Debate on the conference report shall be limited to ten hours, which shall be divided equally between those favoring and those opposing the conference report. A motion to recommit the conference report shall not be in order and it shall not be in order to move to reconsider the vote by which the conference report is agreed to or disagreed to.

(3) Motions to postpone, made with respect to the consideration of such conference report and motions to proceed to the consideration of other business, shall be decided without debate.

(4) Appeals from decisions of the Chair relating to the application of the rules of the Senate or the House of Representatives, as the case may be, to the procedure relating to such conference report shall be decided without debate.

BUDGET LIMITATION BILL MUST BE ENACTED BEFORE APPROPRIATIONS AND CHANGES IN REVENUES AND PUBLIC DEBT LIMIT ARE MADE

SEC. 405. It shall not be in order in either the Senate or the House of Representatives to consider any bill or resolution (or amendment thereto) which provides—

(1) new budget authority for a fiscal year,

(2) an increase or decrease in revenues to become effective during a fiscal year, or

(3) an increase or decrease in the public debt limit to become effective during a fiscal year, until the law for such fiscal year referred to in section 401(a) has been enacted.

EXCLUSIVE JURISDICTION OF BUDGET COMMITTEES

SEC. 406. No bill or resolution, and no amendment to any bill or resolution, dealing with any matter which is within the jurisdiction of the Committee on the Budget of either House shall be considered in that House unless it is a bill which has been reported by the Committee on the Budget of that House (or from the consideration of which such committee has been discharged) or unless it is an amendment to a bill so reported or discharged.

TITLE V—IMPLEMENTATION OF CEILINGS

RESERVATION OF OUTLAYS

SEC. 501. (a) PRESIDENTIAL ACTION.—The President shall reserve from outlay, from new budget authority or any other available budget authority, such amounts as may be necessary to keep outlays during a fiscal year within the limitation on total outlays in effect for such fiscal year under laws enacted pursuant to sections 401 and 402.

(b) PROCEDURE.—In carrying out the provisions of subsection (a) during a fiscal year, the President shall reserve amounts proportionately from budget authority available for each functional category (and to the extent practicable, within each functional category, from each subfunctional category) as set forth in the budget for the fiscal year, except that no reservation shall be made from budget authority for—

(A) interest,

(B) veterans' benefits and services,

(C) payments from social insurance trust funds.

(D) public assistance maintenance grants under title IV of the Social Security Act,

(E) food stamps,

(F) military retirement pay,

(G) medicaid, and

(H) judicial salaries.

(c) EXCEPTION.—Subsection (b) shall not apply to the extent the applicable provisions of any law enacted pursuant to sections 401 and 402 otherwise provide.

RESERVATION OF NEW BUDGET AUTHORITY

SEC. 502. (a) PRESIDENTIAL ACTION.—The President shall reserve from new budget authority such amounts as may be necessary to keep new budget authority for a fiscal year within the limitation on total new budget authority in effect for such fiscal year under laws enacted pursuant to sections 401 and 402.

(b) PROCEDURE.—In carrying out the provisions of subsection (a) for a fiscal year, the President shall reserve amounts proportionately from new budget authority for each functional category (and to the extent practicable, within each functional category, for each subfunctional category) as set forth in the budget for the fiscal year, except that no reservation shall be made from new budget authority for—

(A) interest,

(B) veterans' benefits and services,

(C) payments from social insurance trust funds,

(D) public assistance maintenance grants under title IV of the Social Security Act,

(E) food stamps,
(F) military retirement pay,
(G) medicaid, and
(H) judicial salaries.

The amounts so reserved (other than any amounts reserved from trust funds) are hereby rescinded as of the close of such fiscal year.

(c) EXCEPTION.—Subsection (b) shall not apply to the extent the applicable provisions of any law enacted pursuant to sections 401 and 402 otherwise provide.

APPLICATION OF CERTAIN FORMULAS

SEC. 503. In the administration of any program as to which—

(1) the amount of outlays or obligations is limited pursuant to section 501 or 502, and

(2) the allocation, grant, apportionment, or other distribution of funds among recipients is required to be determined by application of a formula involving the amount appropriated or otherwise made available for distribution,

the amount available for outlay or obligation (as determined by the President in accordance with such sections) shall be substituted for the amount appropriated or otherwise made available in the application of the formula.

TITLE VI—RULES TO IMPROVE CONGRESSIONAL PROCEDURES ON BUDGET AUTHORITY LEGISLATION

NEW BUDGET AUTHORITY LEGISLATION TO LIMIT OUTLAYS

SEC. 601. (a) GENERAL RULE.—Beginning with the fiscal year beginning on January 1, 1975—

(1) bills and resolutions providing new budget authority for the fiscal year reported in each House shall also specify the amount of outlays which may be made during that fiscal year (both pursuant to the new budget authority provided by the bill or resolution and to any other available budget authority) for the purposes for which the new budget authority is provided,

(2) legislation shall be reported in each House for the fiscal year specifying the amount of outlays which may be made during the fiscal year under permanent budget authority or budget authority of indefinite duration, and

(3) amendments proposed in each House to bills or resolutions providing new budget authority for that fiscal year which increase or decrease the amount of any budget authority shall also specify the amount of outlays which may be made during that fiscal year pursuant to the budget authority as so increased or decreased.

(b) LEGISLATION FAILING TO COMPLY SUBJECT TO POINT OF ORDER.—It shall not be in order to consider in either House any bill, resolution, or amendment which does not comply with the provisions of subsection (a).

(c) STUDIES AND ASSISTANCE BY CONGRESSIONAL OFFICE OF THE BUDGET.—The Director of the Congressional Office of the Budget shall undertake studies and provide assistance to the committees of both Houses which have jurisdiction over legislation providing budget authority to enable such committees to comply with the provisions of subsection (a).

LIMITATION ON NEW ADVANCE BUDGET AUTHORITY

SEC. 602. (a) LEGISLATION SUBJECT TO POINT OF ORDER.—It shall not be in order in either the Senate or the House of Representatives to consider any bill or resolution which provides new advance budget authority (or any amendment which provides new advance budget authority) unless such bill or resolution, or such amendment, also provides that the new advance budget authority is to be exercised for any fiscal year only to such extent or in such amounts as are provided for such fiscal year in appropriation Acts enacted after the enactment of such bill or resolution.

(b) NEW ADVANCE BUDGET AUTHORITY DEFINED.—For purposes of subsection (a)—

(1) NEW ADVANCE BUDGET AUTHORITY.—The term "new advance budget authority" means advance budget authority provided by law enacted after December 31, 1973, including any increase in, or addition to, any advance budget authority provided by law in effect on December 31, 1973.

(2) ADVANCE BUDGET AUTHORITY.—The term "advance budget authority" means authority provided by law, whether on a temporary or permanent basis—

(A) to enter into contracts, under which the United States is obligated to make outlays, which have not been provided for in advance by appropriation Acts,

(B) to incur indebtedness, for the repayment of which the United States is liable (other than indebtedness incurred under the Second Liberty Bond Act), which has not been provided for in advance by appropriation Acts,

(C) to guarantee on behalf of the United States the repayment of indebtedness (other than indebtedness described in subparagraph (B)), which has not been provided for in advance by appropriation Acts,

(D) to make payments (including loans and grants), which have not been provided for in advance by appropriation Acts, to any person or government if, under the provisions of the law containing such authority, the United States is obligated to make such payments to persons or governments who meet the requirements established by such law, and

(E) to obligate the United States to make outlays by any other means which has not been provided for in advance by appropriation Acts.

LIMITATION ON NEW PERMANENT BUDGET AUTHORITY

SEC. 603. Beginning with the second session of the Ninety-third Congress, it shall not be in order in either House to consider any bill, resolution, or amendment which provides new permanent budget authority unless such bill, resolution, or amendment has been reported or proposed by the Committee on Appropriations of that House.

REQUIREMENT OF ADVANCE AUTHORIZATIONS BY LEGISLATIVE COMMITTEES

SEC. 604. (a) LEGISLATION SUBJECT TO POINT OF ORDER.—Except as provided in subsection (b), it shall not be in order to consider any bill or resolution (or conference report thereon) authorizing the enactment of new budget authority for any fiscal year after the beginning of such fiscal year.

(b) EMERGENCY WAIVER.—A motion to waive or suspend the application of subsection (a) to any bill, resolution, or conference report may be made pursuant to section 701(b), only if the report accompanying such bill or resolution, or the joint statement accompanying such conference report, sets forth the existence of an emergency or other unusual circumstance which requires its consideration.

JURISDICTION TO RESCIND BUDGET AUTHORITY

SEC. 605. (a) AMENDMENT OF SENATE RULES.—Subparagraph (c) of paragraph 1 of rule XXV of the Standing Rules of the Senate is amended by inserting immediately before the period at the end thereof "and the rescission of appropriations".

(b) AMENDMENT OF HOUSE RULES.—Paragraph (a) of clause 2 of rule XI of the Rules of the House of Representatives is amended by inserting immediately before the period at the end thereof "and the rescission of appropriations".

TITLE VII—TWO-YEAR BUDGET

SEC. 701. Commencing with the fiscal year beginning January 1, 1975, the President's budget shall also contain his budget estimates for the next succeeding fiscal year; and the legislation reported by the Committees on the Budget pursuant to section 101(a)(2) and section 102(d) shall establish limitations on outlays and budget authority for both fiscal years included in the President's budget submission.

TITLE VIII—RULEMAKING POWER; EFFECTIVE DATES

EXERCISE OF RULEMAKING POWER

SEC. 701. (a) The provisions of titles I, IV, and VI and of this section are enacted by the Congress—

(1) as an exercise of the rulemaking power of the Senate and the House of Representatives, respectively, and as such they shall be considered as part of the rules of each House, respectively, or of that House to which they specifically apply; and such rules shall supersede other rules only to the extent that they are inconsistent therewith; and

(2) with full recognition of the constitutional right of either House to change such rules (so far as relating to the procedure in such House) at any time, in the same manner, and to the same extent as in the case of any other rule of such House.

(b) Any rule provided in this Act may be waived or suspended by the Senate or the House of Representatives only by a vote of two-thirds of the Members voting, a quorum being present.

(c) If a point of order is made in either the Senate or the House of Representatives, and sustained by the Presiding Officer of that House, that any bill, resolution, amendment, motion, or other matter is not in order by reason of any rule provided in this Act, the decision of the Presiding Officer may be overruled only by a vote of two-thirds of the Members voting, a quorum being present.

EFFECTIVE DATES

SEC. 702. Except as otherwise specifically provided therein—

(1) titles I, II, and III shall take effect on the date of the enactment of this Act, and

(2) titles IV, V, and VI shall apply with respect to the fiscal year beginning January 1, 1975, and succeeding fiscal years.

Mr. JAVITS. Mr. President, I am pleased to join with the distinguished Senator from Minnesota (Mr. MONDALE) in introducing the "Congressional Budget Control and Reform Act of 1973," an amendment in the nature of a substitute to S. 1541.

We are all aware of the extraordinary impact which Federal spending has upon our economy and upon the daily lives of all Americans. Indeed the exercise of our constitutional spending power is the most pervasive power which is vested in the Congress. Levels of employment, rates of inflation and productivity, and balance of payments are all key issues in economic policy which are addressed in the congressional budget process.

The nature, extent, and direction of just about all Federal activities is determined by the aggregate impact of this process. During the last year, both Houses of Congress have devoted great efforts to analyzing and reforming the process by which Congress makes its annual decisions relating to our Federal budget. Extensive hearings on the practice and effects of Executive impoundment and upon the appropriations and legislative revenue raising processes have been held. Both Houses have passed anti-impoundment legislation.

The Senate Government Operations Committee under the leadership of Sen-

ator ERVIN is presently considering a variety of approaches to the problem of congressional budget reform. As a member of the committee who has examined this difficult issue most carefully, I am convinced that effective control by the Congress over the funds it makes available to Federal, State, and local agencies requires:

First. An informed congressional determination of the desirable volume, range and direction of program activity;

Second. Congressional exercise of independent judgment concerning the financial resources, required by Federal departments and agencies to support effectively such volume, range and direction of program activity;

Third. Availability of congressional sources of information and analysis as a basis for the exercise of independent and informed judgments;

Fourth. Some reasonable and practical procedures to integrate the spending decisions process;

Fifth. The reform of the timing of the appropriations process to require more ordered consideration of spending;

Sixth. An effective spending ceiling but one which does not emasculate the appropriations process; and

Seventh. A workable procedure to implement and effectuate that ceiling should spending authority exceed the ceiling.

Many Senators have given substantial attention to the broad problem of congressional budget reform. I respect the approach of the subcommittee and of Senators ERVIN, PERCY, and METCALF; however, I found a more congenial approach, sponsored jointly by Senators MUSKIE, BROCK, and MAGNUSON.

Mr. President, as an added contribution to this thinking, I believe that the amendment which Senator MONDALE and I introduce today deals with the problem of setting budget priorities consistent with economic reality, while preserving the capability to involve Members of Congress in the setting of national priorities on an informed basis. There is discipline in our bill. There is genuine reform of a process which has long cried out for reform. In summary, that reform is found in the following objectives:

First. Establishment of budget committees in the House and Senate, with rotating membership, including members of legislative committees, on which no member would serve more than 6-year term;

Second. Provision for enactment of an overall congressional ceiling, with recommended subceilings, before July 1 of each year;

Third. Provision for completion of appropriations by July 1, and when appropriations exceed the ceiling, for prorata reduction of all appropriations items;

Fourth. Provision for a second budget resolution, before the end of each session to make any adjustments in the impact of prorata cuts or in the overall spending limit;

Fifth. Establishment of a congressional Office of the Budget, Goals and Priorities, both to assist the budget committees and Members of Congress in dealing with budget questions and to provide assistance in assessing the social impact of the budget and the success of the social programs;

Sixth. Provision for congressional adoption of budgets on a 2-year basis so that the long-term consequences of initial commitments may be better understood and debated; and

Seventh. Provision for the placement of the Federal Government on a calendar year basis to permit more detailed consideration of the President's budget, and to permit appropriations to be complete before the fiscal year begins.

Mr. President, this amendment provides a workable way for Congress to undertake its examination of the needs and program alternatives, and the allocation of limited dollars to diverse human needs. It will establish a means for a responsible and disciplined execution by Congress of its responsibilities in the budget policy field.

It will allow Congress to acquire the means for the gathering of interpretive and analytical data on spending and related program matters. Most importantly, it will facilitate the use of objective expenditures analyses to help it form independent judgments on appropriations matters. I trust that some of the solutions which will begin to resolve these problems are found in this amendment.

ADDITIONAL COSPONSORS OF A RESOLUTION

SENATE RESOLUTION 113

At the request of Mr. STEVENSON, the Senator from Washington (Mr. MAGNUSON), the Senator from Utah (Mr. MOSS), and the Senator from Rhode Island (Mr. PASTORE) were added as cosponsors of Senate Resolution 113, a resolution to establish a Select Committee on the Senate Committee Systems.

NOTICE CONCERNING NOMINATION BEFORE THE COMMITTEE ON THE JUDICIARY

Mr. EASTLAND. Mr. President, the following nomination has been referred to and is now pending before the Committee on the Judiciary:

Leonard F. Chapman, Jr., of Virginia, to be Commissioner of Immigration and Naturalization, vice Raymond F. Farrell, retired

On behalf of the Committee on the Judiciary, notice is hereby given to all persons interested in this nomination to file with the committee, in writing, on or before Wednesday, October 10, 1973, any representations or objections they may wish to present concerning the above nomination, with a further statement whether it is their intention to appear at any hearing which may be scheduled.

ANNOUNCEMENT OF HEARINGS ON NOMINATIONS BY DISTRICT OF COLUMBIA COMMITTEE

Mr. EAGLETON. Mr. President, the Senate Committee on the District of Columbia will hold a public hearing on the nomination of Fred B. Ugast to be an Associate Judge of the Superior Court of the District of Columbia, and on the nomination of William R. Stratton to be a member of the Public Service Commission of the District of Columbia on Wednesday, October 17, 1973, at 9:30 a.m. in room 6226, New Senate Office Building. Persons wishing to present testimony at this hearing should contact Mr. Robert Harris, staff director of the District Committee, room 6222, New Senate Office Building, by noon on Friday, October 12, 1973.

ANNOUNCEMENT OF HEARING ON RETAIL PETROLEUM PRICES

Mr. SPARKMAN. Mr. President, the Committee on Banking, Housing and Urban Affairs will hold a hearing to receive testimony from Mr. John T. Dunlop, Executive Director, Cost of Living Council, on regulations concerning the retail price of petroleum products at 1:30 p.m., October 9, 1973, room 5302, Dirksen Senate Office Building.

NOTICE OF HEARING ON PHASE IV PETROLEUM REGULATIONS

Mr. STEVENSON. Mr. President, under the phase IV regulations of the Cost of Living Council as they relate to petroleum products, major oil company producers and refiners have been allowed to automatically pass through their increased product costs to the retailer. But the retailer, typically a small businessman, has not in turn been allowed to automatically pass through his costs.

This discrimination prompted me, along with Senator MCINTYRE and 17 other cosponsors, to introduce S. 2453, a bill to amend the Economic Stabilization Act to correct inequities in the phase IV petroleum regulations. This bill was referred to the Senate Committee on Banking, Housing and Urban Affairs, as were several other bills on this same subject introduced by other Senators.

After threats of station shutdowns and a growing concern in Congress and elsewhere about the injustice of the regulations, the CLC acted Friday to amend the regulations. The Council changed the computation date of the margin per gallon for retailers, helping to correct one of the problems the Council had artificially created. The Council also allowed a passthrough of costs incurred by retailers through September 28.

But the Council's action on Friday did not address the fundamental inequity caused by its regulations—the fact that major oil producers and refiners could increase and pass their costs through, but the small retailer could not. Since last Friday, seven major oil companies have announced price increases ranging from 0.2 cents to 3.6 cents per gallon for gasoline, heating oil, and other refined petroleum products. These new costs cannot be passed on by the retailers.

Legislation may, therefore, be necessary, and the Council should at least be called upon to explain its continued policies favoring the major producers and refiners at the expense of small petroleum retailers.

The Senate Banking Committee, therefore, will hold hearings next Tuesday afternoon, October 9, on the subject of phase IV petroleum regulations. Dr. John Dunlop is scheduled to testify, and he will be called upon to explain the Coun-

cil's policies. A main focus of the hearing is to determine whether congressional action is needed to correct the regulations before the end of the first session.

It is my hope that the Council will take definitive action to end the discrimination and hardship caused by its regulations. If not, it may be incumbent upon the Congress to act.

ADDITIONAL STATEMENTS

A SPECIAL VISIT TO DISNEY WORLD

Mr. HUMPHREY. Mr. President, a press release was brought to my attention recently, describing an unforgettable trip for 46 mentally retarded and emotionally disturbed children from the Washington, D.C., area, to Disney World in Florida.

I want to share this human interest story with my colleagues, because it is the type of event that ought to make the headlines more often in our daily newspapers. Instead of a constant fare of stories of man's unhumanity to man, we need to hear more often of such genuine examples of human concern voluntarily expressed by Americans.

The Disney World excursion for these children from St. Gertrude's School in Washington was arranged last spring by Mrs. Ruby Gibson of the American Travel Association. Such efforts merit public attention and deserve our sincere commendation.

Mr. President, I ask unanimous consent that the press release describing this tour by Amtrak train and bus, be printed in the RECORD.

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

PRESS RELEASE

Ask anyone who's been there and they'll tell you that Disney World *is* entertainment. Donald Ducks and Mickey Mouses dance through the streets, brass bands pop up out of nowhere for impromptu serenades, rides and spectacular sights abound.

All the magic of Disney World was shared in a special way recently by 46 mentally retarded and emotionally disturbed children from St. Gertrude's School in Washington, D.C.

Benedictine Sister Luanne Monckton was one of ten adults who accompanied the group. "It was just a wonderful experience. Perfect! If we had it to do over again, we wouldn't change a thing," Sister said.

The trip, including motels, transportation to Orlando, Fla., and local transportation, meals and other side trips were arranged by Mrs. Ruby Gibson of the American Travel Association (ATA).

The ATA is a Cooperative and was founded by a number of national and regional organizations to provide travel and recreational services for members.

ATA has provided years of service to members and non-members alike from round-the-world group tours to short bus trips.

Several cooperative organizations, including The Cooperative League of the USA, Credit Union National Association, the Foundation for Cooperative Housing, United Housing Foundation and others are owners of the ATA.

Sister Luanne said the ATA had planned several trips for St. Gertrude's in the past and went to them again for this Disney World excursion.

The trip lasted six days and began with an overnight train ride from Washington to Orlando via Amtrak. In addition to the Disney World outings, there were side trips to Cypress Gardens and Busch Gardens. The return trip was again aboard an Amtrak train.

The train ride, incidentally, was something of a sign of the times. Sister said it was chosen because most of the children had experienced a plane flight but almost none of them had ever traveled by train.

"It was an educational-fun trip," Sister explained, since it afforded the children both entertainment and learning experiences like ordering food in restaurants and traveling by bus and train.

The children's parents report the youngsters talked about nothing but the trip for days afterward. "They'd go back next week if they could," Sister Luanne said. "It's one of the nicest places I've ever been. It's the cleanest, most fabulous place—and everybody was smiling, I didn't see one crabby face there." Everyone was helpful, she added, in showing the children a good time.

St. Gertrude's hopes to make regular annual trips but it probably won't be on the scale of the Disney World adventure. This year's trip was the first in some time since the school's funds have been used in a building program the past few years.

St. Gertrude's has been in operation since 1926. Resident students from Eastern states make up most of its enrollment along with nine day students.

The trip—all six days of it—came off without mishap. "No accidents," Sister Luanne said, "but wouldn't you know it. We got back on Sunday safe and sound and on Tuesday morning our youngest girl came down with chicken pox."

PRIVATE PENSION PLAN REFORM

Mr. DOMINICK. Mr. President, I recently received a memorandum containing a thoughtful analysis of the pension bill passed by the Senate last month. It contains several innovative recommendations, including one regarding integration of the private pension system with social security in a way which would result in considerable savings to the social security program. The memorandum was prepared by Robert H. Pickering and John C. Stoltz, of Robert H. Pickering & Associates, Ltd., in Denver.

Unfortunately, the memorandum was not available to me until after S. 4 and S. 1179 had already been reported out of committee, which made full consideration of these proposals impossible in the Senate. The memorandum has been brought to the attention of the Ways and Means Committee, where I hope it will get the careful consideration it warrants. Although the Senate has already acted on S. 4, I think the new ideas contained in this memorandum will be of interest to the Senate conferees after the House has acted on a pension bill.

I therefore ask unanimous consent, Mr. President, that this excellent memorandum be printed in the RECORD.

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

MEMO REGARDING PRIVATE PENSION PLAN REFORM

(By Robert H. Pickering & Associates, Ltd.)

In regard to inequities concerning private pension plans, it is our belief that the Congress has the opportunity to propose and pass legislation which may serve to cure several ills at one time. While we do agree with the report of the Committee on Finance of the Senate in regard to funding, portability, and trustee and fiduciary responsibility, we were somewhat concerned at the final version of the bill as approved by the Senate.

SUMMARY

Eligibility: We would agree with Senator Hartke that the maximum eligibility age should be 25, or two years of service—whichever comes later.

Deductible contributions: While we did not agree with the committee proposal limiting deductible contributions to $7,500 per year, we also cannot agree with the final version as passed, allowing for 75% of salary (up to a maximum of $75,000) as a retirement benefit for owner-employees without some further limitations.

We would propose that a limit of $20,000 contribution per year per any employee be used as a *pivot point* in computing retirement benefits. Our proposal in this area would tie-in with the existing allowable spread for Covered and Excess Compensation as defined by Social Security.

Double integration: For qualified plans where retirement benefits exceed $18,000 per year, we propose that a new Social Security integration schedule be adopted, thereby saving the Social Security Administration as much as $26,000,000,000 per year by 1986.

Death benefits of qualified retirement plans: We are opposed to the inclusion of Pre-Retirement death benefits in the estate of the deceased worker.

Treasury bills—special issue: A special class of Treasury Bill to be issued to the Social Security Administration only—for investment by the portability trust would provide additional monies to the General Fund at far more reasonable rates than it now enjoys and, at the same time, reduce costs of administration of the fund.

Reasoning for proposed changes—eligibility: The proposed legislation does not take into account that younger people build up experience as they mature in their jobs. While National statistics indicate that an employee changes his job three times between the ages of 21 and 30, we feel that these employees do provide reasonable production, based on compensation. Where consideration of this point involves a *profit sharing* plan, these employees should not be excluded.

Deductible contributions: The proposal would call for a pivot point of $20,000 per year contribution for any one employee. If the contribution exceeds $20,000, then a reduction in the allowable integration spread would result:

The maximum spread allowable under Revenue Ruling 71–446 in a fixed benefit plan is 37.5%. If the plan carries insurance, it is 33.3%. The present social security base is $10,800 per year or $900 per month. Therefore, if a fixed benefit plan calls for 10% of the first $900, up to 47.5% of the difference between $900 and the actual Monthly Compensation may be added to produce the retirement benefit. In the case of a partially or fully insured plan, 10% of the original $900 will then allow a maximum of 43.3% in excess of the Covered Compensation to be computed for retirement. In the case of a profit sharing or money purchase plan, a 10% coverage of the first $900 per month will allow a contribution of 17% on the excess, since the allowable spread for these plans is 7%.

No cost or contribution limits would be set for fixed benefit plans, but retirement benefits could not exceed 100% of compensation for the three years producing the highest average in the five years immediately preceding retirement. Contributions under money purchase, profit sharing, or Keogh plans would be limited to 15% of compensation, per covered employee.

Under our proposal, if the $20,000 contribution limit is exceeded (per any employee), on a cumulative basis, the allowable integration spread would be reduced by 5% for

each $1,000 or fraction thereof in excess contribution for a fixed benefit plan, up to a maximum of 20%. A one percent reduction would occur in a money purchase or profit sharing plan for each $1,000 of excess contribution, up to a maximum of 4%. This reduction would be based on a cumulative factor, therefore, the reductions in the allowable spread would occur in both a pension and a profit sharing plan if the company sponsored a multiple plan program.

Example:	
Employee A: contribution	$21,000
Employee B: contribution	23,000
Total contribution	44,000
Allowable contribution	44,000
Excess	4,000

Fixed benefit reduction in spread, 20 percent.

Money purchase reduction in spread, 4 percent.

Profiit sharing reduction in spread, 4 percent.

That is, the base covered compensation percentage would be increased as follows: In a fixed benefit plan 10% of base compensation plus 43.3% of excess compensation would be changed to 30% of base compensation plus 43.3% of excess compensation, thereby increasing benefits to lower paid employees. In the case of money purchase, or profit sharing plans, the 7% allowable spread would be reduced by 3%.

NOTE: 1. We do not recommend that covered salary be limited to $100,000, as corporate contributions which are based on excess of the $25,000 pivot point per employee will face additional deposits on behalf of lower paid employees.

2. Alternate method: We would suggest an alternate method be allowed in the computation of allowable contributions.

A. A corporation would have the option of deducting contributions of up to the $25,000 per person pivot without regard to the reduction of the spread.

B. Contributions would be allowed up to 20% of the total contribution made by a corporation to any qualified plan or plans, per employee, subject to individual plan provisions.

C. Non-Integrated plans would not be affected by either the basic computation limits, or the limits of the Alternate Method. However, in the case of overlapping Pension and Profit Sharing plans, integration of either plan will subject both plans to limits imposed under the basic computation, or alternate method. Both plans must be administered under the same method limit, i.e. basic computation or alternate method.

D. If a change is made from the basic computation method to the alternate method, reversion to the basic method will not be allowed for a period of five years from the date of change, and then only with the approval of the Internal Revenue Service.

We also feel that this format should be extended under HR–10, thereby allowing greater retirement contributions. However, under HR–10 we feel the owner-employee should not be limited to an upper amount but by the same token, should be required to contribute the same percentage of salary for every employee, as he contributes for himself. We further propose that an additional limit be set to provide an equitable retirement for all.

Double integration: 2nd phase: We propose that a $1,500 pivot point be established as a basis for the reception of social security retirement benefits since the Social Security Administration will be appraised of pension benefits received by employees. If the proposed legislation is enacted, the Administration has basis for control.

We would suggest that retirement benefits as provided by private pension plans, cause a reduction of 10% of the social security retirement benefit to an employee; up to 50%, for each $100 increment or fraction, thereof in excess of $1,500 per month.

Example: Private plan retirement benefit (monthly), $1,670.00.

Pivot point, $1,500.00.

Excess, $170.00.

Reduction social security benefit 20%.

Reduction in dollars based on maximum 1973.

Retirement: worker, $276.00.

Reduction of monthly benefit, $55.26.

As the wage base, and the social security base increase, the dollar reduction, of course, will go proportionately higher, and as the cost of living increases, the basic $1,500 could also be raised!

Based on the 1958 CSO mortality table and on statistics of births and deaths concerning the years 1912–1925, we estimate the savings to Social Security as high as $26,000,000,000 per year by 1990. The mortality tables indicate that the average life span of the retirement worker in 1973 will be 12.9 years. Therefore, in order to arrive at our figure of $26,000,000,000, we use a 12.9 year cycle assuming that 40,000 families per year (2% of the working population for each year) will be effected by the $1,500 pivot. We multiply by $55.26 per month (1973 figures only for social security) and find that each worker in the 12.9 year cycle has a basic reduction of $8,044.96. Multiply that by 40,000 and the savings to the Social Security Administration becomes $341,798,400 per year. This figure, compounded after 12.9 years, produces a savings of $26,916,624,000 after the first 12.9 year cycle has been completed.

The above figures are based on a 20% reduction. A 10% reduction produces approximately $1.4 billion dollars reduction in social security pay-outs in a 12.9 year cycle (based on 40,000 qualifying workers).

The retiring worker who is to be reduced in benefit would receive a lump sum from Social Security in an amount of one year's contribution (employee's only) for each 10% reduction, non-taxable, thereby causing a $25,056,000 pay-out per year for a total during the cycle of $323,222,400 for each 10% reduction. Applying that figure to the 20% reduction instituted above, it creates a $646,-444,800 pay-out by Social Security to retired workers. Subtract this from the $26,-916,624,000 normally anticipated during the 12 year cycle and you still have $26,270,179,-200 in projected savings based on the 1973 figure. We have additional figures to support the aforementioned theorem. By adopting a program of coordination of private plans and Social Security retirement benefits, we could possibly put the Social Security Administration on a sound financial footing by the year 1990 without unduly raising social security taxes.

In analyzing this situation from a broad view, we look at three major advantages to "Double Integration:"

1. Employers and employees will maintain, or reduce Social Security contributions thereby allowing for additional profits to be taxed—to the benefit of the General Fund.

2. The Social Security Administration could be put on a sound financial basis, if emphasis were placed on providing benefits for those people who are unable to provide fully for themselves.

3. This concept would force corporations to include greater numbers of employees, and virtually eliminate excess plans.

Death benefits: The committee has also proposed that death benefits provided by retirement plans be included for Federal Estate tax purposes. We feel that a modification of this proposal is absolutely necessary in order to protect the worker and his family. While this area has been subject to some abuse, we propose a slight change to the committee recommendation which will eliminate the problem.

We suggest that the final bill be amended to allow exclusion of death benefits from Federal Estate tax if the death of a worker occurs before normal retirement. We feel that pre-retirement death benefits are designed to provide for the family of a deceased worker. To tax such monies, which might be better used by that family for on-going support, would be an undue hardship.

Treasury bills-special issue: We would propose that a treasury bill be created especially for the portability trust fund. These bills would carry an interest rate of 6½% per annum. Six percent would be credited to the account of the participant, with ½% being retained to cover administration costs. The bills could be varied in interest rate-upward, but not down, below the 6½% level. The base level would prevent an attack by the General Fund, of funds in the portability account as has happened in the past to social security funds.

As we see it, there are four main advantages to this proposal:

1. The portability fund has a ready made money market for investment.

2. The General Fund has an additional money source at lower rates than it might otherwise enjoy.

3. The Federal Government becomes the guarantor for fund investment at a savings to itself.

4. The employee enjoys a fair rate of return without fear of negative results.

In our opinion, the adoption of the above proposals in conjunction with those other areas covered by the Senate Finance Committee constitutes a major shift in the philosophy concerning retirement benefits. The Administration proposed in 1966 that more responsibility for retirement benefits be shifted to the private sector; thereby relieving the Social Security Administrtaion of some of its responsibility.

Obviously, there have been many discussions regarding this matter in the past. However, for some reason, little or no thought has been given to this particular concept. This legislation is important both from the standpoint of protection of the retiring worker and ultimately, to the stability of our economy. Government economists are in agreement that private pension plans do not contribute to our inflationary spiral. We should encourage contributions, and indeed, the expansion of the private pension program in future years. We feel that additional provisions should be made to encourage the inclusion of a greater number of workers under the private pension plans. In this way, we can insure that the working man or woman receives reasonable funds with which to support himself during retirement.

PHARMACISTS FIGHT AGAINST DRUG ABUSE

Mr. BAYH. Mr. President, during my 3 years as chairman of the Juvenile Delinquency Subcommittee, I have conducted an intensive investigation into the diversion, traffic and abuse of legitimately produced narcotic and nonnarcotic drugs.

Not drugs illicitly grown in Turkey and refined in France. Not drugs grown and refined in Asia's Golden Triangle. But dangerous drugs produced legitimately within our own borders.

We have found that far too many people hold to the traditional, but archiac "hard" drug—heroin cocaine—"soft" drug—produced for legitimate medical purposes—rationale. This unfortunate distinction has served to perpetuate the belief that so-called "soft" drugs, such as amphetamines, barbiturates and methaqualone, involve little risk to the abuser.

As many subcommittee witnesses, particularly the former abusers, made abundantly clear, nothing could be further from the truth.

Casual attitudes, the failure of all concerned to put polydrug abuse in proper perspective—they outnumber heroin abusers 17 to 1—and a readily available supply are intimately linked with the current abuse and extent to which persons, particularly our youth, are becoming dependent on these drugs.

Diversion from legitimate channels occurs at all levels of distribution. This includes thefts, employee pilferage, unauthorized sales and in some instances excessive and even unlawful prescribing and dispensing. Quite often the feared and despised "pusher" is a family's own medicine cabinet.

Our earlier success with the amphetamines, the recent decision on methaqualone and what I hope will be prompt action on the short-acting barbiturates are important steps in limiting the diversion of legitimately manufactured drugs to illicit purposes.

Yet before we truly "turn the corner on drug abuse" we must enlist the support of all concerned, from Federal officials to school teachers, from doctors to prosecutors, from drug companies to former addicts, to do their part to combat a major health and criminal problem reaching its tragic tenacles into all corners of American life.

Pharmacists have a special role to fill in the battle against drug traffic and abuse.

As officials crack down on illegitimate drugs, abusers direct their efforts at the legitimate sources of abusable medicines, in particular pharmacies. During fiscal year 1973 thefts of controlled substances stolen from distribution channels rose by 15 percent—from 2,974 in the first half of the year to 3,408 in the second half. During the same year thefts from pharmacies rose from 57 percent of the total during the first half of the year to 77 percent during the second half. Night break-ins accounted for 70 percent of the total thefts reported, with armed robbery being the second most utilized method at 17 percent of the total.

A far less visible, but apparently equally important source of diversion is prescription fraud. Concern with the alleged ease with which prescription frauds can be perpetrated provided the impetus for the recent Bureau of Narcotics and Dangerous Drugs study "Project Script—A Study of Prescription Fraud Vulnerability." To acquire an estimate of the vulnerability, 256-prescription frauds were attempted over a 2-month period. The attempts were evenly divided among retail pharmacies and mail-order prescription firms. Among the variables involved were modes of fraud, drugs, geographic area, urban location, prescription volume and perpetrator dress mode. Detailed reports were made by the trained criminal investigators who acted as fraud perpetrators. The results indicated that if a fraud perpetrator attempts common prescription fraud involving representative drugs from Controlled Substances Act schedules II through V, the retail pharmacy will honor the prescription 56 percent of the time.

Fraudulent prescriptions for schedule II methamphetamine tablets were honored significantly less than were the drugs in schedule III, IV, and V, but one has a fairly even chance of obtaining secobarbital—"reds"—and phenobarbital through a forged prescription or even by use of a bogus prescription. Few of these diversions are detected and reported as thefts.

Another common practice involves an abuser who visits numerous physicians and complains of the same relevant ailment. From each doctor, the abuser requests and receives a prescription. These prescriptions are then filled and refilled at numerous pharmacies. Thus the abuser or dealer is often able to obtain large quantities of prescription drugs without being detected or the diversion reported.

Pharmacists, indeed, have a special role to play in the fight against drug traffic and abuse. Through educational efforts they can help to promote the legitimate use of medicine which when abused presents a danger to the abuser and the community. Through efforts to self-police careless or unethical colleagues and physicians who are sources of diversions they can combat the illegitimate use of these drugs.

The September 1973 issue of Pharmacy Times entitled "The Pharmacists Drug Abuse Manual," reflects a commitment to fight against drug abuse and a recognition of the vital role that these practitioners can play in that fight. This type of voluntary effort is a credit to the professional and a service to the public. I recommend it to my colleagues and others concerned with drug abuse.

Mr. President, I ask unanimous consent for the text of Dr. Irving Rubin's editorial and accompanying advice for pharmacists, physicians, and patients to be printed in the RECORD.

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

LET'S WIPE OUT THE ILLEGITIMATE USE OF DRUGS!

Today, drug abuse (with its crime-related side effects) is probably the nation's No. 1 problem. Unlike skyrocketing prices, you can't put a "freeze" on drug abuse in an attempt to solve its complexities.

And that's why the editors of PHARMACY TIMES are highly pleased that this issue is co-sponsored by the U.S. Drug Enforcement Administration. This new federal agency is gathering momentum in its attack on the drug abuse problem. In doing so, DEA seeks the active help of the nation's pharmacists.

Essentially, the drug abuse problem entails the following 2 areas:

(1) The illegitimate use of *legitimate* medicinal products;

(2) The illegitimate use of *illegitimate* drugs.

These 2 areas are related as follows: A drug abuse officials crack down on illegitimate drugs, abusers direct their efforts at the legitimate sources of abusable medicines—*pharmacies*.

As a pharmacist, you can help in *both* of these areas. To do so, admittedly, takes time. However, your help is *urgently* needed. Moreover, the illegitimate use of *any* drug *re-emphasizes* your responsibility to see to it that medicines are used *properly*.

This issue of PHARMACY TIMES provides the ammunition to help you help our nation in its battle against drug abuse. Won't you help—*now*?

IRVING RUBIN, R. Ph.,
Editor, Pharmacy Times.

TWENTY WAYS TO IMPROVE SECURITY IN YOUR PHARMACY

Improvement in the physical security of the community pharmacy occurs at several different levels. The cost and effectiveness of this security increase—as the means become more sophisticated. Some security methods can be as simple as eliminating the weak spots in physical security which invite illegal entry (i.e., broken windows, door panels, or poor locks). Cluttered counters, aisles, and drug storage areas also invite the loss of drugs by customers pilferage. Caution in employee hiring practices can help to eliminate theft and illegal activities by unscrupulous personnel.

The pharmacist is encouraged to take those steps that are within his means to improve the security of his (or her) community pharmacy. He may receive additional help by contacting the nearest Regional Office of the Drug Enforcement Administration.

A GUIDE TO SECURITY

The following 20 methods are offered as a guide to help the community pharmacist improve the physical security of his establishment:

(1) Stock minimal quantities of controlled drug substances.

(2) Limit access to drug storage areas.

(3) Leave lights on within the pharmacy after hours. Light up the store exterior at night in order to discourage robberies.

(4) Provide windows and doors with intrusion detection devices (contact switches, electrical lacing).

(5) Install tamper-proof locks.

(6) Install silent (hold-up) alarms for use during operating hours.

(7) Install space protection alarm devices within the pharmacy—for use after operating hours.

(8) Install bars, break-resistant glazing materials, metal shields, metal gates, or screens over exterior openings.

(9) Connect the alarm systems to a central protective agency station by means of a supervised line.

(10) Alarm interior "party" or common walls (with an adjacent establishment).

(11) Use mirrors or closed circuit television for surveillance of aisles and drug storage areas.

(12) Practice proper control of the keys to the pharmacy.

(13) Don't accumulate large sums of money or large quantities of controlled substances.

(14) Request a police escort for after-hour prescription calls.

(15) Practice the "buddy system" at opening or closing times.

(16) Make sure that the pharmacy is free of customers *before* it is locked up at night.

(17) Be cautious of last-minute customers.

(18) Don't become a "soft touch" for dispensing questionable prescriptions.

(19) Don't resist an armed hold-up.

(20) Invite frequent police patrols of the area at irregular intervals.

TWELVE TIPS FOR PRESCRIBERS OF CONTROLLED DRUGS

(1) Keep your prescription blanks in a safe place where they can't be stolen easily. Minimize the number of Rx pads in use.

(2) Write Rxs for Schedule II drugs in ink or indelible pencil or use a typewriter. They must be *signed* by the physician.

(3) Write out the actual amount prescribed *in addition* to giving an arabic number or roman numeral—in order to discourage alterations in written prescriptions.

(4) Avoid writing prescriptions for large quantities of controlled drug products un-

less you *absolutely* determine that such quantities are necessary.

(5) Maintain only a minimum stock of controlled drugs in your medical bag.

(6) Take your medical bag with you when you're away from your automobile or lock it in the trunk.

(7) Be cautious when a patient tells you that another physician had been prescribing a controlled drug product for him. Consult the physician or the hospital records—or else examine the patient thoroughly and decide for yourself if a controlled drug product should be prescribed.

(8) Prescription blanks should only be used for writing prescriptions—and not for notes or memos. A drug abuser could easily erase the message, and use the blank to forge a prescription.

(9) Never sign Rx blanks in advance.

(10) Maintain an accurate record of controlled drug products you have dispensed—as required by the Controlled Substances Act of 1970 and its regulations. However, you may administer medication to a patient in the course of your normal professional practice without maintaining any record.

(11) Assist the pharmacist when he telephones you to verify information about a prescription you may have written. A corresponding responsibility rests with the pharmacist who dispenses the prescription.

(12) Phone the nearest office of the Drug Enforcement Administration to obtain or to furnish information. Your call will be held in the strictest confidence.

EIGHT IMPORTANT SUGGESTIONS FOR PATIENTS ABOUT PROPER DRUG USAGE

Patients should be advised to consult their family physician and pharmacist with respect to proper drug usage.

As a further help, here are 8 suggestions—directed at the patient.

Do not use anyone's prescription medication, except your own (i.e., those prescribed for you by your physician).

Do not haphazardly use or combine nonprescription drug products with prescription medications.

Store all medicines out of the reach of children—as a safety measure.

Do not again use prescription medication for a condition which you feel is similar to the one for which it was originally prescribed by your physician.

Take your prescription medication only as directed by your physician. It is just as important not to underdose yourself as it is not to overdose yourself.

Flush down the toilet all prescription medication not in current use.

Keep your prescription medication in its original container. Do not transfer it to other bottles or mix it together with other medications in one bottle.

Read the directions and precautions which accompany non-prescription products.

(Pharmacists can reprint or mimeograph these suggestions, and provide the information to their patrons—as a professional and public service.)

APPROPRIATIONS FOR TITLE IV OF THE OLDER AMERICANS ACT

Mr. CHILES. Mr. President, earlier this year I testified before the Subcommittee on Labor-HEW Appropriations and requested that funding for title IV, training and research, of the Older Americans Act be included in the Labor-HEW appropriations bill for fiscal year 1974. My request was based upon the fact that the administration had failed to include funding for training in aging studies in its budget. After conducting hearings on this proposal, I became even more convinced that there exists a severe need for persons trained in the field of gerontology.

Senator FONG, presiding over the Appropriations Subcommittee's hearing, was very receptive and attentive to my request, as was the entire committee. I applaud the committee for recognizing the importance of this need and for including a total of $19 million—$7 million for research and $12 million for training—for title IV.

Mr. President, the vast growing number of elderly in this country are in need of services and aid to enable them to live in comfort and security in their own homes. It is essential for this country to establish and maintain programs which are sound and effective in meeting the needs of our elderly. This can be accomplished only by providing sufficient manpower to staff the many services our Congress creates.

Therefore, I strongly urge the passage of the Labor-HEW appropriations bill with the provision for funding for title IV of the Older Americans Act. Personnel in the field of gerontology is very scarce today. I strongly support the funding for these training programs so that the gerontological studies that have been so productive in the past, may continue to motivate and educate in the field of gerontology.

INCLUSIVE TOUR CHARTERS

Mr. CANNON. Mr. President, in recent days my colleagues and I have been the targets of one of the most massive lobbying campaigns in memory in regard to S. 1739, a bill recently reported by the Commerce Committee that would authorize airlines to sell low-cost package vacations to the American public.

This is a bill that I and the majority of the committee take great pride in as it represents a very important breakthrough for the consumer who wants and is entitled to low-cost vacation tours at rates far below what are possible today. This bill will make it possible for the average American to utilize air transportation in conjunction with holiday vacations at prices that he can afford to pay. I do not have to remind my colleagues of what it costs to fly a family of four across the United States today, as many of us do it regularly and at great expense. And yet there is another way, a way that is cheaper because it takes advantage of the marvelous productivity of high-performance, high-density aircraft operating with a full load so as to enormously cut the cost of the air transportation portion of the vacation.

Mr. President, the benefits of this bill are so obvious that virtually every consumer-interest group in the United States has endorsed it. The administration has endorsed it and has urged its passage. The U.S. Travel Service is enthusiastic about it and many large labor organizations such as the United Auto Workers, the United Steel Workers, the National Farmers Union, and the Industrial Union Department of the AFL–CIO are actively seeking to see that it is enacted. With such broad support from the American public one would think that this bill would have been approved by the Senate months ago. Unfortunately, however, that is not the case.

A group of 10 scheduled, trunk airlines, assisted by North Central, a local service carrier, have mounted a shrill and deceitful campaign to beat this bill in the Senate by sending it back to committee. A few days ago I made a speech here in the Senate detailing some of the outrageous charges—charges without any foundation in fact whatsoever—that are being made in an emotional attempt to defeat this bill. Since I have discussed those charges earlier, I will not dwell on them today.

However, I would like to point out to my colleagues how the scheduled airlines and their trade association, the ATA, are telling us one thing while doing quite another. As recently noted by our esteemed colleague in the House, Congressman JOHN MOSS, it appears that the airlines are bent on destroying their reputations for credibility here in Congress.

You have heard the airlines tell you that if S. 1739 is enacted it will result in loss of scheduled air service to the smaller communities and on the thinner routes that the carriers serve. They reason that service of these marginal routes is supported by the profits from the lucrative, heavily traveled, long-haul routes, and that, if those routes are subject to competition from ITC's, revenue and profits will slide, thus necessitating a cutback in service or even elimination of service to the smaller communities.

Now, Mr. President, this, on its face, may appear to be a very cogent and appealing argument against allowing single destination ITC services in the American air transport system. But however appealing it may seem, I ask each of my colleagues to demand facts from the airlines that would buttress this argument. We in the committee have tried to obtain such facts for months. The airlines have not provided them. It is my opinion that they cannot because facts to support this claim do not exist.

Let me summarize the facts that are available. There is only one significant air transportation market in which charters have provided a vigorous alternative to the scheduled services of the scheduled airlines. It is the one between North America and Europe. Many of my colleagues may be surprised to learn that in that market about 30 percent of the travelers now use charter flights. One might think that this charter competition would reflect itself in reduced loads, less frequent flights, and a reduction in volume of scheduled passengers. The opposite, however, is true. As charter traffic has grown at enormous rates over the North Atlantic, scheduled traffic has also turned in impressive gains.

Using the first 6 months of 1973 as an example, let us look at the figures. Charter operations of the scheduled carriers alone in this market increased by 30.6 percent. Obviously, the airline marketing people—those responsible for selling transportation service to the public—do not believe that charter flights are going to divert passengers from their scheduled flights. On the contrary, the mar-

keting managers of both Pan Am and Trans-World Airlines have publicly stated that their charter operations are attracting new passengers into the market—people who would not have traveled in scheduled service. Now let us take a look at what happened to the scheduled traffic during the same period. It was up over the previous year by 11.4 percent—a rate of growth that is about twice as large as that of the scheduled system within the United States. Such facts hardly suggest that the scheduled airlines really believe that charter operations are going to "skim the cream" of the scheduled system. Again, while you are told one thing here in Washington by the airline lobby, the sales people are doing the opposite in the marketplace.

Mr. President, undoubtedly my colleagues have heard the charge that the airlines' lucrative domestic markets—especially the long-haul, coast-to-coast markets—will be jeopardized by single-stop ITC operations.

They do not tell you, however, that they really do not believe that either. Let us take a look at what they are doing.

Trans-World Airlines, one of the three carriers who enjoy coast-to-coast authority, has recently invented a new—and let me add—an ingenious form of charter. They call it "demand scheduling." Here is how it works. The passenger decides at least 90 days in advance that he wants to take a trip to the west coast or vice versa. He puts down a deposit with TWA of $40 and is given a reservation for a specific date on which the travel will occur but the departure time is left to the convenience of the carrier. On the date of departure the passenger pays the balance, boards the flight, and is off on TWA's special charter. What a bargain for the passenger. Instead of paying the coach round-trip air fare of $336, he makes the trip on the TWA charter for $179, a savings of a whopping $157. That is a real bargain for the passenger and TWA should be commended for this innovative and attractive service on which the company has told the CAB it can earn a profit. Now if there really is a "cream skimming" problem inherent in charter travel, it appears that TWA is skimming its own cream; that is it is undercutting its own scheduled service. But I for one do not believe that TWA is going to go out in the market and cut its own throat in its most lucrative routes and that is why I believe the "cream skimming" charge is a blatantly false issue.

TWA is not alone in creating new charter-type travel opportunities. United is in their fighting for the low-cost bargain seeker, too. Here is what United offers in its long-haul markets in competition with TWA's "demand scheduling" charter. United calls its program the midweek excursion fare but it is much akin to charter transportation. The passenger must make a reservation, purchase a ticket, and pick it up at least 7 days in advance of the travel. He is restricted to traveling on Tuesdays, Wednesdays, and Thursdays and he must stay at least 7 days and no more than 9 and return to the city of origin on Tuesday, Wednesday, or Thursday. Again, the passenger electing to take advantage of this type of service gets a remarkable saving on his trip. For example, to fly from New York to San Francisco the coach fare is $336 but the midweek excursion fare for the traveler willing to put up with charter-type restrictions is only $179.95.

Well, if cream is being skimmed, United is skimming it too.

So, Mr. President, it seems apparent that all this talk of cream skimming as a result of single-stop ITC's is an attempt to confuse the Senate on the real issues. If the scheduled carriers' long-haul markets are not vulnerable to competition from their own charter operations, they certainly will not be harmed by ITC operations. But again if any threat does appear to exist, the CAB is directed, under S. 1739, to impose whatever controls it believes necessary to preserve the necessary levels of essential scheduled services.

Mr. President, each Member of the Senate should ask himself the question: If the public is entitled to the type of innovative service and price transportation programs being offered by the scheduled airlines, are they not also entitled to purchase low-cost vacation tour packages which combine all the features of a vacation trip into one package at one price?

I think that if my colleagues will closely examine the issue, keeping in mind that the opponents have not presented a single fact to support their claims, and analyze the type of charter competition that the scheduled airlines themselves are offering to the public, each Senator will come to the conclusion that S. 1739 is truly in the public interest and will not in any way harm, diminish, or threaten the scheduled airline system of the United States.

I urge all my colleagues to vote for S. 1739.

CONFRONTATION AT THE WATERGATE

Mr. ERVIN. Mr. President, a confrontation has arisen between the Senate Select Committee on Presidential Campaign Activities and President Nixon.

In commenting upon it, I do not undertake to speak for the select committee or as its chairman. I merely speak for myself individually.

The confrontation results from the endeavor of the Senate Select Committee to determine by investigation for legislative purposes the truth in respect to the tragic events known collectively as the Watergate affair, and the refusal of the President to submit to the committee in compliance with its requests and subpenas information, papers and taped recordings under his control relevant to the matters the committee is authorized to investigate

A somewhat similar confrontation has arisen between the Special Prosecutor named by the Department of Justice to prosecute criminal cases arising out of the Watergate affair and the President.

Let me make one thing clear. Nothing I say should be construed to intimate any opinion on my part on a question which disturbs many Americans at this moment, that is, whether the President was personally implicated in any stage of the Watergate affair or its alleged coverup.

My experience of 15 years in judicial offices precludes me from forming or entertaining any opinion on this point at this time. This is true because my experience as a judge has inculcated in me these abiding convictions: First, the most sacred and solemn task devolving upon any human being is that of judging aright the conduct of one of his fellow travelers to the tomb; and, second, anyone cast in this role does a grave disservice to truth and justice if he finalizes his judgment respecting another's conduct before he has received and weighed all the evidence relating to it which is available to him.

I am acting upon the presumption that the President is morally and legally blameless in respect to any stage of the Watergate affair, and will continue to do so unless competent and credible evidence received by the select committee compels me ultimately to reach a contrary conclusion.

The validity of my assertion to this effect is not impaired by the fact that I may have interrogated with vigor some of the witnesses who have testified before the select committee. Long experience as a trial lawyer has taught me that vigorous interrogation is oftentimes the only way in which truth can be extracted from an evasive or reluctant witness, or a witness who professes a high degree of forgetfulness.

I wish to discuss the constitutional and pragmatic aspects of the confrontation between the Senate select committee and the President.

In discussions of its constitutional aspect, much mention is made of the doctrine of the separation of the powers of Government, and its offspring, executive privilege.

At first blush the doctrine of the separation of the powers of Government may seem to be a nebulous constitutional ambiguity.

It is, however, simply an embodiment of a fundamental characteristic of the American constitutional system.

The Constitution of the United States divides the powers of Government among the Congress, the President, and the Federal judiciary for this twofold purpose: First, to preserve liberty by preventing the concentration in the hands of a single public official or group of public officials of the fundamental powers of Government; and second, to enable the Congress, the President, and the Federal judiciary to perform their respective constitutional duties and functions without interference from each other.

To these ends, the Constitution vests in the Congress the power to make the laws; in the President the power to execute the laws; and in the Federal judiciary the power to interpret the laws.

Each of them is forbidden to encroach upon the powers of the others, or to obstruct the others in the exercise of their powers.

Executive privilege is an incident of the doctrine of the separation of the powers of Government. Under it, the President cannot be made to divulge

certain confidential communications of an extremely limited nature.

Executive privilege is not an arbitrary power which confers upon the President something in the nature of a divine right to withhold from grand juries, courts, or authorized congressional committees whatever information, papers, or taped recordings he pleases.

The antiquated notion that the rulers of men possess and may exercise divine rights and arbitrary powers perished in America with the Revolution. The Constitution of the United States is a law for rulers and people alike at all times and under all circumstances. The President and all other public officers in our land are bound by oath or affirmation to respect and obey it.

When it is properly understood and applied, executive privilege serves a useful purpose. The Constitution and the laws impose upon the President certain official duties.

The President is entitled to receive from his aides in confidence full and uninhibited advice as to how they think he can best discharge those official duties. His aides might be deterred from giving such advice to him if they know that its confidentiality would not be protected.

On the basis of these considerations, executive privilege permits the President to keep secret confidential communications between him and his aides and even confidential communications among his aides which are had for the purpose of aiding the President to perform in a lawful manner his lawful duties.

Further than this, executive privilege does not go. Since the official duties of the President as defined by the Constitution and the laws do not encompass illegal or unethical or political activities, executive privilege does not confer upon the President the arbitrary power to withhold information, papers, or taped recordings, which are relevant to alleged crimes being investigated by a grand jury or undergoing trial before a court, or which are relevant to illegal, unethical, or political activities being investigated by an authorized congressional committee.

The converse is true. Section 3 of article II of the Constitution expressly declares that the President "shall take care that the laws be faithfully executed."

These words plainly impose upon the President a constitutional obligation to submit to grand juries, courts, and authorized congressional committees, any information, papers, or taped recordings controlled by him, which relate to illegal or unethical or political activities, and which are necessary to enable them to discharge their respective responsibilities as agencies of the Federal judiciary and the Congress.

If this is not true, the President is above the Constitution, and his oath to support that instrument is a meaningless mockery.

Congress has the power to obtain by compulsory process information necessary to enable it to exercise its legislative powers wisely and effectively. To this end, either House of Congress may conduct hearings through the agency of an investigating committee and by that method investigate any matter within the scope of the legislative power of Congress. The breadth of the investigatory power is revealed by the last clause of section 8 of article I of the Constitution.

This clause confers upon Congress in express terms the power "to make all laws which shall be necessary and proper for carrying into execution" the specific legislative powers vested in Congress by the preceding clauses of the section "and all other powers vested by this Constitution in the Government of the United States, or in any department or officer thereof."

Under the Constitution, a congressional investigating committee may conduct an investigation for these legislative purposes: First, to ascertain whether or not conditions or events make it necessary or desirable to enact new laws, or to amend or repeal existing laws; second, to determine whether or not officers or employees of the executive branch are faithfully executing existing laws; and, third, to inform the people on matters of national or international concern.

For these reasons, a congressional committee is able to investigate thoroughly any matter of national concern. This is not so in respect to a court. A court cannot investigate anything except the allegations of an indictment or pleading that specified persons have violated existing laws, and in so doing it cannot receive any evidence whatever except evidence which tends to prove or disprove the allegations.

In the darkness of the early morning of June 17, 1972, James W. McCord and four residents of Miami, Fla., were caught in an act of burglary in the headquarters of the Democratic National Committee in the Watergate complex in Washington with money derived from contributions to President Nixon's campaign for reelection in their possession. A few days later G. Gordon Liddy and E. Howard Hunt were arrested and charged with masterminding the burglary.

At these times McCord was employed by the Committee To Re-elect the President as its chief of security; Liddy was employed by the Finance Committee To Re-elect the President as its chief legal adviser, and Hunt was employed by the White House as a consultant and had an office in the Executive Office Building.

On September 15, 1972, a grand jury sitting in the U.S. District Court for the District of Columbia returned as true bills indictments charging McCord, Liddy, Hunt and the four residents of Miami with the crimes of burglary and illegal electronic surveillance, and conspiracy to commit those crimes. They were placed on trial upon these indictments before Judge Sirica and a petit jury in the district court in January 1973. All of them except McCord and Liddy pleaded guilty to all charges at an early stage of the trial, and McCord and Liddy were adjudged guilty of all charges by the petit jury. None of them testified at the trial.

During the days, weeks, and months following June 17, 1972, the press and the broadcast media published news dispatches asserting in ever-increasing intensity and detail that President Nixon entrusted the management of his campaign for reelection to the Presidency in 1972 to a Committee to Re-Elect the President, headed by former Attorney General Mitchell and a Finance Committee To Re-elect the President headed by former Secretary of Commerce Stans; that prior to the discovery of the five burglars in the Watergate, various officers of the committees for the reelection of the President and various White House aides concocted and executed through agents unethical schemes to sabotage the campaigns of Democrats who aspired to run against President Nixon in 1972 by spying upon them, defaming their reputations, and playing "dirty tricks" upon them and their organizations; that various officers of the committees for the reelection of the President and various White House aides planned and procured the bugging and burglary of the headquarters of the Democratic National Committee in the Watergate to obtain intelligence concerning the Democratic Committee and its plans; and that after the five burglars were caught in the Watergate various officers of the committees for the reelection of the President and various White House aides engaged in devious coverup operations to hide from law enforcement officers, the news media, and the public the identities and activities of the officers and aides who had been involved in the bugging and burglary of the Watergate and the unethical schemes to sabotage the campaigns of Democrats.

On February 7, 1973, the Senate was prompted by these assertions of the news media to adopt by the unanimous vote of all Senators present Senate Resolution No. 60, which established the Senate Select Committee on Presidential Campaign Activities and directed it "to conduct an investigation and study of the extent, if any, to which illegal, improper, or unethical activities were engaged in by any persons, acting either individually or in combination with others, in the Presidential election of 1972, or in any related campaign or canvass conducted by or in behalf of any person seeking nomination or election as the candidate of any political party for the office of President of the United States in such election, and to determine whether in its judgment any occurrences which may be revealed by the investigation and study indicate the necessity or desirability of the enactment of new congressional legislation to safeguard the electoral process by which the President of the United States is chosen."

The resolution confers upon the Senate select committee specific power to investigate all aspects of the Presidential election in 1972 and the various activities related to it. Moreover, it empowers the committee to obtain by subpena any testimony, documentary or oral, which tends to prove the truth in respect to any matter the committee is authorized to investigate.

The select committee has thus far limited its investigation to the bugging and burglary of the Watergate, and to allegations that various persons under-

took to hide the truth relating to those events from law enforcement officers, the news media, and the public.

With the exception of two career public servants, Richard Helms, of the Central Intelligence Agency, and Henry E. Petersen, of the Department of Justice, all of the important witnesses testifying before the committee have been men who derived the governmental and political power they exercised from President Nixon and who had virtually no experience in government or politics apart from their association with him.

While it may be conflicting or unclear in respect to the degree of complicity of one or two of the persons allegedly involved in the Watergate affair, the testimony thus far received by the Senate Select Committee makes these things manifest:

First. Some of the men aiding the President in his governmental or political affairs denied the validity of the principle enunciated by the Supreme Court in *Ex Parte Milligan*, 4 Wall. 1, 18 L. ed. 281, that:

> The Constitution of the United States is a law for rulers and people, equally in war and peace, and covers with the shield of its protection all classes of men, at all times, and under all circumstances and that no doctrine, involving more pernicious consequences, was ever invented by the wit of man than that any of its provisions can be suspended during any of the great exigencies of government.

In keeping with their denial, they entertained the notion that the President is above the Constitution and possesses the arbitrary and unreviewable power to authorize burglary and bugging without court order whenever he thinks that such action may reveal the activities or thoughts of any persons or groups suspected of vaguely defined subversive proclivities.

Second. Others of the men aiding the President in his governmental and political activities believed that although illegal, bugging and burglary constituted effective ways in which to gather information concerning the programs and thoughts of political opponents and persons suspected of undefined subversive tendencies: that as aides to the President they were privileged to pervert the true functions of the Federal Bureau of Investigation, the Central Intelligence Agency, the Internal Revenue Service, the Department of Justice, and other governmental agencies to serve their political ends; and that representatives of the news media who published or broadcast news or views adverse to the President or his policies were enemies of the Government.

Third. In consequence of these attitudes and views, some officers of the committees for the reelection of the President participated in one way or another in planning, or procuring, or financing the bugging and burglary of the headquarters of the Democratic National Committee in Watergate. After the bugging and burglary became known, these officers and some other officers of the committees for the reelection of the President and some White House aides, acting either individually or in combination with others, undertook in various ways to conceal from law enforcement officers, the news media, and the public the involvement of officers of the committees for the reelection of the President in the bugging and the burglary of the Watergate. To effect such concealment, some of these persons undertook to limit the FBI's investigation of the scope of the affair, others willfully withheld from prosecuting and investigating officials important evidence relevant to the affair, or deliberately destroyed cogent documentary evidence relating to it, others suborned or committed perjury before the grand jury investigating the affair and before the petit jury trying McCord, Liddy, Hunt, and the four Miami residents, others participated in one way or another in secret payments in cash of thousands of dollars collected for political purposes to McCord, Liddy, Hunt, and the four Miami residents or their representatives as "hush money" to induce them to keep silent, and others undertook to persuade McCord to withhold what he knew from law enforcement and prosecuting authorities by assuring him that silence on his part would be ultimately rewarded by Presidential clemency. By these means, the truth relating to the Watergate affair was substantially suppressed for many months. While the hearings of the Senate select committee have been underway, Jeb Stuart Magruder, deputy director of the Committee To Re-elect the President, and Frederick La Rue, one of John Mitchell's chief assistants, entered pleas before Judge Sirica in the district court admitting their guilt of the felony of conspiring with others to obstruct justice because of their participation in the coverup operations.

Fourth. The bugging and burglary of Watergate and the ensuing coverup operations cost at least $450,000, and were financed out of moneys collected to advance the political fortunes of President Nixon, most of which had been secretly stored in safes in the offices of the Finance Committee To Re-elect the President.

Fifth. President Nixon has in his possession or under his control taped recordings and memorandums which contain evidence crucial to the ascertainment of the full truth in respect to the Watergate affair. The tapes record the conversations, both personal and telephonic, that the President had while in his offices in the White House and the Executive Office Building with officers of the committees for his reelection, White House aides, and others in respect to political activities connected with his quest for reelection and the Watergate affair and its alleged coverup. Tapes of September 15, 1972, and February 28, March 13, and March 21, 1973, record conversations had by the President and the White House counsel, John W. Dean III, and in an unaltered state these tapes will clearly reveal whether Dean testified truthfully or falsely before the select committee when he declared that on these occasions he gave the President detailed information about the Watergate affair and the ensuing coverup efforts and was commended by the President for his coverup operations. The memorandums contain information exchanged between officers of the committees for the reelection of the President and White House aides and among White House aides in respect to the Watergate affair and ensuing coverup operations. The four tapes specified and the memorandums contain highly important evidence tending to show what happened in connection with the Watergate affair, who participated in the ensuing coverup operations, and who was without legal or moral responsibility in the premises.

In an effort to secure the cooperation of the President in its search for the truth, the select committee respectfully requested the President to make the four specified tapes and the memorandums available to it. The President denied the request, and the select committee thereupon sought to obtain them from him by subpenas duces tecum.

The President refused to obey the subpenas, and the select committee instituted a suit against him in the U.S. District Court for the District of Columbia to obtain access to the tapes and memorandums.

Fortunately there has been no prior necessity for a suit of this nature, and I will make no prediction in respect to its outcome.

The President undertakes to justify his refusal to make available to the select committee evidence it needs to perform its constitutional function by asserting, in substance, that the doctrine of the separation of the powers of Government confers upon him an absolute power to withhold the tapes and memorandums from the committee and that he would seriously impair his capacity and that of his successors to discharge the duties of the Presidency if he should make the specified tapes and memorandums available to the committee.

I submit the President's position is, in reality, incompatible with the doctrine of the separation of powers of Government. This is so because the select committee is exercising the constitutional power of the Senate to conduct the investigation, and the doctrine of the separation of the powers of Government requires the President to recognize this and to refrain from obstructing the committee.

But even if the President is vested with the autocratic power he claims and is exempt from the obligation resting upon all other Americans to produce evidence relevant to a congressional investigation, the Constitution assuredly does not obligate him to hinder the search for truth or forbid him voluntarily to make the tapes and memorandums available to the committee.

His predecessors in the Presidency—Thomas Jefferson, Abraham Lincoln, Ulysses S. Grant, and Theodore Roosevelt—did not construe the Constitution to require them to hide the truth from grand juries, courts, and congressional committees.

When Chief Justice John Marshall as circuit justice was presiding at the trial of Aaron Burr for treason in Richmond, Va., in 1807, counsel for Aaron Burr applied to him for a subpena duces tecum

requiring Thomas Jefferson, the President of the United States, to make available for use as evidence a letter written to him by a military adviser, Gen. James Wilkenson, and certain official papers. When he granted the application, Chief Justice Marshall observed that it is the character of the testimony sought and not the character of the person possessing it which determines whether a subpena will issue.

Jefferson made the letter and other papers available to the court in obedience to the subpena, and in addition offered to testify by deposition in respect to any other information desired.

During the Civil War one congressional committee investigated the publication by The New York Tribune of a speech prepared by Abraham Lincoln before the speech was delivered or released, and another congressional committee investigated a rumor that Mrs. Lincoln was disloyal to the Union. On both of these occasions Abraham Lincoln, President of the United States, voluntarily appeared and testified before these congressional committees in respect to the matters under investigation.

President Ulysses S. Grant voluntarily testified by deposition when one of his former aides was being tried in court upon a criminal charge, and several years after he had left the Presidency Theodore Roosevelt demanded and was accorded the opportunity to testify before a congressional committee, which was investigating the manner in which campaign contributions were obtained for his benefit when he was running for reelection against Alton B. Parker.

The Constitution did not collapse, the Powers of the Presidency were not impaired, and the heavens did not fall when Thomas Jefferson, Abraham Lincoln, Ulysses S. Grant and Thoedore Roosevelt voluntarily cooperated with courts and congressional committees, in their search for truth, and such dire consequences would not ensue if President Nixon should voluntarily make the four specified tapes and the memoranda available to the Select Committee.

To be sure President Nixon invokes as a precedent for his refusal to make the tapes and memorandums available the action of President Truman in declining to appear in person and testify before the Un-American Activities Committee of the House concerning the manner in which he had performed his constitutional and legal duties during his Presidency.

Former President Truman's action does not afford any support for President Nixon's position.

The select committee does not seek to require President Nixon to furnish to it testimony concerning his official acts. It is merely asking him to make available to it documentary evidence relating to illegal and unethical and political activities—matters not covered by executive privilege.

I deeply deplore President Nixon's action. It obstructs the select committee in the performance of its constitutional task, and, in addition, is calculated to induce multitudes of people to believe that he withholds the tapes and memorandums because their contents are adverse to him.

In closing, I make this pledge to the people of our land: As long as I have a mind to think, a tongue to speak, and a heart to love my country, I shall deny that the Constitution confers any arbitrary power on any President or empowers any President to convert George Washington's America into Caesar's Rome.

RUSSIAN JEWISH EMIGREES IN AUSTRIA

Mr. BENTSEN. Mr. President, if there is one principle of international relations which has been underscored by the events of this century—it certainly has to be the fact that appeasement of those who resort to violence for political purposes is no assurance of peace. And that those who clear to the forces of violence and terrorism are most often the victims of the very tragedy they seek to avoid.

As President Kennedy remarked in his inaugural address:

> Those who foolishly sought power by riding the back of the tiger ended up inside.

It is especially disturbing, Mr. President, to read this morning that the Government of Austria has refused to change its decision to close the transit station for Jewish emigrees at Schoenau Castle. This decision was made under the blackmail threat of Arab terrorists who hijacked an Austria bound train last week. Chancellor Kreisky is quoted this morning as saying that on that day he was faced with a choice between life and death of the hostages being held. The hostages were certainly important but the choice, I believe, involved even more.

The choice involved the question of whether or not a sovereign government was to be cowered by a band of terrorist rabble or whether it would insist upon maintaining its authority and dealing with these terrorists as the criminals they are.

The choice involved not just the safety of the hostages on that train but the safety of all travelers who will now be even further threatened by the emboldened terrorists of the Arab underworld.

The choice involved the freedom and rights of Russian emigrees who in attempting to flee from a totalitarian state where they have no rights find that they have arrived in a supposedly free nation which has bartered their rights away at gun point.

We have no easy choices in this difficult world today and it is facile to second guess the choices made by those who are faced with tough decisions. There can be no doubt, however, that the cause of world peace and human rights suffered a severe setback by the choice of the Austrian Government. I can only urge the officials of that government to reconsider their judgment and to take their place once again among those nations who chart their course on the basis of national principle rather than international terrorist duress.

EDWARD STEICHEN

Mr. RIBICOFF. Mr. President, most of us remember Edward Steichen as one of the world's pioneering photographers. When he was not roaming the world in search of subjects, Captain Steichen lived in the small, beautiful rural town of Redding, Conn. There he was not only the world famous photographer, but also a concerned environmentalist.

On August 25, 1973, the Edward Steichen Memorial Wildlife Reserve was dedicated in Redding. At the ceremony Stuart Chase, a longtime friend and neighbor of Steichen, spoke of Steichen's love of his fellow men and commitment to saving our endangered natural resources as evidenced by his photographs and environmental work in Redding.

I ask unanimous consent that Mr. Chase's remarks, as published in the August 3, 1973, Redding Pilot, be printed in the RECORD.

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

CAPTAIN STEICHEN

(By Stuart Chase)

(EDITORS' NOTE: Following is the text of Mr. Chase's talk, made at the dedication of the Edward Steichen Memorial Wild Life Preserve last Saturday, Aug. 25.)

My first vivid memory of Captain Steichen, as friend and neighbor, was when we were both in the fight to save the Redding Glen from being submerged by the new reservoir for Bridgeport. We lost that fight but the Glen was not completely drowned, and the Saugatuck Reservoir, when full, one must admit is a handsome body of water—and not susceptible to subdivision. That bruising battle, however, left no doubt as to where the Captain stood on protecting the environment, especially in Redding.

Another early memory was driving over from Umpawaug on Topstone Road, and suddenly coming upon what surely was the Caribbean Sea off St. John's, spread out before our eyes! It was the Captain's special summer crop of delphiniums, acres of them in every shade of blue, on both sides of the road, breathlessly beautiful!

The Captain will be remembered not only as a great artist—perhaps the world's greatest in the realm of photography—but for his book The Family of Man, which showed a deep philosophical grasp of the unity of the human race—"the essential oneness of mankind throughout the world." He will be remembered, too, for his abiding interest in growing things, in nature and the environment.

The little rural town of Redding can be proud to have claimed within its borders for a time at least Edward Steichen, along with Mark Twain and Charles Ives—three giants of artistic creation. Steichen's brother-in-law, Carl Sandburg, another giant, did not live in Redding but he wrote a poem about Topstone Mountain, over there above the lake. And I quote:

> Sometimes old men sitting near the exits of life say: "There were giants in those days."
> They wanted stones to sit on, stones to throw at each other, great stones for companions, for loneliness. All giants being lonely.

As you know, it would not have been possible to get the Steichen land with its stoney sentinel without the help of ROLI, Redding Open Lands Incorporated, the non-profit corporation, which has now sold enough supersized lots to pay off the bank loan in due

course; to hold inviolate many acres of open space; and to make possible the gift of the Steichen Wild Life Preserve to the Connecticut Audubon Society.

This, I am sure, would please the Captain, were he with us today. It will certainly please the Audubon Society and Mrs. Barnes. It will please the town as a substantial addition to its open space program. And, if I may say so, it pleases the guarantors of ROLI who will have no more restless nights now that the bank loan can be retired without a painful personal assessment.

Altogether Redding has 10 methods for holding open space, of which ROLI is but one, and more than 2,000 acres now seem to be secure. Some day we hope to hold 5,000 acres, a full quarter of the town, forever open. You will find the basis for that hope in the recent Plan of Development, as prepared by the Planning Commission; with the help of the Conservation Commission.

I once wrote a column for our local paper about Redding's 20,000 acres. With your permission, and in line with the present popular vogue for recycling, I will quote the final two paragraphs:

TWENTY THOUSAND ACRES

"Redding is one of Connecticut's larger towns in area, one of the smaller in population. I see these acres in the snowy blanket of January, the new green of April, the blaze of October. I see the high ridges, the rushing streams, the quiet pools, the old stone walls, the gracious architecture of a simpler age. That age has gone forever, but the land is here, almost as comely as when we were a town of farmers, and Joel Barlow was riding north to join the Hartford Wits before the Revolution.

"Our task on the Planning Commission is not to return 20,000 acres to 1775, certainly not to return them to a state of primeval nature. Our task is to protect these acres as vital living space for people—not just the people who are here now, but the people who will be living here a decade, a generation hence. Our task is to improve the relation between people and the land—which, when you come to think of it, is one of the timeless tasks of mankind."

The Captain was a valiant worker in support of that timeless task.

Thank you.

BOXCAR SHORTAGE SEVERE AS BUMPER CROP HARVESTED

Mr. HUMPHREY. Mr. President, rising food prices are a serious concern to all Americans today. This problem is in part the result of inadequacies in our rural transportation system, in general, and a critical shortage of boxcars or hopper cars, in particular. Unless immediate action is taken on this problem, we can expect even more transportation induced in inflation the months ahead. If we are to keep up with the growing demand of domestic and foreign buyers for our grain, steps must be taken now to solve this problem.

This year the grain crop is a big one and prices are the highest in years. What would seem to be a banner year for our farmers, however, may turn into a disaster instead. Farmers who want to sell right now are unable to because there are insufficient boxcars available to ship and deliver the grain. Not only are farmers affected, but the middle man—the elevator operator—is hard pressed to find storage for the grain awaiting shipment. Although other methods of transportation are being used to alleviate this problem, the high cost and limited haul capacity of trucks, and the inadequacy of farm-to-market roads, make this remedy inadequate and costly to the farmer and consumer. A solution to the boxcar shortage is thus being made more urgent.

Unless something is done soon, the problem is likely to worsen. On July 19, Secretary of Agriculture Earl L. Butz announced a measure which would free approximately 19 million additional acres available for production in 1974. This expanded acreage will compound the overload presently experienced unless the boxcar shortage is somehow alleviated.

This summer, the Senate passed the Rolling Stock Utilization and Financing Act of 1973, a bill which I strongly supported. This measure, if approved by the House and signed by the President, would be an important step in the right direction.

However, more immediate action must be taken by the executive branch to facilitate the movement of boxcars to distribute the bumper grain crop that we are harvesting. I urge the Department of Agriculture to work closely with the Department of Transportation in proposing some immediate relief for our overloaded rural transportation system and to begin now to work on the longer term actions that are required.

Mr. President, because of the severity of this problem and its impact on rural producers and urban consumers alike, and the need for immediate action, I ask unanimous consent that an article published in the Wheaton Gazette, entitled "Boxcar Shortage Severe in This Area" be printed at this point in the RECORD.

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

[From the Wheaton (Minn.) Gazette, Sept. 6, 1973]

ELEVATOR MEN WONDER IF RAIL SERVICE IS DISAPPEARING—BOXCAR SHORTAGE SEVERE IN THIS AREA

"Locked up Monday. Amen!"

That was on a sign posted in a neighboring grain elevator last week in anticipation of the Labor Day holiday. And the sign seemed to express pretty much what is on the minds of elevator operators all up and down the Milwaukee Road rail spur between Ortonville and Fargo as these grain handlers are caught in a monumental mental squeeze of too much grain and no way to handle it.

If nothing else, the national holiday gave them a chance to shut down for a brief period of time and get out from under the bombardment of phone calls and personal requests from farmers seeking to sell their product.

The Gazette took a tour of this Milwaukee Road spur during the past week, visiting with elevator operators, trying to determine if the problem of a boxcar shortage is really as bad as is frequently reported. Conclusion: The boxcar shortage not only does exist, but is indeed a good deal more intensive and far-reaching than most people even in this rural area seem to realize.

One elevator operator told us that he figures on being out of the business next year. He says that another year of this sort of pressure will send him to his grave or a mental institution—and he's not anxious for either. So he plans on getting out.

All of the elevator operators are caught in the same predicament. They are trying to handle the grain for area farmers—the people who have been their customers for years, the people who have made the elevators successful in good times and bad times over the past years.

The elevators are stymied. For the most part, they are constantly plugged—that is, filled with grain. They can only buy an amount equal to what they can ship out. And they can't ship very much out.

The farmers don't like—and with a good deal of justification. For the first time since anybody can remember, wheat has gone up to $4.00 per bushel. The price on all grains is the best it has been in years. Added to that, this area has produced a bumper crop. It should add up to one banner year for farmers—but they can't spend the money for their grain if they can't sell the grain. And much of it they can't. Right now every available storage space is being used. Dryers have been converted to grain bins. Some grain is even being stacked on the ground.

Elevator operators are trying desperately to handle this big new crop, and are being doubly hampered by the requirement that they continue to ship our government stored grain which has been called in. The latter really doesn't add to the farmers' problems because elevators can fill the space taken up by government grain with new grain—so farmers can get rid of that much. But this puts the elevators in a real financial pinch because they know they'll have to sit on that much more cash grain—and pay the high cost of handling to do so. Eventually, this does get back to the farmers because somewhere along the line he's going to have to take less for his product to cover the added cost of overhead; either that, or a lot of elevators are going to go broke.

The aggravating, frustrating problem for elevators keeps boiling down to the same old thing in this area—the boxcar shortage. And elevator operators are really not satisfied that this can simply be written off as a "general nationwide problem." Some of them along the Milwaukee spur between Ortonville and Fargo—in fact, most of them—express the gut feeling that the railroad company serving this area has a plan to try to get this line closed off entirely in the years ahead. They don't like it; they can't see any justification in it.

The elevator men know that the railroad is their lifeblood. Without it, a good many elevators in this area would simply be out of business. Every town along the 125 mile spur would be badly hurt. And farmers themselves would wind up with a much higher overhead if they are eventually required to find some other means to transport their product.

Operators of the elevators along this line are not readily willing to make pointed accusations against the railroad company in most cases. They do, however, suggest that something is "fishy". While reports from other areas seem to indicate that more grain than ever is being handled by railroads this year, elevator men along this M-R run claim that they are getting clobbered—that they are getting far less boxcars this year than they got a year ago. In nearly all cases, the elevator men say that their supply of cars this year is less than half what it was a year ago.

The various elevator managers along the Milwaukee Road spur running thru here are trying to serve the area's farmers—and trying to maintain something of a sense of humor in the process. But they find the going tough. In talking with them, you can vividly see their concern for the farmer, realizing that he needs to take advantage of the current situation of high prices on his grain. They want, more than anything else, to help him get it. But when elevators become plugged and when there is no way to get the grain hauled out, there simply isn't a thing these elevator operators can do. Perhaps the feeling of helplessness more than anything else is driving them up a wall.

All elevators are using trucks more than ever before. But they say this is not any real answer for grain movement. The trucks are capable of hauling far less, cost of transportation is a good deal more expensive, and most elevator managers say that trucks are not as reliable in that they are never certain when they'll be available. If a truck happens to wheel in, it has to be loaded "right now". With boxcars, they say, they can better handle their workload and at a sizeable saving.

A good idea of the problem confronting elevators in the area is provided in a composite of opinions voiced by the various elevator operators along the Ortonville to Fargo spur of the Milwaukee Road. Following is a summary of an interview with each of them:

CLINTON FARMERS CO-OPERATIVE ELEVATOR

Owen Tate, manager

The Clinton Farmers Co-operative Elevator is getting "way less than half the cars of last year," according to manager Owen Tate. In addition to the problem of lack of means to transport grain, the elevator is faced with a situation of being plugged, mostly with cash grain. With a total capacity of 300,000 bushels, the elevator has only about 60,000 bushels of government stored grain still on hand—and nearly a quarter of a million bushels of cash grain that Tate would like to sell on the favorable market.

Tate said that he is currently getting about five boxcars a week; that he would very much like to have at least 15 cars a week. "I could take 15 cars a week and keep loading them and shipping out steadily all winter long," Tate said.

Tate, like many other elevator operators, wonders why the major cutback in service on the spur through here. "Seems like they're (the Milwaukee Road) trying to abandon the road," he said. "They're not doing any fixing, just patch work here and there." And he said that even the big grain hopper cars wouldn't help the situation much in this area because the condition of the railroad bed makes it impossible to load them to capacity anyway.

GRACEVILLE CARGILL ELEVATOR

Jack Montonye, manager

Without taking in any more new grain, Jack Montonye of the Cargill Elevator in Graceville figures that he will have to load out at least 28 cars of already stored grain to get his "house in halfway decent shape" before the start of row crop harvesting. And he really doesn't believe it's possible—but he's going to make a run at it.

Right now Montonye is getting only a small fraction of the number of boxcars he would like—despite the fact that he is receiving cars from two different railroad companies. The Milwaukee Road runs north and south through Graceville and has a sidetrack to his elevator. The Burlington-Northern does the same off its east-west run.

Montonye said that he gets only about a boxcar a week from the Milwaukee Road and from 3 to 5 cars a week from the Burlington-Northern. That figures out to less than a boxcar a day—and Montonye says that he could load out 10 cars everyday.

The manager of the Graceville Cargill plant is running his business as best he can under the situation, dealing almost entirely in cash grain. He said that he has never had much in the way of government stored grain, so moving that out is no problem for him. But he is perhaps even harder hit than the average because his cost of overhead is there for all that cash grain and he just can't move it out.

Montonye said that a year ago he had little trouble with boxcars. But that he attributes to a poor crop in that immediate area. Montonye got caught in the squeeze when prices began rising sharply last December. He had one boxcar on his sidetrack and didn't know what to do with it. So he decided to start contracting for oats—since cars were available. He did—he contracted for 300,000 bushels. That's about 100 boxcars' worth. He loaded the single car he had, and wham—the boxcar shortage caught him, too. He finally filled the contract, but admits it was quite a struggle. Now he's like everybody else along the line—trying to get every boxcar he can.

GRACEVILLE

PEEVEY ELEVATOR

Paul Kositzky, manager

Like Cargill, the Peevey Elevator in Graceville is served by two railroads—the Milwaukee and the B–N. And like every elevator along the line, the Peevey Elevator is aching for more boxcars.

Paul Kositzky, manager of the Graceville plant, is not happy with what has been happening. He maintains that a new system of allocating cars by the Burlington-Northern on the basis of past usage is penalizing the small elevators and catering to the large ones. He says the system is designed to push the little guy out of business.

Whether that's true or not is questionable—but Kositzky does know for a fact that he is getting fewer boxcars this year from both railroads serving his elevator. He gets only one car in three from the Milwaukee Road, he says, and only about three cars a week total from both railroads. He figures he could use 20 cars a week.

Kositzky injects some philosophical opinion on the entire shape of things when he talks about his situation. He isn't happy with the priorities apparently given by government. "Watergate means nothing to the average person out here, but $4.00 wheat to the farmer means money in the community," he said. He pointed out that the farmer, when he makes money, spends money and that as such, his well-being is the greatest thing that can happen to the rural community.

Kositzky, like other elevator managers, is using more trucking this year than ever before. But he points out the farmer is really being penalized by not being able to get adequate numbers of railroad cars. He said that transportation costs are higher with trucks and that in addition there is a "truck discount" which comes off the grain price. "I feel I could pay the farmer 30 cents a bushel more for wheat with sufficient boxcars."

DUMONT

FARMERS COOPERATIVE

ELEVATOR

Herb Frisch, manager

The Farmers Co-operative Elevator in Dumont has been as hard-hit as any elevator along the M–R spur this year. Manager Herb Frisch said that during all of August he got only 14 boxcars this year. In the same month of 1972—when the grain supply was less and the price lower—he got 40 cars, nearly three times as many. Last Saturday he stated that he had received only three boxcars from the Milwaukee Road in the preceding week. "I could use all they could haul in here," he said.

Frisch claims that there is more grain in the country in this area now than there was before the government call-in last December. He says that despite the call-in of stored grain which was supposed to keep an outflow throughout the winter months, the shipment of grain this year has not even been able to keep up with the supply of the new crop.

Frisch, too, is not pleased with the service his elevator has been receiving from the Milwaukee Road. "What gets me," he said, "is that two or three years from now they'll say this line isn't paying, and they'll try to close it."

He noted that some farmers are trying to meet the problem of handling grain by buying their own transport trucks. But Frisch doesn't think that will provide them with an answer. He says that they are already having trouble getting unloaded at the terminals, and suspects that when there are a number of privately owned rigs making the run, the unions might well move to cut them off entirely, making it impossible for them to get unloaded at the terminals.

In an effort to work with area farmers, Frisch is having them sign up now for bringing in their corn crop. And then there's the beans. "We'll have to worry about beans when the time comes," he says, as he tackles his problems on a day-to-day basis.

DUMONT

DUMONT GRAIN CO.

Alex Wilson, manager

One of the stickiest problems facing elevators in this area was brought to light by Dumont Grain manager Alex Wilson when he talked about the increasing cost of operation for elevators. It costs about five cents per month just to cover interest and insurance when an elevator buys and stores cash wheat, Wilson said. And this does not include labor, depreciation and other costs of operating overhead.

Yet this is a problem that is being confronted by every elevator in this area where the boxcar shortage is making it impossible to haul out the grain. "We'd be better off not to even buy grain for storage," Wilson says. But he's quick to add that this is impossible and certainly not what is being done. He said that every effort is being made to serve the farmers of the area by taking all the grain they can store or ship. But the lack of boxcars makes this a minimal effort.

While the Dumont Grain Company is getting only one or two cars a week, they could easily use ten, Wilson said. From 10 to 15 calls a day are coming into the elevator from area farmers, asking if there is room to take grain. The usual answer has been negative.

WHEATON FARMERS CO-OPERATIVE ELEVATOR

Al Hennen, manager

The Farmers Co-operative Elevator in Wheaton is another example of an elevator along this spur of the Milwaukee Road which has gotten far fewer boxcars this year than was the case a year earlier.

Last year was what has to be considered a "normal" year around here. The crop was average; the price on grain was average in comparison with prices over the past few years; and there was still the normal amount of government grain sealed. Yet during that year the Wheaton elevator received and shipped out grain in 342 boxcars during the first eight months.

This year, 1973, is, however, another story entirely. The crop is a big one; prices are the highest in years, meaning that farmers want to sell right now; there is no more government storage; and there still remains a huge amount of previously stored government grain which must be delivered. Yet in spite of this vastly increased need for transportation facilities, the elevator in Wheaton has received, during the first eight months of the year only 169 boxcars—less than half their supply in 1972.

Elevator manager Al Hennen claims that there are still about 6½ million bushels of old grain around the county yet to come in, besides the big new crop. Right now he says that there are some farmers in the area piling grain on the ground because there simply isn't anyplace else to put it. The elevator had a list ten pages long of farmers who were to bring in government stored grain when the harvest season began. Hennen said that the list was set aside in an effort to handle the new crop for farmers in the area. "We're doing everything we can to take care of the new grain," he said.

Hennen isn't happy with the railroad situation. He pointed out that the train only makes two trips through here a week—at least trips from which he can expect boxcars.

The train goes from Ortonville to Fargo on Monday; returns on Tuesday. It goes up again on Thursday, returning on Friday. And Hennen says that he can look for cars only from the south—and then far fewer than he needs.

TYLER, N. DAK.

TYLER FARMERS ELEVATOR COMPANY

Gus Unruh, manager

With a need for anywhere from 15 to 25 boxcars a week, the Tyler Elevator is getting about four a week—20 percent of what they need. And that's just to handle the small grain crop, according to manager Gus Unruh. They could use even more boxcars to take care of what looks like a big soybean and corn harvest coming up.

Unruh estimates that he is getting only about half the number of boxcars this year that he got a year ago.

While the Tyler manager doesn't know it for a fact he feels that the railroad situation is hurting his business in that it is giving an edge to competition. He said that he thinks the Burlington eight miles north and the Soo Line seven miles south are both providing elevators along those lines with greater numbers of boxcars, thus taking at least some of the business of farmers who used to sell to the Tyler Elevator. Unruh admits that's a guess—but at worst it's an educated guess by one who's living with the situation.

ABERCROMBIE

ABERCROMBIE GRAIN CO.

Wesley Berg, manager

The squeeze of the boxcar shortage has prompted Abercrombie Grain Company manager Wesley Berg to place heavy reliance on trucks to move grain out of his elevator—but he has had to pay dearly for it.

Berg said that with only two boxcars a week coming in he really hasn't had much choice—not if he wants to stay in business. In order to move grain he has had to go to trucking. And he has found the price on truck hauling skyrocketing upwards.

One day last week Berg says that a number of trucks were parked outside his elevator ready to haul. But the drivers got together and demanded better hauling rates or they would not haul. In order to move the grain, Berg gave in to the demands.

Abercrombie is perhaps in as serious a situation as any elevator along the M–R spur. With the elevator plugged tight, Berg has been forced to dump grain on the ground alongside the railroad tracks. He has already stacked up some 100,000 bushels of grain on the ground—including about 20,000 bushels of good wheat. He is now desperately worried about where he is going to put the soybean and corn crop.

Berg is convinced that the only answer to his problem is more boxcars—not trucks.

CHRISTINE

KENT DORAN GRAIN CO.

Ron Olthoff, manager

The Kent Doran Grain Company manager Ron Olthoff says that he is getting from three to four boxcars per week during a time when he could use at least 15 a week. So far this year he has loaded out 110 cars, compared with 107 in the same period in 1972. But Olthoff says that the comparison between the two years is not a fair one, because, one, the increased crop yield this year, and more particularly because of the transport of grain that has been required throughout the year because of the haul-in of government stored grain.

The Christine elevator is operating two of its own trucks and has one independent hired on a steady basis, but Olthoff says that trucks are not the answer to his dilemma. The only answer, he says, is more boxcars.

Like all managers along the Milwaukee spur, Olthoff worries about the upcoming corn and bean crops. He now has no place either in the elevator or in storage bins for any part of that crop—and won't have unless he can get the grain moving out.

HICKSON

HICKSON GRAIN ELEVATOR

Marshall Tangen, manager

With every square inch of storage space filled to capacity, both elevator and on-farm storage, Marshall Tangen of the Hickson Grain Elevator is really hurting for boxcars. He had been getting about two cars per week, he said, until the second week in August, and since then has been getting only a car a week. Tangen, too, is using more trucking than ever in an effort to move the grain.

"Every time a semi-truck leaves the elevator with a load of grain, a new line of farmers' trucks appears to maintain the elevator's status as packed solid," he said.

Tangen said that he has been relying heavily on trucks, but added that this means is unreliable because many independent truckers cannot be counted on to return to haul more loads from the same elevator. And he readily understands that the situation is no picnic for the truckers, either. He said that they sometimes must wait up to 24 hours before being unloaded after hauling grain to the Twin Cities or Duluth.

Tangen is averaging about three semi-truck loads of grain going out every day of the week—but he's still very concerned because he doesn't know how he'll be able to make room for the soybean crop, a crop which he believes will be harvested earlier than usual this year.

In general, it can be stated that the elevator operators along the Milwaukee Road spur between Ortonville and Fargo all claim to be receiving far fewer boxcars this year than last year, despite the fact that all needed more cars than ever before—and despite the fact that they keep reading about other railroad companies providing more hauling capacity for elevators.

The elevator managers, for the most part, express questions about the railroad serving them. Some believe they are being frozen out and that an effort will be made to shut down the spur line.

As a rule, the elevator men claim to be getting less than half the number of cars this year that they got in 1972. And all claim a greater need because of heavier yields of small grains and because of the call-in of government stored grain.

All of the elevator operators are using trucks substantially more than ever before. While all are thankful for the trucks they do get now, they are not happy with the higher costs of transporting that way, and all express the belief that trucking will never replace the railroad for efficient grain movement.

Most of all, the elevator men, to a man, are concerned about the farmers who are their customers. They want to see these farmers able to sell this big new crop at the highly favorable current prices and are doing everything they can to make this happen.

But in order to get the job done, they all claim that they must have more boxcars. The big question is—How do you get them?

DR. WILLIAM J. SANDERS

Mr. RIBICOFF. Mr. President, in 1956, while I was serving as Governor of Connecticut, the position of State Commissioner of Education became vacant. I set out on a nationwide search to find a preeminent educator and administrator. I finally chose Dr. William J. Sanders and his accomplishments proved his ability.

For 17 years Bill Sanders has offered the Connecticut Department of Education dynamic, imaginative, and dedicated leadership. During his years of service he expanded the educational programs and facilities in the State and made Connecticut schools among the best in the Nation.

Dr. Sanders retired last month. He is going to be missed by the people of Connecticut. He leaves behind a record of accomplishments and spirit of progress that will challenge his successors for years to come.

The Hartford Courant and Waterbury Republican recently paid tribute to Dr. Sanders. I ask unanimous consent that the editorials be printed in the RECORD.

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

[From the Hartford-Courant, Sept. 28, 1973]

WILLIAM J. SANDERS: AN UNCOMMON MAN RETIRES

This is the last official work day for William J. Sanders as commissioner of education for the State, a job he assumed in 1956. If it is at all like the others Dr. Sanders has spent during the last 17 years, he will be a busy man.

Which is not surprising. For during his tenure Connecticut's educational horizon has widened to include innovative programs developed under his leadership to include the preschool child and adults, the disadvantaged, the gifted and talented, non-English-speaking persons of all ages and senior citizen projects.

Four new state technical colleges have been built. In the younger grades, 60 communities with less than 2,000 students were grouped in units for greater efficiency. Project Concern became a reality in Hartford to share resources of mostly white schools with inner city youngsters.

A statewide educational needs study and a survey of reading achievement added foundations on which to build the future.

Another measure of growth is the administering of grants. When Dr. Sanders came to Connecticut from the presidency of Fitchburg State Teachers College in Massachusetts, his department worked with about $38 million a year in grants. Now it spends about $1 million every day.

Yet, despite its bigness, Dr. Sanders has tried to keep education in this state a personalized service. He believes schools should have a warm, human environment and rejects their being run like factories. Surely that attitude has helped the Commissioner maintain what he terms "very good relationships" with town and city school districts and those in their charge.

And Nutmeggers are not alone in their admiration of this patient, scholarly man whose intellectual curiosity and wit add to his charm.

Calls to serve have come from the Department of Health, Education and Welfare to help plot the course of vocational and technical education in the nation through 1975 and to determine the role of government, civic and community groups in the field. He has been a director and is president of the Council of Chief State School Officers and a member of the President's Special Project on School Finance. Recently, Connecticut was named one of three states that have managed federal grants most effectively. And he was a leader in a national conference on reading among numerous other occasions when Dr. Sanders' perceptive opinions and knowledge have been sought.

Indeed, a busy man. Yet, as an associate wrote in September's Connecticut Education edition, he takes time for people, "He calls you Mister and invariably rises when you enter his office . . . listens with a concentra-

tion that is undivided and a little overwhelming.

"And regardless of the merits of your proposal, he hears you out—questioning, probing, trying to help you develop your ideas—and then he thanks you. He always thanks you, as though you have done an uncommonly gracious thing in sharing with him your ideas."

Surely Connecticut education loses an uncommon man with the retirement of Dr. Sanders.

[From the Waterbury Republican, Sept. 29, 1973]

DR. SANDERS RETIRES

Connecticut has been fortunate in the men who have guided the State Department of Education over its 135 years of existence. Certainly so during the past 17 years when this arm of the state government was directed by Dr. William J. Sanders. Friday was his last day at work; the state now has an acting director, Dr. Maurice J. Ross, who has likewise complimented the exemplary services of his superior.

Starting in 1956, Dr. Sanders served under such governors as Abraham Ribicoff, John N. Dempsey, and Thomas J. Meskill—thus holding his most important post under both Democratic and Republican auspices, no mean feat in this day and age—and in Connecticut.

During his tenure many changes have occurred at all levels of education in the State of Connecticut. It is to Dr. Sanders' credit that so much has been accomplished and that a department so subject to the whims of the public and the educator and the officeholder has earned as much respect and commendation as has Connecticut's Department of Education under Cmsr. Sanders. He well deserves all of the laudatory expressions voiced in his behalf.

JAMES B. CAREY

Mr. HUMPHREY. Mr. President, it was with deep sadness that I learned of the death of James B. Carey on September 11, 1973, at the age of 62. Jim Carey was one of the hardest working, most determined leaders that it has been the great fortune of the American labor movement to call its own.

Founder and first president of the International Union of Electrical Workers, vice president of the AFL–CIO, and labor representative of the United Nations Association, Jim Carey was a dedicated fighter for free trade unionism. His capabilities acknowledged in Presidential appointments and in his presence at international meetings, he had known also the harsh realities of poverty and of strike barricades. Known to some as a man of blunt words and singleminded dedication, Jim was also a man who could accept defeat with dignity and exhibit a wry humor.

I shall miss this vital man, and I take this opportunity to express my deep sympathy to his wife, Margaret, and his children, James and Patricia.

Mr. President, I ask unanimous consent that an article in the New York Times of September 12, 1973, describing the career of James B. Carey, be printed in the RECORD.

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

JAMES B. CAREY DIES AT 62; LABOR LEADER FOUNDED IUE—FORMER CIO TREASURER AND AFL–CIO VICE PRESIDENT FOUGHT UNION COMMUNISTS

WASHINGTON, September 11.—James B. Carey, founder and first president of the 285,000-member International Union of Electrical Workers, died today, apparently of a heart attack, at his home in suburban Silver Spring, Md. He was 62 years old.

Mr. Carey was defeated for re-election as president of the I.U.E. in 1965 by Paul Jennings, who today mourned his death as "a loss to working people everywhere."

A funeral mass for Mr. Carey will be celebrated at 9:30 A.M. Thursday in St. Michael's Roman Catholic Church in Silver Spring.

FIERY AND TRUCULENT LEADER

(By Emanuel Perlmutter)

James B. Carey used to boast that at the age of 10 in Philadephia he led his schoolmates in a classroom strike against excessive homework. Although the story may be apocryphal, his whole career as a labor leader was fiery and truculent.

He held major positions in trade unionism and the Federal Government. Besides founding the I.U.E., he was the first and only secretary-treasurer of the Congress of Industrial Relations (C.I.R.) and vice president of the merged American Federation of Labor-Congress of Industrial Organizations. After his defeat for re-election as president of the I.U.E., he became labor representative of the United Nations Association—a position he held until his retirement last year.

Cocky and bantam-size, Mr. Carey took on tough opponents during his stormy career. He fought Communists in the labor movement as well as miserly and reactionary employers and had bristling policy quarrels with John L. Lewis, powerful leader of the United Mine Workers.

ALWAYS ON THE MOVE

He had an enormous capacity for hard work and a willingness to handle detail and assiduous study of administration. He was rarely stationary, constantly negotiating, traveling to conventions, making speeches and taking on extracurricular tasks.

A socially committed New Dealer, Mr. Carey served President Franklin Delano Roosevelt in World War II as a member of the Office of Production Management, the National Mediation Board and the National War Labor Board.

Under President Harry S. Truman, from 1946 to 1951, he was a member of the Presidential Commission on Civil Rights, the Presidential Non-Partisan Commission on Foreign Aid and the labor advisory committees of the Office of Defense Mobilization and the Department of Labor.

He was a familiar figure at international gatherings, particularly those dedicated to free trade unionism. He fought Communist influence in the World Federation of Trade Unions and helped to form the more democratic World Confederation of Trade Unions.

Mr. Carey was born in Phladelphia on Aug. 12, 1911, one of the 11 children of John S. Carey, a paymaster in the United States Mint, and his wife, Margaret. He began working after school hours in a local factory at the age of 14.

He began his trade-union career in 1929, when he was 18 years old. As an employee of the Philco Radio Corporation in Philadelphia he was dismayed by growing unemployment in that city and the replacement of men by machines in its factories. He organized the "Phil-Rod Fishing Club," ostensibly as a fishing club, but actually to serve as the nucleus of a union. Its members eventually joined what was intended to be a company union in the Philco plant, but wound up leading a strike of its 3,800 workers.

Mr. Carey helped to negotiate a favorable settlement of the strike for the employees in October, 1933. Two months later, when representatives of a dozen A.F.L. and independent unions established the Radio and Allied Trades National Labor Council, Mr. Carey—then 22 years old—was elected president. In 1934 he became a general organizer for the A.F.L.

The United Electrical, Radio and Machine Workers of America, now the U.E.W., was formed in 1936 as a new independent and industrial union. Mr. Carey was elected president and six months later led the 30,000-member union into the newly formed C.I.O. With the backing of Mr. Lewis, who had almost singlehandedly formed the C.I.O., Mr. Carey was elected its secretary-treasurer.

BROKE WITH LEWIS

Mr. Carey broke with Mr. Lewis in 1940 because the mine leader backed Wendell L. Willkie, the Republican candidate, in the Presidential election while Mr. Carey supported President Roosevelt.

The U. E. W. continued to grow under Mr. Carey's leadership and reached 300,000 members in 1941. However, Mr. Carey was growing continually concerned by the Communist sympathies of some of the union leaders. With communism as an issue, he was defeated for re-election in 1941 by Albert J. Fitzgerald. Eventually, he took most of the union away from leftist domination when he formed the rival I.U.E.

In the last years of his leadership of the I.U.E., Mr. Carey grew increasingly irascible and inflexible in his dealings both with employers and with his fellow union leaders. By 1965, he was no longer the infant prodigy of the American trade union movement and was defeated for president of his union by Mr. Jennings.

Mr. Carey is survived by his widow, the former Margaret McCormick, whom he married in 1938; a son, James, and a daughter, Patricia.

THE GENOCIDE CONVENTION

Mr. PROXMIRE. Mr. President, in 1968 President Johnson appointed a Commission for the Observance of Human Rights Year. A subcommittee of that Commission, under the chairmanship of Justice Tom Clark, retired, examined the legal and constitutional questions regarding U.S. participation in human rights treaties. In his letter of transmittal accompanying the final report, Justice Clark stated:

I would like to reiterate, however, our finding, after a thorough review of judicial, Congressional and diplomatic precedents, that human rights are matters of international concern; and that the President, with the United States Senate concurring, may, on behalf of the United States, ratify or adhere to any international human rights convention that does not contravene a specific Constitutional provision.

Mr. President, the Genocide Convention meets this criterion. Its intent is in accord with our most noble traditions. The United States, as the Members of this Chamber well know, was among the first to advocate a treaty of this nature. Let us hope that we are not among the last to ratify it.

The 93d Congress is still young, Mr. President. It is my sincere hope that we will ratify this convention before the end of this first session. I trust that I will have my colleagues' support.

NEEDED: A NATIONAL MENTAL HEALTH POLICY FOR THE ELDERLY

Mr. MUSKIE. Mr. President, the Senate Special Committee on Aging, on which I serve as chairman of the Subcommittee on Health of the Elderly, has long been concerned about mental health problems of older Americans.

Part of our concern arises from the fact that geriatric patients now occupy one of every five beds in our Nation's mental hospitals. In addition, perhaps 15 to 25 percent of elderly persons living in their own homes have some degree of mental impairment.

Furthermore, we have received reports of "warehousing" of the elderly in institutions of some States while from other States we hear of "dumping" of the elderly from institutions into the community without any real regard for their well-being.

At the heart of such problems are negative attitudes toward the elderly. As an official of the National Association of State Mental Health Program Directors recently stated:

> The mental and emotional well-being of the aged has been particularly neglected probably because "senility" is so often believed to be an inevitable and irreversible consequence of aging.

Another consequence of such attitudes is that older persons are drastically underrepresented in community mental health programs.

The Senate Committee on Aging, in November 1971, issued a report summing up problems related to mental health of the elderly. Since that time I have introduced legislation calling for a bill to estabish a Commission on Mental Health and Illnesses of the Elderly. My arguments for that bill are stated in the May 9, 1973, issue of the CONGRESSIONAL RECORD.

A Commission, however, much as it may be needed, is only one element in a truly national effort needed in this area.

For that reason I was much impressed by a farsighted, challenging address made by Bertram S. Brown, M.D., Director of the National Institute of Mental Health, at the Governor's Conference on Aging in Nashville, Tenn., on September 26.

Dr. Brown provided an admirable summary of the scene today, saying:

> We see resources that are scattered and often used inappropriately. Coordination at the service or consumer level remains a goal rather than a reality.

Dr. Brown, recognizing the difficulties that could block the way for constructive action, nevertheless asks for a long-needed, "a national mental health strategy for the elderly," and he provides 10 program goals.

Mr. President, Dr. Brown has long been recognized as a resourceful and highly informed advocate for the well-being of all Americans. His statement on older Americans is a significant and timely message.

I ask unanimous consent that his address be printed in the RECORD.

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

WHERE DO WE GO FROM HERE?

(By Bertram S. Brown, M.D.)

This has been a very stimulating session. To present summary reports on two days of workshop discussions is no small task but really quite a challenge in linguistic logistics. The Group Reporters have succeeded commendably in conveying, I am sure, the representative interests, impressions, ideas, and concerns of all the discussants.

My task now seems at least equally challenging. To assimilate and comment on the information-laden Group Reports is not only a logistic problem but a political one as well. Transportation, mental health, health and nutrition are indeed inseparable issues in any comprehensive program designed to meet the consumer needs of the Nation's and, specifically, Tennessee's elderly. While I acknowledge the significance of the entire spectrum of topics you have covered throughout this Conference, my politics now will be local, and as Director of the National Institute of Mental Health I will focus on concerns most pertinent to that aspect of the Conference.

The issues and opportunities so well spelled out in the discussion reports are high profile reminders of the urgency and wisdom of a national mental health policy for the elderly.

The need is pressing: psychopathology in general and depression in particular rise sharply with age. Suicide reaches a desolate peak among white, elderly males. Loneliness, anxiety, and boredom too often characterize the lives of the old. Many feel isolated, useless, and unwanted. These are mental health concerns. Too often, the loss of and changes in work and social status cause older persons to lose confidence in themselves, and this is a mental health concern. When through the death of or separation from contemporaries the older person withdraws socially, it is a mental health concern. The contingencies of diminished income and financial dependency become mental health concerns.

In short, we see a vulnerability induced in the old by society's failure to meet their elementary needs for socialization, good health care, special housing arrangements, or adequate income—this becomes a mental health concern, and through our effort, a concern that can be remedied.

In recent years, increased national exposure has been given to this problem. The President's Task Force on the Aging, in 1970, expressed concern regarding "the use of State mental hospitals as custodial facilities for large numbers of chronically ill or disabled older persons who are not in need of active psychiatric care because alternative living arrangements with psychiatric consultation or support do not exist . . ."

At that time, the Senate Special Committee on Aging, in anticipation of the White House Conference on Aging in 1971, issued a report entitled: *Mental Health Care and the Elderly: Shortcomings in Public Policy,* which referred to the "widespread confusions and contradictions in public health policy on mental health of the elderly (which) are causing heavy economic, social and psychological costs among older Americans and their offspring." These costs are paid by some elderly misplaced in institutions when they could—with appropriate services—return to the community. Others pay that cost by remaining in their own homes, "in confusion or despair, denied access to services which help others but not them."

Outside the Federal sphere, the Group for the Advancement of Psychiatry in its publication "Toward a Public Policy on Mental Health Care of the Elderly" stated that "the elderly suffer disproportionately from our non-system of non-care, characterized by insufficiently financing for both health and sickness and by fragmented delivery of services."

In 1971, the Special Concerns Session on Mental Health Care Strategies and Aging of the White House Conference recommended the establishment of a Presidential Commission on Mental Illness and the Elderly. This Session further proposed that there be recognition and support of the individual's right to care and treatment within the full range of mental health services, that adequately staffed and programmed comprehensive local mental health services be developed for the elderly, and that greater efforts be made to develop options to institutional care.

On a third front, a critical front in the drive for greater equity in resource allocation, are the organized senior citizen groups whose membership has multiplied tenfold during the past decade.

These individuals recognize that a most crippling loss of old age has been that of choice. Today, the older consumer is no longer satisfied to be at the mercy of the providers of service. He expects to bargain with dignity and freedom in the marketplace as does any other consumer. But he can do this only when services are available so that options are assured.

One of our primary responsibilities, from the Federal to the community level, is to look critically at the services and service options currently available to the elderly.

When we do, we see an accumulation of untreated illness. We see resources that are scattered and often used inappropriately. Coordination at the service or consumer level remains a goal rather than a reality.

Citing nationwide statistics, congregate care facilities provide 85 percent of the mental health care received by the elderly. One million older persons live in these facilities—in State mental hospitals and nursing homes—throughout the country, and often through no choice of their own. We estimate that 300,000 to 500,000 of these million persons are not primarily in need of such services and could better be provided for in more appropriate facilities and through alternate service systems.

In part, a scarcity of more suitable community resources, including mental health services, limits the range of choice. Also, program restrictions frequently limit the potential of family and community contributions. Strengthening these programs lessens the pressure on more expensive institutional care, permits facilities to better serve those who most need their services, and helps correct an imbalance as damaging to society as to the elderly.

A hopeful sign is the growth of community based mental health facilities. In 1955, 77 percent of all psychiatric patient care episodes were provided inpatient services and 23 percent treated in outpatient facilities. By 1971 only 42 percent of all psychiatric patient care episodes were provided inpatient services, and 58 percent outpatient.

In 1973, this trend is unmistakable. The reversal parallels the phenomenal reduction in State mental hospital population. To impede it will inevitably limit the range of quality choices to institutional care, with consequent impact on the mental health of the older person served.

Tempering our program aspirations with the hard, cold logic of events we must recognize the emerging framework for workable strategies as we develop responses to mental health needs of the elderly. That framework includes: budget austerity, national health insurance, augmentation of third party payments, revenue sharing services, integration of services, decentralization, institutional reform, and cost-accounting.

Realistic program support will require a blend of strategies based on principles acepted by taxpayers, consumers, providers, and professionals.

A delicate recipe, this blend calls for working coalitions and incentives that will make it possible. Just as we cannot achieve a socially desired goal such as reducing a hos-

pital population at the expense of its staff, neither should we allow the depopulation of hospitals to the detriment of patients and their families. Nor should one agency be obligated to operate in default of another's responsibility.

A working collaboration, or mutual aid in behalf of the elderly, is essential in responding to the wholeness of their needs.

In addition to working coalitions differentially responsive to older consumers and their families, effective strategy relies on program accountability. Accountability is linked to program survival. Necessarily, that accountability will be measured by its impact on people.

Looking to our own house first, the NIMH has intensified activities to implement its focus on aging as an Institute priority within existing resources:

Extramural research grants affecting the elderly have been increased;

Training activities have been augmented, particularly affecting nursing home manpower;

Collaborative activity with other groups and agencies such as HEW's Administration on Aging and the Department of Housing and Urban Development (HUD) was increased;

A series of interrelated planning and evaluation activities were initiated to provide a firm data base for expanded programs for the elderly;

In the NIMH State Program Development office, where aging is a high priority, several publications were issued that are enjoying wide acceptance.

Still, a significant expansion of NIMH programs requires additional resources.

Research during the past decade has provided added impetus to our efforts. Recent findings suggest that functional mental impairment in older persons is as responsive to treatment as with younger persons. Such studies indicate that apathy, isolation and regressed behavior can be reduced by adequate assessment of the improvement potential and the specific modes of intervention.

As a psychiatrist and science administrator, I would be uneasy if geriatrics research promised magic formulas or elixirs. I would be equally uneasy if NIMH financial and human investments in research on problems of the aged did not promise significant improvements in treatment, service systems, and manpower qualified to meet the psychosocial needs of older Americans.

Armed with such research findings and supported by a growing community of experienced professionals in the field; provided with political mandates at the Federal, State, and local levels of government, and spurred on by both the needs and assistance of citizen groups across the country, where do we go from here? What must be done to insure the continued day-to-day success in the field of this conference and others like it?

Communication of new information represents one challenge. There is mounting evidence of the rehabilitation potential of the elderly by practitioners in the field. Yet somehow this has not been translated into practice.

Considerable research has dealt with negtive attitudes that permeate the area of geriatrics. It was found that both administrative and treatment staff inappropriately fear that the elderly are unresponsive and unrehabilitatable. Popular misconceptions about treatability often delay seeking help until a crisis develops.

As health and welfare professionals, we must appreciate that treatment goals for the elderly often serve different needs than for the young. They do not always imply recovery. Slowing the progress of the disease may be called for, whereas a return to productivity might not be practical.

Any effort to develop a national mental health strategy for the elderly must need criteria set by diverse interest groups. It must be goal-centered, visible, workable, and provide good returns for the dollars expended. While it would require a budget and problems inherent in equitable allocation of resources, it would emphasize program results which could be supported by all. The strategy must be responsive to the needs of our citizens and not just geared to the convenience of our desks.

With Federal agencies serving as a national spearhead working in collaboration with state and local departments and citizen consumer groups, a national policy might reasonably move toward achievement of the following program goals:

(1) Reduce inappropriate institutional care of the elderly by at least 10 percent per year through phasing out the use of congregate, custodial care facilities and phasing in small, individualized social, protective, and health care settings of quality service in the community.

(2) Support community projects having mental health relevance and make available to the elderly in their own neighborhoods and with their participation a broad range of community services.

(3) Foster collaboration in service delivery at the consumer level through political, financial, and personal support of coalition planning.

(4) Work toward elimination of exclusion and discrimination against the mentally impaired aged in existing and proposed financing mechanisms including Medicare, Medicaid, health maintenance organizations, the categorical aids, revenue sharing, and the proposed third party payment plans.

(5) Contribute to the establishment and achievement of humane standards of care for older patients through support of nursing home training and ombudsman programs.

(6) Work toward recognition and support of the right to care and treatment for the aged mentally impaired.

(7) Study the barriers to quality care and the obstacles to compliance with standards for dissemination and use in a nationwide program development.

(8) Encourage initiation of additional geriatric programs through mental health centers or other community mental health related facilities.

(9) Expand the existing number of training places for mental health manpower serving the elderly.

(10) Augment existing support for a broad range of basic and applied research to increase knowledge of the cause, prevention and treatment of mental disorders in later life and to provide a better knowledge base for policy decisions affecting the mental health of the elderly.

While it seems most efficient to retain the primary research planning and support function at a coordinated Federal level, in local governance we should be attuned to the profitable opportunities for Federal-private collaboration in research support.

For our own part in furtherance of these objectives, the National Institute of Mental Health can focus its resources and leadership to keep program objectives clearly visible, hold program units accountable for program targets, vigorously assess the impact of what we do, encourage collaborative efforts, support regions and States financially and through technical assistance, speed the dissemination of information about successful projects, help maintain standards, and prompt constituent groups involvement in program development.

These program goals are, I believe, a balanced and, more importantly, a feasible blend of group interests. They seem to represent what most people want.

The citizen impact of such goals are measurable. They are dignifying and humane. Means for their achievement have been demonstrated. Payoff is high, Supporters can be found across the country. And leadership is able and willing.

With your assistance, backing, and good will, perhaps we can begin.

ENERGY WASTE—LET US KICK THE HABIT

Mr. HUMPHREY. Mr. President, yesterday, for the first time since World War II, a limited form of fuel rationing was imposed in the United States. This is but a reflection of the severity of the energy crisis facing us at this time. Our ability to influence supply to meet our energy needs may be limited, but we certainly can take more aggressive action to reduce the unfortunate energy waste in America. This waste occurs from the time the fuel comes out of the ground until it is consumed—waste in schools, in factories, in homes, and on our highways. Figures as high as 40 percent have been cited for the amount of fuel wasted in a given year.

This situation is inexcusable. Measures can and must be taken to reduce the waste of our energy resources. Solutions for eliminating waste are not necessarily complex or costly. A study sponsored by the Treasury Department found that 2 to 3 million barrels of oil a day, about 20 percent of current daily consumption, could be saved through eight relatively easy, uncostly, and quick conservation measures. The emphasis must be placed on public participation in a program of energy conservation. It is in the home and on the road that much of the waste occurs. The Government should sponsor a program which will increase public awareness of measures which they can take to reduce the waste of our valuable energy resources.

An article by Tim O'Brien in today's Washington Post, "Americans Might Be Squandering 40 Percent of Energy Resources," provides a fascinating and highly informative commentary on this subject. I ask that this article be printed in the RECORD.

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

[From the Washington Post, Oct. 3, 1973]

AMERICANS MIGHT BE SQUANDERING 40 PERCENT OF ENERGY RESOURCES

(By Tim O'Brien)

The American energy crisis, experts say, is shorthand for the convergence of many negative variables—dwindling domestic supplies, pressure from those who want to breathe clean air, population increases, the insatiable appetites of new machines, political tensions with nations that produce the raw materials of energy.

In the complex statistical manipulations and forecasts, however, one variable remains almost an afterthought: Simple waste. Extravagance. Inefficiency. Squandering. Unnecessary guzzling of what fuel there is.

While it is not fair to say the waste of energy is overlooked—environmentalists have been screaming about it for years—it is true that energy conservation is viewed by most observers as a mere palliative. A drop in the bucket of remedies.

It is virtually impossible to measure with even rough accuracy the amount of fuel wasted in a given year. But that has not kept people from guessing. Sen. Jennings Randolph (D-W. Va.) estimates that the nation

is squandering from 30 to 40 per cent of its basic energy resources.

Another estimate puts the waste at 25 per cent a year.

John Muller, a researcher in the Interior Department's Office of Energy Conservation, says that "if this were a dictatorship and we could somehow control how people waste energy, we could save from two to three million barrels of oil a day." That would be a fifth of the 15 million barrels Americans consume each day.

There are anecdotes aplenty to illustrate the wastes. The New York City World Trade Center, for example, uses more energy for its heating, lighting and cooling than is needed for the entire upstate city of Schenectady, with 100,000 residents.

Beyond anecdotes, however, there is little in the way of official data to suggest what the magnitude of the waste is or where fuels are being wasted. The President's new Office of Energy Policy, created to coordinate the nation's response to the crisis, has no comprehensive numbers on the subject. The Office of Energy Conservation, where prime responsibility in the area resides, has only an admittedly tentative set of estimates.

Perhaps the single best index of where and how much fuel is being unnecessarily burned is a recent study conducted by an independent energy consultant for the Treasury Department. The department requested a list of emergency actions that could be quickly taken to reduce significantly fuel consumption.

The study found that through eight relatively easy, uncostly and quick conservation measures, about 2 million barrels of oil a day could be saved.

The eight emergency measures are:

Reducing speed limits to 50 miles per hour for passenger cars—150,000 barrels a day.

Increasing load factors on commercial aircraft from 50 per cent to 70 per cent—80,000 barrels a day.

Setting home thermostats two degrees lower than average—50,000 barrels a day.

Conservation measures in industry—500,000 barrels a day.

Cease hot water laundering of clothes—300,000 barrels a day.

Mandatory car tune-ups every six months—200,000 barrels a day.

Conservation measures in commercial buildings (fans off at night, air conditioning only during office hours, installation of proper window insulation)—200,000 barrels a day.

Increasing car pools for job commuting (from 1.3 to 2.3 persons per car)—200,000 barrels a day.

The figures attached to each of the conservation measures are the lowest estimated savings. In fact, the study found that about 2 million barrels a day could be saved and, possibly, another million barrels a day beyond that.

These eight steps are but the tip of the potential conservation iceberg, according to energy researcher Muller. He keeps a notebook filled with some 250 energy conservation measures, which he says are the "product of just one man's thinking. If five or six of us sat down, we could come up with a much larger list."

In the field of agriculture, he suggests slowing down the speed of tractor engines when they are not running and requiring farmers to adopt reduced tillage farming. In industry, where over 41 per cent of America's energy is consumed, he thinks energy consumption can be reduced by 10 per cent through "improved operating practices and minor changes in plants, involving little or no cost."

Dr. Jack Rafuse, a staffer in the new Office of Energy Policy, considers that estimate conservative. He says energy conservation teams have found that "though almost zero-cost kinds of things, industries can save 40 per cent of their plant fuel without affecting energy output at all."

If the 40 per cent savings could be taken as an industry-wide average and if every industry in the nation were to undertake similar measures, simple mathematics would show an astounding result: About 16 per cent of all the energy expended in America each year could be saved. This is in the industrial sector alone—and at "almost zero-cost."

If one were to list the villains of energy waste, three would probably stand out as most notorious: Automobiles, commercial America and the homes we live in.

Today's standard American car travels between 11 and 12 miles on a gallon of gasoline, not as far as it did 50 years ago. The nation's 1974 model autos average about 4,400 pounds—35 per cent more than the foreign makes tested in a recent Environmental Protection Agency (EPA) study.

Weight, the EPA says, is the single best index of expected miles per gallon, and it is not surprising that foreign makes averaged about six miles per gallon or nearly 37 per cent more than American autos tested by the EPA.

One study, conducted for the U.S. Army Tank-Automotive Command last year, estimated a 30 per cent potential fuel savings through a shift to smaller cars.

Although the law of diminishing returns begins to set in at a certain point, energy watchers say that by requiring tune-ups, imposing 50 or 55 mile-per-hour speed limits, putting fewer horses under the hoods and eliminating gas-eating extras like air conditioners, we could cut gasoline consumption in half.

Aside from these savings, a panel of General Motors, Ford and International Harvester engineers has reported that by requiring radial tires on all autos, fuel consumption could be cut by 10 per cent; by installing engine turbo-chargers it could drop another 10 to 15 per cent.

Conservation hurts most when it hits a person's home. And it is in the home where much of the waste is happening.

Energy specialist Muller estimates, for example, that if we threw away our dishwashers—or were required to wash dishes by hand—we could save 35,000 barrels of fuel a day. If during the summer we were to dry clothes on a line instead of in an automatic dryer, the savings would amount to 130,000 barrels a day.

"The little things," he says, "add up. But the little things hurt most."

A big drop in the conservation bucket, he says, would be to insulate the attics of those existing homes that are without it—Savings of perhaps 250,000 barrels of fuel a day.

The Michigan Consolidated Gas Co., in an effort to promote conservation of natural gas, has offered its customers loans to insulate their homes. The result, said President Hugh C. Daly, could be a savings of six billion cubic feet of gas annually if 200,000 customers sign up. "That's $9 million . . . that our customers won't have to pay," he said.

Other home energy savings in the Muller conservation notebook: Get rid of decorative outside lighting; weather strip and caulk all houses; service inefficient burners and furnaces; promote cold water washing of clothes; shut off furnace pilots in the summer.

"These are things that ought to be done as course," an environmentalist says. "They save money, they save fuel. Americans, unfortunately, are energy hogs."

Aside from hoggishness, however, is the problem of outright inefficiency. Six per cent of electricity produced in the United States in 1970, for example, was used to heat homes, despite the fact that electric heat is half as productive as oil or gas heat. Still, electric heat is a growing trend. About 25 per cent of the 40,000 buildings constructed in 1959 were heated electrically. It is cheap to install, it is clean, it is considered modern and esthetically pleasing—but it is wasteful.

Commercial America, with its glittering neon billboards and lighted shop windows, is a third major waster of now-precious energy. Muller's notebook lists some 28 methods of conservation that could be applied at low cost to the nation's commerce:

Rescheduling night sporting events for daylight hours; installation of a second set of doors at lobby entrances to help keep out outside air; shutting down 24-hour-a-day electric advertising signs; turning off air-conditioners at 3 p.m.; putting an immediate stop to the construction of glass walled skyscrapers that lose heat nearly as fast as it can be pumped in.

Yet in the end, what is waste and what is "necessary luxury" is the key to conservation. What an energy conservationist sees as waste, housewife with a stack of dishes and a crying baby and a new dishwasher sees as a necessity. Until these attitudes change—until the fuel crisis leaves a gash on the American consciousness—the potential savings are likely to remain largely theoretical.

ARCHIE BUNKER HAS PROBLEMS WITH OLDER AMERICANS

Mr. CHURCH. Mr. President, with an audience of perhaps 45 million persons, the "All in the Family" television series has made a powerful statement on problems of older Americans.

In the episode of September 29, Archie Bunker reacted negatively—as he does toward so many other groups—toward the elderly citizens of this Nation.

Mr. Bunker was confronted by an 82-year-old man who had "busted out" of an old person's home because he was so thoroughly bored. Archie's wife, Edith, saw the old man through a grocery store window and, what else, invited him home.

Archie could not understand such hospitality. What is more, he did not like to be reminded that someday, almost before he knew it, he would become old, too.

Within less than half an hour the "All in the Family" show commented on such matters as the special impact of high food costs upon the elderly, the fact that medicare covers only 42 percent of the health care costs of older Americans, and the fact that the average social security benefit is less than the official poverty level.

In addition, the program depicted the old man's daughter as a complete ingrate who would not even answer the telephone when she heard her father wanted to speak to her. Many sons and daughters unfortunately feel that way about parents, even though many others undergo severe financial hardship to help their mothers and fathers through difficult periods, including the illness costs that medicare does not pay for.

At any rate, the "All in the Family" show made many of the points which the Senate Committee on Aging and I, as its chairman, attempt to make in reports and speeches.

Furthermore, in spite of all the problems it dealt with, the show presented the old man as a lively, bright, and attractive person. He was as much an individual in old age as he was throughout his earlier life. It reminded us, or should remind us, that the elderly of our Nation cannot be forgotten or patronized.

That kind of message is well worth delivering. To producer Norman Lear and all his associates—and in particular to Mr. Carroll O'Connor for his consistently fine performance as Archie—I would like to extend heartfelt appreciation for helping us to see the world through Archie Bunker's eyes and for helping understand why he is so often wrong.

INTERSTATE LAND SALES

Mr. HARTKE. Mr. President, my attention has recently been focused on the apparent failure of the Interstate Land Sales Act of 1968 to halt the grave misuse of the public trust by certain salesmen in the interstate land sales industry. An article by Paul Friggens which appeared in the Reader's Digest brings the problem into a clearer perspective. It points out the need for my bill, S. 1753, the Interstate Lands Sales Act amendments.

Mr. President, I ask unanimous consent that this article be printed in the RECORD for the purpose of informing the Senate about this problem.

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

LAND SWINDLES: A CON GAME TO BEWARE OF

(By Paul Friggens)

(Note.—From coast to coast, dishonest land developers have made a fine art—and a billion-dollar business—out of promising paradise. The result, all too often, is shattered dreams and empty bank accounts.)

Have you ever received a phone call from a mysterious female whose mellifluous voice invites you and your spouse to free drinks, a gala dinner, a movie—and "a chance to show you our wonderful new way of life, where you can get away from it all in the recreation community of tomorrow"?

Is your mail flooded with fancy color brochures, pressing you to invest in a vacation or retirement home where you can enjoy "country-club living"?

Have you been tempted by full-page newspaper and magazine ads offering an "all-expense flight" to tour the latest multimillion-dollar development "out where the fun begins"?

Chances are you've been approached in some such manner; it happens, every week, to thousands of Americans. We are witnessing a national phenomenon—the biggest, brashest real-estate boom in recent U.S. history. From coast to coast, enterprising developers are cashing in on a ready-made market in four major areas: recreation sites, second homes, retirement homes and raw-land investment. Authorities estimate that the current boom involves as many as 10,000 developments, and that each year undeveloped land is being sold for upward of $6 billion.

Much of this phenomenal development is legitimate. Sadly, much of it also thrives on massive misrepresentation, if not on outright fraud. Says George K. Bernstein, Administrator of the Office of Interstate Land Sales Registration (OILSR) in Washington, D.C.: "Thousands of people are misled or cheated every week, and the abuses extend to every part of the country."

Tragic Testimony. In order to register and ride herd on the growing horde of developers, Congress established OILSR in 1968. In public hearings held by this agency in cities around the country, the testimony of honest, if gullible, victims has often been appalling. Some examples:

A retired machine-shop worker told reporters after testifying at a Seattle hearing that he and his wife had sunk $6,000 into Texas and New Mexico properties after being wined and dined at a Renton, Wash., sales dinner. "We really couldn't afford to buy," he recalled. "But they kept saying, 'You want to make money, don't you?' Finally, we made a deal for six lots. They said they would lease the lots to apartment builders for $225 a month each, and that the income would help pay off our loan. But they never came through." Added the man's wife, "We still owe an additonal $10,000, and the company warns us to keep on paying or we'll lose everything."

An elderly widow at a packed Phoenix, Ariz., hearing told of paying $2,900 for a desert lot on the promise of quick profits. Only days after the sale was made, the salesman was back pushing a second deal. "But I can't invest any more," the woman pleaded. "I've exhausted my savings and, besides, I need $900 to buy a used car."

"That's easy," said the fast-talking salesman. "Buy two more lots. Within six months, I guarantee you a profit of $300 on each of your three lots—and there's the price of your car." Convinced, the woman borrowed $3,500 to purchase the additional lots. Six months later, she learned that the salesman had vanished and that she was stuck with a patch of desert—and a fat debt.

Vacationing two summers ago in New Orleans, the William F. Fraccos of Clarendon Hills, Ill., were buttonholed in the French Quarter by a slick salesman. They were offered a free lunch and a tour of the city if they would listen to a land-sales presentation. Quite a presentation it was.

Some months before the Fraccaros' visit to New Orleans, the multimillion-dollar McCulloch Corporation had bought England's famed London Bridge and rebuilt it with great publicity at Lake Havasu City in western Arizona. Carved out of the desert, the city of 10,000 beside the Colorado River was a developer's dream, and wholly legitimate. But almost simultaneously, on 12,800 barren acres about 40 miles away, another development had sprung up with an almost identical name—Lake Havasu Estates. After erecting a portable sales office and bulldozing a few dirt "streets" through a cactus-covered area where utilities, water-supply and sewage disposal systems are not generally available, the promoters of Lake Havasu Estates had begun selling lots sight unseen all over the United States—including New Orleans.

"Salesmen led us to believe," testified the Fraccaros, "that we were dealing with the McCulloch Corporation, and that Lake Havasu Estates was responsible for bringing London Bridge to Arizona." For only $3395, plus finance charges, the Fraccaros were told, they could own 1¼ acres. Convinced, they put $165 down and agreed to pay $57.29 a month for seven years after which they would acquire a deed.

Returning home, the couple read a bona-fide McCulloch ad in a Chicago newspaper, and recognized their mistake. Too late. They are now out $500 for their Arizona inspection trip, plus sizable lawyer fees at $40 per hour, and thus far have failed to recover the $738 they had invested before stopping payment.

Unhappily, such brazen misrepresentation is common throughout the country. Some purchasers find their land under water, as did the Detroit couple who discovered that their Florida lot was located in the Everglades and infested with cotton-mouth snakes. Still others, badly, misled, buy in a flood plain, landslide area or location prone to forest fires. "The fact is," Arizona Congressman Morris K. Udall testified at Phoenix, "that without such things as high-pressure salesmanship, cocktail parties and free toasters, nobody in his right mind would buy one of these lots." Bitter and disillusioned, many buyers kiss the money they have already paid—maybe their life savings—good-by. Frequenty, their lots are then resold—"some as many as eight times," it was testified at the federal hearings.

Out in the Cold. The high-pressure salesmen usually work on commission only—they don't eat if they don't sell—so they're apt to exaggerate the facts about a subdivision or lot. *Orally*, they will promise anything, and then rely on the fine print to cover them. For instance, they may speak glowingly of "immediate" improvements—streets, water, power, etc.—or even of refunds for buyers who aren't satisfied. What they don't say is that developers may not be required to provide the improvements for ten years after purchase, by which time they may have gone bankrupt or fled the country. And unless refunds are promised in print, they are almost never paid.

Another frequent practice, which some buyers may not fully comprehend, is selling on a "contract for deed." One of the industry's major attractions is that the little fellow can pay for his land in installments. However, the average purchaser may not be aware that he acquires an actual, recordable title only after he has made his *final* payment—perhaps five or ten years after purchase. He can make installment payments for years, but if he has no clear title, and if the promoter disappears or goes bankrupt, he loses everything. And in many deals the buyer is *never* given a recordable deed or clear title, even after he has completed his payments.

Says Keith Koske, director of the Colorado Real Estate Commission: "I have seen retired couples come to Colorado to locate their homesite, only to discover that, in place of a clear title to a specific lot, they actually owned *one six-thousandth* of an undivided interest in an entire section—640 acres—of land. Still others have found that their interest in the land had been foreclosed by the owner of a blanket mortgage."

Some spurious promoters acquire land with a small down payment, then mortgage the whole development and appropriate the income from land sales instead of making interest payments. By the time they are foreclosed, the promoters have disappeared. The innocent buyer is, of course, left out in the cold.

When real-estate con men can't get their way by subtle misrepresentation, they often turn to outright fraud. For example, a phony New England developer, Charles Geotis, alias Endicott, sold off at public auctions—and at fancy prices—hundreds of acres of "lovely Maine woodland." But the land simply never existed! At a Geotis real-estate auction in a posh New York City hotel, land-registration and state officials walked in, sent 400 prospects packing and stopped the sale. Convicted of postal fraud, credit-card fraud and failure to register with OILSR, Geotis was sentenced to two years in prison and jailed in September 1972. Authorities estimate that he had swindled over $1 million, and that his conviction probably saved the public several millions more.

Needed: Action. What is being done about these shameless swindles? Not much. To date, the government has registered some 4800 developments out of an estimated 10,000. It has prosecuted a handful of dishonest developers, has been directly responsible for the recovery of about $1 million for unhappy purchasers, and has warned some 450 operators that they are violating the Interstate Land Sales Full Disclosure Act. But OILSR is simply too small to cope with the problem. With only 16 investigators, it must handle more than 1000 consumer inquiries and complaints per month, involving millions of acres in all 50 states. Not surprisingly, the agency is currently six to eight weeks behind merely in acknowledging complaints, let alone investigating them. OILSR is and will likely remain primarily a registration and disclosure agency, not a regulatory arm of the federal government.

How then can the naked investor be protected? Says administrator Bernstein: "The federal act can never be fully effective, and the consumer canot be considered adequately protected, until the states play a more effective role in the regulation of interstate land sales."

Speaking recently before a meeting of real-estate licensing officials in Las Vegas, Bernstein called for greater uniformity and simplification of state laws regulating interstate land sales. Among specific proposals, he urged that the states strengthen subdivision controls by initiating mandatory inspection and approval of plots, roads, water supply, utilities and other improvements at the county or state level; that developers be required by the states to show financial ability to complete facilities as promised, either by posting a performance bond or by setting up escrow funds; that state licensing and strict regulation of salesmen be established.

Meanwhile, what can you do as an *individual* to protect yourself? According to John R. McDowell, OILSR's deputy administrator, you should take the following steps before you buy:

First, ask the salesman to show you a federal property report, which is required of all developers by law. Take it home and *study* it. This report should disclose every important factor affecting the offered land: such things as title, nature of the land and surroundings, kinds of facilities to be provided, liens, water and sewer restrictions. Under federal law, a buyer may void his purchase *and* get his money back if he is not given a copy of the property report. And remember that the law also provides a 48-hour "cooling-off" period during which you may cancel your agreement. Be on the lookout for a *waiver* of this right, which is frequently—and legally—included in contracts for on-site sales.

Second, show your lawyer the sales contract before you sign *anything.* If you still have questions after obtaining legal advice, write to OILSR for a free bulletin which defines your legal rights.

Third, never buy sight unseen. Go to the land. Better to pay travel expenses, and know what you are buying, than to lose your life savings.

BRAZIL: 9 YEARS OF MILITARY TUTELAGE AND AMERICAN AID

Mr. CHURCH. Mr. President, the U.S. foreign aid program has distorted our foreign policy and committed us to ruling regimes totally contrary to our traditional values of civil liberties and human rights.

Brazil, since 1964, has frequently been cited by American AID proponents as an example of the kind of "progress" a country can achieve when it puts its economic house in order, assisted by the U.S. Government. Brazil, since 1964, is, for sure, an example of the willing support the U.S. Government stands ready to give a governing elite that offers "a favorable investment climate" at the expense of human rights. Even Brazil's President, General Medici made this point in 1970 when he said:

> Brazil is doing very well, but the people are doing poorly.

Prof. Brady Tyson, of American University, has written a thoughtful analysis on the result of 9 years of Brazil under the tutelage of the military junta, aided by American assistance. I ask unanimous consent that his article in the July 1973 Worldview be printed in the RECORD.

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

BRAZIL: 9 YEARS OF MILITARY TUTELAGE

(By Brady Tyson)

The "Brazilian Model of Development" has been the subject of a good deal of comment and analysis during the past few years. Some of those who once looked with hope upon the experiments of the "democratic left" of the fifties as a potential viable and dynamic alternative to Communist and totalitarian models for less developed countries have now begun to consider that the "modernizing military managers" might offer a more relevant model. Indeed, current interest seems to be in comparing the Chilean and Brazilian models in terms of social and human cost and benefit, though it is certainly too early for any conclusive judgments of net results in either case.

This is an interim, summary and provisional judgment on the Brazilian experiment of the past nine years, that is, since the military took power on April 1, 1964. To try to give an impression of the results of the interaction among the values of political democracy, equality and economic growth, and the present levels compared with those of 1964, as well as what appear to be the trends, I have chosen six "indicators":

1. The autonomy and integrity of the legal system
2. Torture and police brutality
3. Freedom of the mass media
4. Income distribution patterns
5. Education distribution patterns
6. The quality of life of the people of the city of greater São Paulo.

Many of the results and trends are not entirely the result or the intention of the military regime, and conclusions as to cause and effect in some fields are necessarily very tentative. By way of conclusions I have offered four questions that are of general concern and are also important in considering the Brazilian case in particular.

THE AUTONOMY AND INTEGRITY OF THE LEGAL SYSTEM

Through the legal system many areas of "human rights" are defined and, to some degree, "operationalized." A legal system that could offer an orderly and equitable process for resolving disputes, that could protect society from persistent antisocial behavior and protect the legal rights of individuals and groups against intrusions by public and private groups has never been even a near reality in Brazil. Recourse to law and the courts has always in effect been denied the great majority of the poor and illiterate, not only because of their lack of resources, but through informal systems of intimidation and social control. Nonetheless, granting all the weaknesses of the pre-1964 legal system in Brazil, there did exist a vigorous tradition of law, a popular belief that the legal system did exist to promote the general welfare and to protect human rights and dignity, and a belief that this legal system could and should be respected and strengthened. This legal system, which was overthrown by the military in 1964—and its remnants steadily eroded since then—was rooted in the same political philosophy and values as those of most of the rest of Western nations.

From the first week of military rule the Brazilian army declared itself not only above the law but the source of law, and has in practice been the interpreter of law and the only official expression of the sovereign will of the nation. The Prologue to the First Institutional Act of April 9, 1964, declares: "The victorious revolution vests the constitutive power in the Army. This is the most expressive and radical form of the constitutive power. The victorious revolution as the constitutive power legitimizes itself. . . . This Institutional Act can be issued only by the victorious revolution as represented by the Commanders in Chief of the Armed Forces. . . . [Only the revolution] is empowered to establish the ways and means of constituting the new government and vesting in it the power and judicial instruments necessary. . . ."

More than eight years later, in July 1972, President-General Medici gave an important speech in which be tried to lay to rest certian rumors of an impending liberalization of the regime. He said, among other things: "The current regime will modify and correct, in a permanent process of institutionalization, the guidelines of our juridical order in order that they will faithfully carry out the objectives of the political decision of March 31, 1964." *Visão,* a Brazilian newsweekly, commented on the speech: "The insistence on the extraordinary powers [of the executive] is not being made now in the face of some crisis, in which representative democracy is seen as threatened by its enemies of the extreme left. It is made in the name of an antiliberal doctrine of the role of the State. For this reason, the speech of the President, of a known ideological inspiration, ought to please those groups that, in other times, sought to replace representative democracy with a corporatist regime."

In an unpublished paper on "The Role and Rule of Law in Post-1964 Brazil," Professors Trubek and Henry Steiner conclude that "The politicization of legal institutions and processes has surely lessened the 'legitimacy' of law in the public eye. 'Law' must be perceived by many Brazilians ever more clearly as an instrument of state planning and state power, hardly as a structure of norms and institutions that are designed to afford a degree of predictability and security in private life, and to protect areas of private life from governmental interference. Law at once structures the evolving regulatory and administrative state, and loses its identity into administration." Professors Trubek and Steiner also conclude that ". . . a decline in the autonomy, integrity and thus inherent legitimacy of the legal system has been one of the prices paid by the regime for economic growth within a closed society," and that the purpose of the legal system has been radically changed so that, coupled with the activities of the police and military security agencies, law has become an integral part of a system designed to "make potential opponents of the regime fearful of acting in any way that might lead to midnight arrest, etc."

Since 1964, then, an authoritarian government has tended to rule more and more by administrative fiat, in arbitrary and even secret ways. The legal system has thus largely ceased to be a system designed to promote and protect human rights and welfare and has become an instrument of national policy, as arbitrarily decided by the President or his appointees.

TORTURE AND POLICE BRUTALITY IN BRAZIL SINCE 1964

Like most nations with a history of small but prosperous minorities profiting from the misery of the poor majority, Brazil has traditionally used police repression and brutality as a means of social control. Peasants and poor and illiterate or semi-literate people in general have always been subject to arbitrary and brutal behavior on the part of the police. However, except for a few highly repressive years of the *Estado Novo* of Getulio Vargas, political dissenters or those of the middle and upper classes were rarely treated harshly.

Since 1964, however, two important changes from traditional Brazilian practice have been institutionalized. First, political dissent, if coupled with anything that appears to be clandestine or mobilization, has become the instant object of police brutality, regardless of the social class, reputation or profession of the persons suspected. For instance, according to the best information available, the well-known ex-Federal Deputy, Rubem Paiva, was literally beaten to death by police in January, 1971. Secondly,

as distinguished from mere police brutality systematic, officially sanctioned scientific torture has become a common and regular practice in Brazil, especially since late 1968. It is almost totally limited now to several military security agencies.

In spite of the absence of certainty, given the nature of the problem, we can with reasonable assurance give some statistical dimentions. Probably between 40 and 120 people have been beaten to death, tortured to death or died in prison from some such treatment since 1964, the great majority of them since 1968. The practice has continued into this very year. If anything, though the rate of torture probably began to decline last year, the number of deaths is increasing. This number does not include the estimated 200 to 300 people killed by the so-called "Death Squads," usually off-duty policemen, during the past ten years. There have probably been over 20,000 people detained at one time or another for political reasons since 1964. There are probably about 1,000 political prisoners in Brazilian jails at this time, and the high was probably in November, 1970, when there were perhaps near to 12,000. About 2,000 have been the victims of what is usually called "police brutality," but which I am distinguishing from systematic torture.

The number of people tortured and beaten is not large compared with other, recent epidemics of state savagery. What is significant is that the Brazilian army has institutionalized and protected torture and brutality as instruments of social control and that such methods have, and are intended to have, far-reaching consequences of intimidation.

FREEDOM OF THE MASS MEDIA SINCE 1964

Censorship is important because it is a means of social control for governments that are governing against the will of the majority of the nation in question, and the presence and degree of censorship, along with police repression, present at least the presumption that the government is afraid of the consequences of the free press and media and has something to hide. Given the narrow literacy base compared to most nations its size, the Brazilian media have in times past exercised a considerable influence and have been the means of communicating most political information, at least about the national political system. With the exception of the most difficult days of the Estado Novo, the Brazilian press was remarkably free and uninhibited.

Beginning in 1964 a process of steadily increasing pressure, both formal and informal, has continually narrowed the scope of permissible subjects for discussion in the media. This process has had its periods of greater and less pressure, but the general tendency is clear. As Professor Beverly May Carl has written in a recent article on "The Erosion of Constitutional Rights of Political Offenders in Brazil," "A review of the rights still available to the common criminal . . . shows that, technically at least, an armed robber in Brazil today is in a better position than an editorial writer." What has emerged is a code of rules promulgated by the government that give it some sort of "legal" justification for almost any act of prepublication or postpublication censorship imaginable. The Brazilian press is not completely muzzled: far from it. But it is closely watched, and there are no more than five or six newspapers or magazines in Brazil today that dare to use the remaining freedom to criticize. The rule of thumb seems to be that subjects that irritate the generals or that might excite large numbers of people are proscribed.

INCOME DISTRIBUTION PATTERNS AND TRENDS IN BRAZIL SINCE 1964

Though income distribution patterns are certainly not entirely susceptible to government planning and policy, the Brazilian government has attempted to realize a conscious mode. The level of income and share of national income various groups receive tell much about their welfare, opportunities, status and self-esteem. Furthermore, the nature of the "Brazilian economic miracle" is vitally linked with the patterns of income reconcentration that have become characteristic of Brazil since 1967.

In 1960 Brazilian income was distributed much like that of the United States in about 1929, except that the per capita GNP of the U.S. was about five or six times that of Brazil. But whereas the United States has shown a slow tendency toward more equal distribution, the rapid economic growth that has been characteristic of Brazil since 1967 (averaging about 7 per cent per year, after discounting for the growth in population) has been accompanied by a "reconcentration" of wealth in the upper strata of society. For instance, in 1960 the poorest 40 per cent of the Brazilian population received about 11.57 per cent of the national income, but according to the statistics of the most recent research, this fell to 10 per cent by 1970. On the other hand, the richest 10 per cent had received 39.66 per cent of the national income in 1960, but had increased its share to 47.79 per cent by 1970.

Though the interpretation and adequacy of the statistics is always open to some doubts, it seems reasonable to assume that the real purchasing power of only 30 to 40 per cent of the population has actually increased during the past ten years and that the bulk of the increase in consumer purchasing power has been concentrated in the upper 10 per cent of the population. Likewise, it is reasonable to assert that the proportionate share of the national income has actually decreased for all but the upper 10 per cent. When all is taken into account—and there are many contradictory indicators—probably less than 30 per cent of the Brazilian people have profited from the economic growth, about 20 to 25 per cent have suffered some decline in their real wages, and the rest of the population (perhaps 50 per cent) remain in the level of "absolute poverty." Almost all analysts agree that the real minimum salary in 1970 was about 30 to 38 per cent lower than it was in 1960. There are some indicators that the drift downward of the real wages of the urban workers may have been slowed or even, in some areas, stopped during the past two years, but the data are still too tentative to draw firm conclusions.

The process of economic growth that has characterized the Brazilian economy, espeially since 1967, and that has been so warmly received by the multinational corporations, has tended to increase rather than decrease the distance between the "two Brazils": the poor majority of about 70,000,000 people and the relatively prosperous, modernizing sector of 30,000,000 or less people. It is difficult to know exactly whether this decline in proportionate share of national income has been accompanied by an absolute decline in living standard, or whether the living standard has remained essentially the same, or whether there has been a small increase for some of the lower 70 per cent of the population.

Two other aspects of the process of economic growth in Brazil must be at least mentioned. First, the emphasis of this growth has been on durable consumer goods (which must be considered "luxury goods" in a nation such as Brazil—goods such as refrigerators, private automobiles, electric toasters, TV sets, etc.) and manufactured goods for export. In other words, the increase in domestic consumption has been very largely limited to the upper 20 to 30 per cent of the population, and there has not been a significant increase in the production of perishable consumer goods (clothes, processed foods, etc), goods that might have improved the quality of life of the lower 70 per cent of the Brazilian population. Secondly, the Brazilian government has affirmed (at the Stockholm Conference) that industrial pollution is not a significant concern for developing nations at this time, and, in truth, there are no stringent pollution regulations in Brazil as yet. This means that the rapid expansion of industrial production in the city of São Paulo, for instance, has been accompanied by a consequent decline in the quality of the environment.

EDUCATION DISTRIBUTION PATTERNS AND TRENDS IN BRAZIL SINCE 1964

Educational opportunities are generally regarded as an indication of general equality of opportunity and social equality. The Brazilian army has always shown an interest in education, albeit in particular kinds of education, and has placed some emphasis on improving and expanding the educational system. Almost since the founding of the republic (in 1889) Brazil has entertained two strong but basically incompatible theories of education: First, a traditional, Iberian élitist concept that only an aristocratic élite really needs much education and that the system should be presided over by a few traditional intellectuals in the small universities that maintain and transmit the values and civilization of the past; second, a positivist concept of education and training for everyone, reenforced by North American liberal (John Dewey) concepts of popular education for citizenship. The Brazilian army, building on its traditional positivist attitudes, has adapted for the purposes of national development (as it understands what development is) the concept that an educational system should be designed to provide the number and types of skills and knowledge needed at a particular time for the process of national modernization.

There has been a steady decline of illiteracy in Brazil each year for over twenty-five years, from 47.4 per cent literate in 1946 to 61.5 per cent literate in 1970. It is not possible at this time to evaluate the impact of the present government's adult literacy program, *Mobral*, on the educational profile of Brazil, except to comment that in content it represents what Paulo Freire would call a "domesticating" approach, inculcating in a catechetical way a simple but rigid concept of patriotism and citizenship. In other words, it is not designed to create a critical citizenry, whatever its technical competence or final impact in teaching literacy on Brazilian society.

In keeping with the kind of economic system sought, priorities in education have been assigned to training those workers, managers and technicians who can operate a technically sophisticated, capital and technology intensive modern industrial plant designed to produce the diverse and sophisticated products of a middle- and upper-class market. At the same time that the number of Brazilians who are economically active has dropped and the productivity per worker has increased, the average level of education has increased, especially among those in the industrial sector. Again, some tendency toward a modernized version of a dual society is evident.

According to recently released statistics of the Ministry of Planning, there has been a 56 per cent increase in enrollment in primary schools since 1964 (but there has also been an increase of probably 20 to 25 per cent in the age group). But during the same period enrollment in secondary schools increased 208 per cent, with approximately the same increase in the age group, and, most significantly, enrollments in institutions of higher education have increased an amazing 460 per cent (from 124,000 university students in 1963 to 694,000 in 1972). In other words, the concentration of income in the upper 20 to 30 per cent of the population has been

accompanied by the concentration of years-of-education in the same group, and the distance between the educated minority and the uneducated majority has been increased, not decreased, by the government's application of resources.

THE QUALITY OF LIFE OF THE PEOPLE OF THE CITY OF GREATER SÃO PAULO SINCE 1964

There are probably more and better statistics on this area than on Brazil as a whole, and the analysis of this data provides some sort of check on national accounts. The city of São Paulo and the south of Brazil in general are often looked upon as the chief beneficiary of the process of economic growth in Brazil. This economic growth is often used to justify the imposition of a repressive and authoritarian regime and to justify the claims that the present government is very popular with the Brazilian people, who are supposedly sharing in the largesse of economic growth. It ought to be possible to verify these claims to some degree by looking at this "fastest growing city" in the world, the heart of the Brazilian industrial boom and the center of the richest part of Brazil.

Far less than any of the other indicators in this series can the present situation of the city of São Paulo be considered an intentional outcome of government plans and programs. The problems of urban sprawl, decay and inadequate human support systems are worldwide and are bound to be more acute in a city as large and as fast growing as São Paulo. Nonetheless, the policies of the present government have had the effect of exacerbating all the problems of this city. Such policies as the priority given (though this is to be modified this year) to middle-class housing at the expense of low-cost housing, the tremendous investment in freeway construction in a ctiy that already has more automobiles than any other city in the world except Los Angeles, in encouraging the rapid expansion of the industrial plant without any significant regulations against pollution (thus creating a smog problem already worse than Chicgao's), and, most importantly, the wage-and-price policies and controls that have been designed to concentrate wealth in the upper strata of society and to extract the savings necessary for industrial expansion from the urban workers—such policies have all contributed significantly to a quite obvious situation, even though it appears to contradict somewhat some of the statistics above. That fact is that the majority of the people of São Paulo have suffered a significant decline in the quality and standard of life during the past ten years, even though statistics show that their average purchasing power has risen.

Because the channels of expression, such as labor unions, the press, free elections, etc., of popular dissatisfaction—never very satisfactory—have been silenced, the decline in welfare of the majority of the people of São Paulo has not been adequately noticed. Last October, when the newspapers published studies showing that the rate of infant mortality in the city of São Paulo was continuing to rise and that for the first time since records have been kept was about 90 infant deaths per 1,000 live births in 1972, many people were shocked. Such an infant mortality rate should not be surprising in a city of about 9,000,000 people, growing at the rate of nearly 500,000 people per year, in which 48.5 per cent of the people live in substandard housing, 60 per cent of the people are not served by a sewage system and 35 per cent do not have running water.

Even though the per capita monthly income of the city of São Paulo is about $70, which is considerably higher than the average for the whole of Brazil (which is between $40 and $45), almost half (49.1 per cent) of the people of São Paulo have a per capita monthly income of $35 or less, or about $175 or less per family. Sixteen and nine-tenths per cent of the families of São Paulo have a monthly income of $70 or less, or $14 per capita per month, or about $170 per year. Real wages in São Paulo for industrial workers dropped over 30 per cent from 1965 until 1971, though there has been a small recovery since. In 1971 it took a worker on minimum salary 113 hours and 26 minutes to earn sufficient buying power to buy his own minimum diet for a month, as determined by the official standards of minimum nutrition, whereas in 1965 it took a worker on minimum salary only 87 hours and 20 minutes to do the same.

São Paulo is a "sick city," according to the newspaper *O Estado de São Paulo*. The Archbishop of São Paulo, Cardinal Arns, said last year that the people of the city live "in distress, full of tension and increasing neurosis because of the crime rate." There were 3,750 robberies and assaults in 1968, 7,750 in 1970 and 11,400 in 1971. These are not indications of a rising standard of living. So, in spite of the aggregate statistics and their per capita averages, there are significant indications that the majority of the people of São Paulo have probably experienced a decline in their standard of living, their purchasing power, a deterioration in the urban support systems and environment—in sum, a deterioration in the quality of life during the past ten years. Even though, given its growth rates and the low estate of urban planning and administration all over the world, some decline might have happened under any government, the question before us is whether or not the policies of the present government and its encouragement of the expansion of the consumer market of the middle and upper classes has not contributed substantially to this decline.

São Paulo is a booming city, with perhaps up to 40 per cent of its population enjoying a rapidly rising standard of living, but with the rest of its population participating only marginally in this expansion and paying a high cost as a result of a policy of not-so-benign neglect. The city of São Paulo is a Westchester County set in the middle of a Calcutta. High-rise, luxury apartment house buildings, with built-in mini-quarters for two or three domestic servants, expansive urban freeways, luxury boutiques, its own jet set, its own jockey clubs, country clubs, private and very expensive luncheon clubs for executives, coexist peacefully—given the extensive repressive system—with the quiet misery of over half of the population. And the pattern repeats itself, the gap between the two São Paulos widens.

SUMMARY

Slowly and haltingly at first, and recently more rapidly and with more certainty, the Brazilian army has moved to remake the nation over in its own self-image. This has involved a flexible and complicated series of steps and phases, like a prolonged military campaign, with changes of allies now and then and different immediate objectives and tactics for different phases. In the long run the Brazilian army (if we can imagine it has a composite will and attitude) desires a modern, efficient, harmonious, unified, tranquil, prosperous, as nearly autonomous as possible, productive, strong, internationally respected Brazil. To achieve these goals they have over the first nine years of their rule chosen policies designed to stimulate the concentration of capital in the middle and upper classes, promoted the production of goods for export and luxury items for domestic consumption and the attraction of foreign capital.

Because the social and human costs of these policies have been, and remain, high, as well as because the army probably has some built-in antipathy to the untidiness and tensions of public, free debate of national policies and is distrustful of initiatives from below, the army has had to become increasingly repressive and to assume more and more power during the same period in order to maintain the stability that it values and avoid the aggregation of the dissenting groups that it fears. Though a minority of about 20 to 30 per cent of the Brazilian people have profited materially from this process, the great majority of the nation has either been relatively unaffected (because their situation was, and remains, marginal to modernizing Brazil) or, in the case of the great majority of the urban poor and industrial workers, their situation has tended to deteriorate, certainly in terms of their proportionate share of the national income, and almost certainly in terms of their standard of living and quality of life.

Though there have been some signs during the past two years that the deterioration of real wages has been slowed, or perhaps in some cases stabilized at a considerably lower level than in 1965, it is too early for any definitive conclusions on this. The benefits of the economic growth of the past few years have accrued almost entirely to the top 20 to 30 per cent of the population, and this in terms of a greatly expanded and more sophisticated consumer market of durable goods and luxury items.

But even if the Brazilian government can reverse the trend and begin again the tortuous process of redistributing income more equitably rather than reconcentrating it as is now occurring, and thus achieve what has happened to a limited degree in Spain in the past ten years, Brazil still has another massive problem that will not necessarily be affected by even such a radical reversal of present policy. Even if the benefits of economic growth could be more evenly distributed among those already active in the money economy, there remains the nearly 50 per cent of the population who live at best only on the fringes of the money economy at a near-absolute poverty level. The present trend of reconcentration of wealth through the development of a capitalist, consumer economy seems hardly a wise first step toward an adequate standard of living for all Brazilians.

Furthermore, the steadily increasing use of repression and censorship, the utilization of torture and brutality against political dissenters, the debasement of the legal system through the arbitrary use of its channels for administrative purposes, all seem illogical steps if the goal is truly the "redemocratization" of Brazil. It is much more likely that a new form of what might be called a "modernizing, corporate state" dominated by a managerial and social-engineering mentality is beginning to emerge. But until some degree of law and freedom is restored, the government must remain repressive, and may tend to become even more so, and must remain arbitrary and very closed within a very small group because the social tensions generated by the so-called "economic miracle," as well as those generated by political repression and military and police brutality and torture and arbitrariness, cannot be otherwise contained.

President Medici summed up well the situation of human rights and economic growth in Brazil today when he said in 1970. "Brazil is doing very well, but the people are doing poorly." Indeed, the present economic policies of the military government may be far more cruel and far-reaching than the systematic torture of political prisoners it uses to repress and intimidate dissent. The results of the first nine years show clearly that, in the words of Celso Furtado, policies "geared to satisfy the high levels of consumption of a small minority of the population because the social cost of an economic system." The results of this policy are to leave, Furtado continues, ". . . a large majority of the population living at a physiological subsistence level, increasing masses of underemployed people in the urban zones, etc."

The concentration of wealth in the hands of 20 to 30 per cent of the people, and the concentration of political power in the hands of less than 1 per cent of the people, continues, and the maintenance of the pauper-

ism of the great majority of the Brazilian people has become state policy. Though the population is expanding, there is no equivalent increase of Brazilians actively sharing in the market of consumer goods.

Consequently, it would seem that the denial of political liberty and constitutional government has produced no significant gain for the overwhelming majority of the Brazilian people and that the Brazilian army has, perhaps unwittingly and unknowingly, been made the guardian for a dynamic but highly exploitive economic system, favoring a small minority of the nation. Political repression and economic exploitation thus go hand in hand. Brazil is creating a Scandinavian-size consumer economy superimposed on an Indonesian-size pauperized mass, presided over by a cruel and increasingly isolated army.

I would like to pose four questions for consideration, against the backdrop of the past nine years of deterioration of human rights and welfare in Brazil:

First, were the Bishops of the Roman Catholic Church, meeting in their world synod of 1971, correct when they said:

"Unless combatted and overcome by social and political action, the influence of the new industrial and technological order favors the concentration of wealth, power and decision-making in the hands of a small public or private controlling group."

Second, was Radomiro Tomic, former Chilean Ambassador to the United States, correct when he said in a speech in this country in January of this year:

"There is no room for illusions. It is already too late for any Latin American country to emerge from underdevelopment through a production system simultaneously based on capitalism and democracy. . . . It is more than likely that the dilemma imposed by history on the Latin American countries for the remainder of this century will no longer be between capitalism and socialism, but between totalitarian, dictatorial and oppressive socialism, or communitarian, pluralistic and self-managing socialism. Whoever fails to understand this will be working against history and against the essential interests of democracy in Latin America."

Third, was Professor Albert Fishlow correct last March when, referring specifically to the present situation in Brazil, he said in Santiago:

"In the absence of effective and far-reaching alteration in governmental attitudes, there is likely to be little progress and, quite possibly, retrogression in the distribution of income. It is mistaken to view such a result as an unfortunate but inevitable consequence of rapid growth. There is no necessary inconsistency between greater equity and expanding output."

And *lastly,* in their message to President Medici of last December, was the Order of Brazilian Lawyers correct in saying:

"There is not any reason why it is necessary to sacrifice the principles of law upon the altar of development, because the legitimate social and economic progress of the country can only be realized if it is consonant with the principle of a government of law and respect for the fundamental rights of man. If it is true that peace and security are indispensable for development, it is not less true that tranquility and peace do not exist when there is no liberty and no justice."

EEC CHALLENGES THE MULTINATIONAL FIRM

Mr. HARTKE. Mr. President, of the many problems that face governments throughout the world, one of the most important is how to tax multinational corporations. No single state can handle the problem; the power of the multinational corporations lies in the fact that they go beyond the realm of individual states. International cooperation is necessary for any effective control of these giants.

The European Economic Community is now considering various group efforts at solving the problem of taxing the multinational firms. They have recently pointed out that, because most countries have different tax procedures, the international company can easily exploit the differences by concentrating funds in low-tax areas. A recent working paper of the Common Market calls for a "world profit" system of taxation be created to avoid such abuses.

I ask unanimous consent that a recent article from the New York Times be printed in the RECORD. The article deals with new proposals for a European tax strategy for multinational firms.

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

MULTINATIONAL COMPANIES FACING A TAX CHALLENGE

(By Clyde H. Farnsworth)

PARIS, July 23.—Authorities of the Common Market are seeking to put multinational companies under tighter surveillance to narrow their scope for avoiding or reducing taxation in Europe.

A working paper of the European Economic Community's commission (its policy-initiating body of civil servants) singles out taxation as an area where multinational companies are in sharpest conflict with host states. The confidential 45-page document, which was obtained by The New York Times, is considered by many experts to have a good chance of being approved formally by the commission.

PROPOSALS MADE

There could, however, be a long fight among the member nations before any policy finally becomes effective. If adopted, the plan would mean substantially higher tax payments for American-based multinational concerns.

The commission, in its working paper, has urged establishment by member states of a two-tier foreign-exchange market—one controlled for business transactions and the other free. It also declared that "an effort must be made to confront the multinational undertakings with political and trade union counterweights at international level."

"Even leaving aside any problems with tax evasion, it is undoubtedly true that domiciliation in various countries, each with its own methods and rates and with independently conducted audits, . . . provides openings for tax avoidance," the document said.

"The prices charged in a group's intercompany transactions and fees for industrial property or management can be used as a means of reducting the tax assessment basis or of consistently moving profits to countries with favorable tax systems."

A TAX STRATEGY

While conceding that there are no quantitative data available on these problems, the commission's paper said: "Heads of multinational undertakings freely admit, however, that if tax avoidance is not their raison d'être or their main source of profit, nevertheless they do logically operate a tax strategy that best serves the interests of their firm.

"Merely by being true to themselves, the multinationals thus come into conflict with the [host] states."

The document called on the member states to provide international assistance and cooperation in information and tax collection; greater powers of inspection at the national level; cooperation with countries, with low taxes outside the European Economic Community and intensified cooperation within the community.

The paper recommended the so-called "world profit" system as the most effective and most neutral for assuring a "standard" rate of tax. This method consists of adding together all the profits of the parent company and taxing them at the rate applicable in its home country after deduction of the taxes paid abroad.

Examining another possible abuse, the document observed that "a major impact on monetary speculation is often attributed to the multinationals."

It said that, while multinationals "are acting perfectly normal in trying to provide against foreign-exchange losses or even to make a profit by moving their liquid assets about, nevertheless the possibilities open to the multinationals, which they do not deny using, have accentuated the speculative monetary movements of recent years."

A TWO-TIER MARKET

Pending a reform of the monetary system, the Common Market recommendation is to urge member states to set up a two-tier foreign-exchange market—one controlled for business transactions and one free.

To be effective, as the commission's paper notes, this method would require tougher accounting and tax inspection machinery.

Under the two-tier system, foreign exchange needed to finance trade is obtained at a controlled rate while all other transfers are at the free rate. France, Belgium and Italy, of the Common Market states, already have such a system in operation.

In assessing the strength and flexibility of multinational companies, the document suggested that the essential objective of any new Common Market policy "must be to restore equilibrium between the parties concerned."

REGULATION OF LEGISLATIVE ACTIVITIES BY TAX-EXEMPT ORGANIZATIONS: A CONSTITUTIONAL QUESTION

Mr. MUSKIE. Mr. President, for some years many of us in Congress have been concerned about Federal regulation of legislative activities of tax-exempt organizations. Currently, the tax code restricts tax-exempt publicly supported charities from engaging in "substantial" legislative activities. This standard is vague and subject to abuse. To correct it, I have introduced legislation each year since 1971 to substitute a more certain standard. The bill I introduced this year on February 28, together with Senators HUGH SCOTT, NELSON, and DOLE, now has a total of 34 cosponsors. Congressman SYMINGTON has introduced identical bills in the House, H.R. 4994 and H.R. 5095; these bills now have a total of 45 cosponsors. I understand that the House Ways and Means Committee has been considering these proposals as part of its work on tax reform legislation.

But in the past few months, a new question has been raised about these restrictions in the tax code: whether or not they violate the Constitution. This question has been thoroughly explored in an article by Thomas Troyer in the journal of the New York University's Institute of Federal Taxation. In typically brilliant style, Mr. Troyer sets out in detail "three lines of attack on the constitutionality of the legislative restriction:"

(1) The "doctrine of unconstitutional con-

ditions," which in this case argues that the federal government cannot indirectly regulate First Amendment activities by tax exempt organizations, since it cannot do so directly;

(2) The equal protection standards of the due process clause of the Fifth Amendment, which arguably invalidates current restrictions because they discriminate among different kinds of charities; and

(3) The void-for-vagueness doctrine.

Mr. Troyer's analysis suggests that, on each of these grounds, restrictions in current law may well be unconstitutional. He also suggests that sections of the tax code penalizing legislative activities by private foundations may be unconstitutional. Mr. Troyer's fine article deserves study, and I ask unanimous consent that it be inserted in the RECORD at the conclusion of my remarks.

These constitutional questions are now being brought before the courts by two tax exempt organizations. Tax Analysts and Advocates, and Taxation With Representation, in a suit for a declaratory judgment to invalidate the restrictions. The outcome of this suit may have important consequences for the future conduct of tax exempt organizations, and for our first amendment freedoms. Congressman SYMINGTON has already inserted several documents relating to this suit in the CONGRESSIONAL RECORD of August 1. I ask unanimous consent that additional materials concerning this suit—two descriptive articles and a supplemental statement filed in court—also be printed in the RECORD.

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

CHARITIES, LAW-MAKING, AND THE CONSTITUTION: THE VALIDITY OF THE RESTRICTIONS ON INFLUENCING LEGISLATION

(By Thomas A. Troyer*)

Attorney (Colorado, District of Columbia); Vice-Chairman, Committee on Exempt Organizations, Section of Taxation, American Bar Association; Formerly Associate Tax Legislative Counsel, United States Treasury Department; Associate Professorial Lecturer, George Washington University School of Law; Adjunct Professor, Georgetown University Law Center; Contributor to Legal Periodicals; Firm; Caplin & Drysdale, Washington, D.C.

SYNOPSIS

Criticism and proposals for modification.
Hearing on proposed liberalizations.
Constitutionality of Restriction.
Legislative history.
Dependence of restrictions on 1934 amendments.
What constitutes "charitable".
Cases under pre-1934 law.
Constitutional case against restrictions.
Unconstitutional Conditions
Application of doctrine to legislative restrictions.
Possession of First Amendment rights by corporations.
Is First Amendment protection absolute here?
Balancing of government interest and burden to charities.
Cammarano descriptions of government interest.
Post-Cammarano congressional action.
Policy of 1962 Revenue Act.
Grass roots lobbying.
Application of deductibility to much grass roots business lobbying.
Difference in impact of tax rules on business and charities.
Not nondeductibility: death sentence.
Section 501(c)(4) alternative.
In sum: Cammarano and Section 162(e)(2) not controlling here.
Unconstitutional Conditions: Tax Support for Other Lobbying.
Veterans' organizations.
Number of organizations affected.
Fraternal beneficiary societies.
Number of organizations affected.
Ability of large charities to lobby.
Lobbying by funded charities.
Lobbying for social welfare organizations.
Lobbying by labor organizations and trade associations.
Number of organizations affected.
Conclusion: Slee does not state compelling government interest.
Another possible government interest.
Limitation upon lobbying by rich.
Effect for lobbying same as for other charitable activities.
Conclusion: strength of unconstitutional conditions attack.
Equal Protection.
Americans United case.
Difference of equal protection argument in Americans United.
Concurring opinion in Americans United.
Vagueness.
Sources of uncertainty.
Vagueness of I.R.S. explanation.
Applicability of Freund classification.
Consequences for organizations with rulings.
Advance rulings difficulties.
Consequences for new organizations.
Practical necessity of advance ruling.
Delegation of authority to I.R.S. personnel.
Assessment of vagueness attack.
Recent court action.
Private Foundation Restrictions: Direct Regulation of Speech.
Burden on foundations.
Termination tax.
Effect for foundations.
Government interest in restrictions.
Size and legislative involvement of foundations.
Amount of foundation expenditures.
Most foundation expenditures for nonlegislative purposes.
Comparison with legislative expenditures of businesses and labor groups.
Evidence presented to Congress in 1969.
Committee report rationale.
A look ahead: the courts and Congress.

By its terms, the exemption from federal income tax which Section 501(c)(3) establishes for charities extends only to organizations "no substantial part of the activities of which is carrying on propaganda, or otherwise attempting to influence legislation. . . ." [1] The qualification of charities to receive contributions which their donors may deduct for federal income tax purposes is limited by an identical statutory provision.[2] The statutes governing the estate and gift tax deductions for charitable contributions contain the same limitation.[3]

CRITICISM AND PROPOSALS FOR MODIFICATION

In recent years, these limitations have become the subject of mounting criticism from a variety of sources

A well-known article in 1960 by Professor Clark of Yale Law School opened the barrage.[4] In 1969 the American Bar Association joined the attack, proposing liberalization of Section 501(c)(3) and the related charitable deduction sections to permit direct communications by publicly supported charities with legislative bodies.[5] In 1971 Senator Muskie introduced a bill modeled upon the American Bar Association recommendation, arguing:

"The groups which suffer most under these limitations of the Internal Revenue Code are civil rights organizations, consumer and environmental groups, and the recently established public interest law firms. The outstanding characteristic of these groups has been their advocacy of the views of those who are under-represented before governmental agencies, in the courts, and Congress. It is fundamental to our constitutional system that they should have equal access along with business groups and others in presenting views to Congress. This is so not because the views of the public interest groups are necessarily correct, but because in considering the increasingly complex matters which come before it, the Congress should hear and weigh all views to the fullest extent possible.[6]

Early in 1972 Senator Muskie and Senator Scott together introduced a somewhat modified form of this bill.[7] Later that year Congressman Ullman and several other members of the House Ways and Means Committee introduced a bill with the same objectives but with further modifications.[8]

HEARING ON PROPOSED LIBERALIZATIONS

At a hearing held by the House Ways and Means Committee on the Ullman bill in May of 1972, representatives of a large and diverse group of charitable institutions supported elimination or relaxation of the present restrictions on charities' legislative activities.[9] The Administration was ambivalent. Speaking for the Council on Environmental Quality, Russell Train argued for liberalization:

"Public charitable groups represent deeply felt concerns of many of our citizens in many important areas—including health, education, and the environment. Many of these groups have much to contribute in the way of information and a wide range of views that can make a valuable contribution to the legislative process. At the same time, these very groups have avoided legislative appearances for fear of jeopardizing their tax-exempt and tax-deductible status.

"I can think of no more useful and practical step available to us right now than to clarify the authority of our citizens' many charitable associations to speak on their behalf to the legislature. It should be our purpose to encourage in every way we can the responsible participation by citizen groups in the process of government. The present law constitutes a roadblock to such participation and it should be remedied as rapidly as possible." [10]

The Treasury Department, on the other hand, while expressing sympathy with "the objectives" of the Ullman bill, elaborated concern about a number of its provisions.[11]

After the hearing, the Ways and Means Committee considered the Ullman bill in two executive sessions but, with the press of other business, took no further action on it.

The substance of the various proposals to relax the present constraints on charities' legislative activities, and the points of difference among the proposals, have been well summarized elsewhere.[12] At present it is a matter of conjecture whether the Ways and Means Committee will take action on the subject this year. If it does, it seems likely that the action will depart in significant respects from all of the prior bills. The process of legislative compromise being what it is, it also seems likely that any liberalization adopted by Congress this year will leave at least much of the bite of the present restrictions intact.

CONSTITUTIONALITY OF RESTRICTIONS

That being the case, it seems worth asking a question which, until recently, has seldom been raised, and, so far as I know, has never been exhaustively examined. Are the restrictions constitutional? Analysis suggests that the answer may well be negative.[12.1]

Preliminary to assessment of the constitutional issues, one must first determine whether the restrictions on influencing legislation are inherent in the fundamental Congressional judgment to continue the Section 501(c)(3) and related tax benefits to "charitable" organizations or whether the restrictions depend upon the special statutory mandates against substantial legislative efforts. If entities which attempt to influence legislation are naturally beyond the group meant to be assisted by the tax benefits provided

Footnotes at end of article.

charities, the constitutionality of withholding those benefits from them would stand upon essentially different footing than if, qualifying as charities under applicable standards, they are denied the tax benefits only by reason of a separate and special Congressional decision to forceclose such organizations from substantial legislative efforts.

To resolve this threshold question, we must review briefly the legislative history of the present statutory provisions against substantial influencing of legislation and the authorities bearing on the dependence of the restrictions on those provisions.

LEGISLATIVE HISTORY

The limitations on the legislative activities of charities first appeared in the language of the statute in 1934.[13] The legislative history of the 1934 amendments is sparse and unclear. It suggests that the primary focus of the proponents of the amendments was on a single organization (the National Economy League); that their *objective was to rule out charitable deductions for selfishly motivated gifts,* designed to advance the *personal interests of the giver* through legislative agitation; and that the language selected by the drafters of the amendments was thought to be unfortunately broad, likely to sweep within the restrictions more than their proponents intended to include.[14] Nowhere does the legislative history indicate that Congress was aware of the prior case law on this subject. Nowhere do the published materials suggest that Congress thought the amendments simply a clarification of restrictions already inherent in the statutory term "charitable," or in other language of the exemption and deduction statutes as they then stood. Indeed, to the extent that the limited legislative history permits one to draw a conclusion on the point, the *implication is strong that Congress thought it was adding restrictions* not previously included in these provisions.

DEPENDENCE OF RESTRICTIONS ON 1934 AMENDMENTS

Several cases decided under pre-1934 law grounded *denial* of charities' *exemptions* or qualification to receive deductible charitable contributions on *efforts by the* organizations *to influence legislation.*[15] A review of the authorities, however, indicates strongly that, absent the 1934 amendment, the doctrine of those cases would long since have passed from the federal tax law.

WHAT CONSTITUTES "CHARITABLE"

Although it was far from evident as a matter of American tax law before 1934, it is settled by now that "charitable" is the most comprehensive of the terms designating exempt purposes in Section 501(c)(3), including each of the other purposes in the enumeration except "testing for public safety," and extending to activities which lie beyond any of the others.[16] It was also far from evident before 1934—but has by now been decided by the Supreme Court and accepted by the Internal Revenue Service—that the construction of "charitable" for federal tax purposes is governed by the general, non-tax law of charitable trusts.[17]

The United States decisions in the non-tax area are now overwhelmingly to the effect that an otherwise charitable trust remains charitable even though the attainment of its purpose entails influencing legislation. Scott says:

"In the United States the notion that a trust for a purpose otherwise charitable is not charitable if the accomplishment of its purposes involves a change in existing laws has been pretty thoroughly rejected. Many reforms can be accomplished only by a change in the law, and there seems to be no good reason why the mere fact that they can be accomplished only through legislation should prevent them from being valid charitable purposes." [18]

The Restatement is to the same effect.[19] The cases amply support the proposition.[20] It flows naturally from the general trust law principle that "if . . . the purposes of the trust . . . are charitable, they are no less charitable because of the means authorized to effectuate them, when . . . these means are legal and not against public policy. . ." [21]

If, then, the law of charitable trusts governs the definition of "charitable" for purposes of the tax law, and the relevant law of trusts treats influencing legislation as a permissible means of carrying out a charitable purpose, it seems clear that, (but for the statutory amendments in 1934) charities could now without adverse tax consequence make use of legislative activities to advance their purposes and they could do so upon precisely the same basis as they make use of any other acceptable means to those ends. The rule preventing them from doing so must, in the first instance, be laid at the door of the 1934 Congress.

CASES UNDER PRE-1934 LAW

Slee v. *Commissioner* [22] and the other decisions denying charitable exemptions or deductions under the pre-1934 law on the basis of the charities' legislative activities uniformly failed to recognize the relevance of the general law of charitable trusts to the definitional issue. They also failed to recognize that "charitable" is a broader term than "educational"—comprehending all that is "educational" and much else besides—and, proceeding from 1919 Treasury Regulations which excluded controversial communications from the "educational" category,[23] they assumed that whatever was not educational could not be charitable. *Slee* itself suffers from both failures.

The subsequent development of the tax law makes it clear that, on both points, the courts were simply wrong. On the key issue, the Supreme Court has now held, and Treasury Regulations provide, that the general law of charitable trusts governs the tax definitions. With this evolution of the law, the legislative restrictions created by the early decisions in disregard of now-settled principles would necessarily have died, had not Congress created the 1934 restrictions on the legislative activities of charities.

One cannot establish the subsistence of the *Slee* rule by arguing that the permissibility of legislative efforts was less clear in the law of charitable trusts in 1913, or 1930, and that the doctrine developed by Judge Hand and his brethren, representing a plausible extrapolation from divided authorities in the non-tax area to the tax definition, remains good tax law. It is true that an 1867 Massachusetts case,[24] followed in 1922,[25] denied charitable status on the basis of legislative activities, as did the English authority, though none of the tax cases under pre-1934 law founded their decisions on these authorities.

It is a settled facet of the law of charitable trusts, made applicable to the tax law by the courts' and the Regulations' adoption of the general law of charities for purposes of the tax definition of "charitable," that "charity" is a continually changing concept, developing and adjusting as the needs of society change.[26] Hence, in determining whether in 1973 the tax restrictions on charities' legislative activities stem from the definition of "charitable" or must stand on the special language added to the statute in 1934, the state of the trust law in 1913 or 1930 is irrelevant. The issue is the state of the American trust law in 1973. As the authorities cited above disclose, on that issue there can be little question.

CONSTITUTIONAL CASE AGAINST RESTRICTIONS

With this background, there would appear to be three lines of attack on the constitutionality of the legislative restrictions. One is founded upon the doctrine of unconstitutional conditions. The second derives from equal protection standards which the due process clause of the Fifth Amendment imposes on the Federal Government. The third is based on the void-for-vagueness doctrine.

Each of these attacks is, if sound, by itself sufficient to invalidate the legislative restrictions. Hence, if any of the three is valid, the restrictions must fall.

UNCONSTITUTIONAL CONDITIONS

The restrictions on substantial legislative efforts seem, first, a classic situation for the application of the doctrine of unconstitutional conditions. The doctrine has been described as follows:

"Essentially, this doctrine declares that whatever an express constitutional provision forbids government to do directly it equally forbids government to do indirectly. As a consequence, it seems to follow that the first amendment forbids the government to condition its largess upon the willingness of the petitioner to surrender a right which he would otherwise be entitled to exercise as a private citizen. The net effect is to enable an individual to challenge certain conditions imposed upon [a governmental benefit] without disturbing the presupposition that he has no 'right' to that [benefit]." [27]

The Supreme Court has applied the rule, for example, to hold that unemployment benefits cannot be denied to a person who refuses to work on Saturday because of his religious principles;[28] that public employment cannot be conditioned upon the employee's refraining from constitutionally protected speech activities;[29] that a public school teacher cannot be discharged for invoking the privilege against self-incrimination;[30] and that an attorney cannot be disbarred for invoking that privilege.[31]

Most closely in point for present purposes is the Supreme Court decision in *Speiser v. Randall.*[32] The Court there held that the State of California could not condition a veteran's property tax exemption upon the veteran's taking an oath not to advocate the overthrow of the government. The language of the decision is instructive:

"It is settled that speech can be effectively limited by the exercise of the taxing power. Grosjean v. American Press Co., 297 U.S. 233, 56 S. Ct. 444, 80 L.Ed. 660. To deny an exemption to claimants who engage in certain forms of speech is in effect to penalize them for such speech. The appellees are plainly mistaken in their argument that, because a tax exemption is a 'privilege' or 'bounty,' its denial may not infringe speech." [33]

APPLICATION OF DOCTRINE TO LEGISLATIVE RESTRICTIONS

On its face, the doctrine of unconstitutional conditions appears plainly and directly applicable to the specification of the charitable exemption and deduction statutes that their privileges shall not extend to organizations having substantial activities aimed at the influencing of legislation. Much of the activity proscribed is within the First Amendment right to petition the Government,[34] and all seems well within the broader first amendment protection of free speech. The effect of the restrictions, therefore, is to withhold or withdraw the privileges of tax exemption and qualification to receive deductible contributions from charities which engage in specified first amendment activities of more than an insubstantial amount. Justice Sutherland's description of the unconstitutional conditions rule in a leading early case seems clearly in point:

"It would be a palpable incongruity to strike down an act of state legislation which, by words of express divestment, seeks to strip the citizen of rights guaranteed by the

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federal Constitution, but to uphold an act by which the same result is accomplished under the guise of a surrender of a right in exchange for a valuable privilege which the state threatens otherwise to withhold. . . . If the state may compel the surrender of one constitutional right as a condition of its favor, it may, in like manner, compel a surrender of all. It is inconceivable that guarantees embedded in the Constitution of the United States may thus be manipulated out of existence." [35]

Initial measurement of the unconstitutional conditions doctrine against the charitable exemption and deductions' legislative restrictions, then, suggests a natural fit. Let us look more closely at the details of the application of the doctrine to evaluate the strength of the constitutional attack.

POSSESSION OF FIRST AMENDMENT RIGHTS BY CORPORATIONS

There is no direct Supreme Court decision that the First Amendment rights of free speech and to petition the Government are held in undiluted form by corporations. However, the Court has held squarely that the first amendment protection of freedom of the press extends to corporations as well as to natural persons.[36] Several of the Court's other decisions appear to assume that the protection of speech and petition apply with undiminished force to corporations.[37] The language of the amendment itself—"Congress shall make no law . . ."—suggests that its prohibitions apply without regard to the legal character of the person whose speech or petition Congress seeks to restrain.

Hence, while the issue cannot be regarded as conclusively resolved, it seems likely that the first amendment rights of free speech and petition would be held to afford the legislative efforts of charitable corporations and trusts a protection equivalent to that which they provide the same efforts of individuals.

IS FIRST AMENDMENT PROTECTION ABSOLUTE HERE?

It may be that, having said this much, we have said enough. Describing Alexander Meiklejohn's view that the core of the first amendment is the protection of expressions which bear upon the governing process, broadly construed, Justice Brennan has said: "It is these activities of 'governing importance' in all their diversity that fall within the scope of the first amendment, and for such activities the amendment gives *unqualified protection.*" [38]

Justice Brennan proceeds to suggest that the cases of *New York Times* v. *Sullivan* [39] and *Garrison* v. *Louisiana* [40] adopt this approach to the application of the first amendment.[41] Subsequent cases have cast no doubt upon the Justice's 1965 evaluation. If it is correct, it would seem to apply directly to the subject with which we are concerned; for the expressions of charitable institutions on legislative policy are plainly within the "governing importance" class.

Professor Van Alstyne has stated essentially the same view in slightly different terms. He argues that, where a government conditions a benefit upon desistence from the exercise of an explicit constitutional right, the unconstitutional conditions rule strikes down the condition without the necessity of any further inquiry into the strength of the government interest in imposing the condition, or the weight of the burden which it places on the party contesting it.[42] The view seems supported by the approach of the Supreme Court in at least some of the cases applying the doctrine.[43]

If these views are correct, and the relevant First Amendment protections extend to charitable corporations and trusts, the legislative restrictions of the charitable exemption and deduction statutes should fall, entirely and without further analysis or argument.

BALANCING OF GOVERNMENT INTEREST AND BURDEN TO CHARITIES

Let us not, however, leave the matter at that. While they antedate the Supreme Court decisions in the *Times* and *Garrison* cases, a number of holdings on the unconstitutional conditions doctrine have included inquiries by the Supreme Court into the character and strength of the government interest in establishing the condition in issue and the nature of the burden which it entails.[44] Let us make similar inquiries concerning the legislative restrictions in the charitable exemption and deduction statutes.

CAMMARANO DESCRIPTION OF GOVERNMENT INTEREST

Where a condition impinges upon an explicit constitutional right—as is the case with the first amendment rights of free speech and petition—even the cases which approach the first amendment protections without the strictness suggested by Justice Brennan and Professor Van Alstyne sustain a condition on a government benefit only upon a showing that the Government has a "compelling" or "overriding" interest in the condition.[45] The government interest in the restrictions on charities' legislative activities has been stated by the Supreme Court [46] to be that described by Judge Hand in *Slee*: "Controversies of that sort [i.e., legislative] must be conducted without public subvention; the Treasury stands aside from them." [47] Indeed, after quoting Judge Hand, the *Cammarano* opinion goes on to describe this as "sharply defined policy" of the Federal Government.[48] Is it?

POST-CAMMARANO CONGRESSIONAL ACTION

Cammarano upheld a Treasury Regulation denying business expense deductions for the costs of attempts to influence legislation. In at least one important part of the area dealt with by that decision, federal policy, so far from being "sharply defined" against tax support for the legislative activities of private parties, now specifically provides such support.

Three years after the *Cammarano* case, Congress reversed its result for most business expenses of direct communication with legislative bodies.[49] With certain limitations, where a business incurs such expenses in an effort to influence legislation, the expenses are now specifically made deductible by Section 162(e). Thus, in legislative controversies involving such expenses, the Treasury—and the general taxpayer—no longer stand aside. Through the mechanism of tax deductions, the Federal Government provides financial support for the lobbying efforts of private parties.

POLICY OF 1962 REVENUE ACT

The policy grounds for the 1962 Congressional action are significant. Congress reversed the rule of prior law only partly from a belief that proper computation of businesses' net income requires deduction of direct lobbying expenses. The Senate Finance Committee Report relies more heavily upon several quite different arguments in favor of the amendment—and all of them would apply with equal force to the elimination of the restrictions on charities' legislative activities.[50] In particular, the Finance Committee observed: "The presentation of such information to the legislators is necessary to a proper evaluation on their part of the impact of present or proposed legislation." [51]

With this policy underpinning, in the area of direct communication with legislative bodies the 1962 Congressional action would seem at least very largely to erode the *Cammarano* finding of a "sharply defined" government interest against tax support for the legislative conduct of private parties.

GRASS ROOTS LOBBYING

The 1962 Act did not extend deductibility to business expenses of grass roots lobbying. Section 162(e)(2) specifies that the statutory provisions for direct lobbying "shall not be construed as allowing the deductibility of any amount paid or incurred . . . in connection with any attempt to influence the general public, or segments thereof, with respect to legislative matters. . . ." It does not, however, follow that the failure to revise prior law on this point constitutes a Congressional finding of a compelling governmental interest sufficient to sustain the exemption and deduction restrictions on grass roots legislative efforts by charities.

APPLICATION OF DEDUCTIBILITY TO MUCH GRASS ROOTS BUSINESS LOBBYING

As a practical matter, businesses are in fact able to deduct much of the costs of communications with the general public which bear on legislative matters. The line between deductible institutional advertising and non-deductible grass roots lobbying is sufficiently blurred—and the audit resources of the Internal Revenue Service sufficiently limited—to permit the deduction of considerable costs of business advertising designed to affect the views of the general public on issues which are present or will surface in legislative bodies. The fact has been noted by a former Commissioner of Internal Revenue,[52] has been explored in more detail by Professor George Cooper of Columbia Law School,[53] and was recently admitted by the Assistant Secretary of the Treasury for Tax Policy to the Ways and Means Committee.[54]

Illustrations of grass roots legislative appeals by businesses abound. During the debate about tax reform in the 1972 Presidential campaign, Bethlehem Steel Corporation placed full-page advertisements, intended to demonstrate the absence of need for tax reform affecting it, in Newsweek, Time, U.S. News and World Report, Business Week, The Saturday Review, Industry Week, Forbes, The Harvard Business Review, Editor & Publisher, and nineteen newspapers.

A Washington Post article of February 4, 1973, describes a current $3 million advertising campaign by the petroleum industry, designed to focus public attention on the energy crisis and, among other things, develop support for pending legislation to remove the Federal Power Commission's ability to regulate the price of natural gas. The campaign included television advertising estimated by the American Petroleum Institute to have reached 95 percent of all American homes with television sets. Senator Muskie has described the grass roots efforts of business groups interested in legislation on the Supersonic Transport.[54.1]

The comments of the witnesses noted above at the Ways and Means Committee hearing on the Ullman Bill makes clear that disallowance of business expense deductions for such advertising "is probably not a realistic expectation." [54.2]

In this state of affairs, the failure of Congress to tighten the restriction on business expense of deductions for grass roots lobbying, or to adopt more distinct standards for the disallowance of such deductions, by itself would seem to cast doubt on the presence of a compelling government interest here.

DIFFERENCE IN IMPACT ON TAX RULES ON BUSINESSES AND CHARITIES

Even if one takes the limitation of the 1962 amendment to direct lobbying as indicative of the existence of a governmental interest in the grass roots lobbying area, the interest is not one which justifies the exemption and deduction restrictions on charities' lobbying. To the argument that *Speiser v. Randall* [55] and the unconstitutional conditions doctrine required the allowance of business deductions for the costs of grass roots lobbying, the Supreme Court in *Cammarano* responded:

"Petitioners are not being denied a tax deduction because they engage in constitutionally protected activities, but are simply

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being required to pay for those activities entirely out of their own pockets." [56]

The Congressional action in 1962 did no more than leave that rule in effect for businesses' grass roots lobbying. Consequently, to the extent that the action can be deemed to manifest Congress' perception of a governmental interest, the interest cannot have been one in preventing grass roots legislative appeals—for businesses could make such appeals without limit before, and they continue to be able to do so now, so long as they do not deduct the attendant costs. Insofar as the Section 162(e)(2) limitation is effective at all, it amounts to no more than a Congressional statement that businesses which wish to appeal to the public on legislative issues must use their own funds to do so.

NOT NONDEDUCTIBILITY: DEATH SENTENCE

Charities which depend upon the charitable contribution deduction for their financial support, however, do not have that option.[57] The effect of the legislative restrictions on their qualification to receive deductible contributions is altogether to preclude them from engaging in legislative efforts beyond the insubstantial level. If their legislative activities exceed that level, they cannot simply pay tax on the funds which finance the activities; they must surrender entirely their ability to receive deductible contributions for all periods after the Internal Revenue Service announces their fall from grace to the public—and until their legislative activities subside to insubstantiality.

The threat is of a wholly different scale than the prospect of nondeductibility for a business. The impact which loss of Section 170 qualification will have on the charity's capacity to raise funds from the general public and from foundations is in no way limited to, or measured by, the cost of the charity's legislative activities, or the taxes which might have been paid on that amount by the charity or its donors. Describing the practical effect of denial of contribution qualifications, a recent Court of Appeals decision has said:

"Because of the 'tax breaks' attendant to contributions to corporations qualifying under § 170(c) of the Code, qualifications thereunder is a precious possession and removal from the *Cumulative List, Organizations Described in Section 170(c) of the Internal Revenue Code of 1954* is a damaging—sometimes fatal—injury to the financial status of any 'charitable' organization. Potential contributors with a minimum of business acumen are careful to get the most for their contributed dollar, and one certain way not to do so is to contribute to non-§ 170 corporations. Appellant, therefore, [is] presented with the dollar dilemma of finding prospective contributors closing their wallets. . . . [58]"

SECTION 501(C)(4) ALTERNATIVE

It is no answer to say that personnel of a charity which wishes to express legislative views may establish a separate organization exempt under Section 501(c)(4), attempt to obtain non-deductible funding for it, and proceed to do their best to influence legislation through the new organization.

An established charitable institution with an on-going program in any of a great variety of areas—mental health, or conservation, or educational psychology, or public interest law—will work extensively under and with the existing laws which apply in its area. It will develop familiarity with those laws, expertise in their practical operation, and knowledge of their defects. Its charitable work will, thus, produce an institutional fund of knowledge and experience from which proposals for improvement of existing law naturally flow.

If those connected with the charity form a Section 501(c)(4) organization, the Internal Revenue Service will quite properly insist that none of the operations and resources of the charity be employed to support activities of the Section 501(c)(4) organization which the charity could not itself have carried on directly. The Service takes the position that research and study exploited by legislative efforts may themselves be treated as "attempts to influence legislation." [59] In fact, it scrutinizes relationships between charities and Section 501(c)(4) organizations carefully to make certain that no impermissible support of the Section 501(c)(4) organizations' activities is occurring.

As a consequence, the legislative views and proposals developing from the work of the charity will be subject to essentially the same restraint flowing from the legislative restrictions of the charitable deduction statutes even where those interested in the charity form a separate Section 501(c)(4) organization to carry on legislative efforts.[59.1]

In Sum: Cammarano and Section 162(e)(2), Not Controlling Here

The restraint which the legislative restrictions of the charitable deduction statutes impose on the expression of legislative views by charities, thus, is real. In foreclosing such expressions altogether where they are more than insubstantial, the restrictions create for charities a burden which is both far greater, and different in kind, than the effect for businesses of the denial of deductions for the expenses of lobbying. Consequently, it does not follow, from Cammarano's holding of the constitutionality of the business deduction limit, that the legislative restrictions on charities are also constitutional. Similarly, it does not follow, from the 1962 Congressional preservation of the rule that businesses must pay for their own grass roots lobbying, that there is a compelling government interest in foreclosing charities altogether from substantial legislative activities.

UNCONSTITUTIONAL CONDITIONS: TAX SUPPORT FOR OTHER LOBBYING

Aspects of the tax laws beyond Section 162(e) shed further light on the question whether the Federal Government has a compelling interest in denying exemption and qualification to receive deductible contributions to charities which carry on substantial legislative activities.

VETERANS' ORGANIZATIONS

Since 1924 Section 170(c)(3) and its predecessors have granted charitable contribution deductions for donations to "A post or organization of war veterans or an auxiliary or society of, or trust or foundation for, any such post or organization" if they are domestically organized and their earnings do not inure to private parties.[60] Similar provisions extend gift tax deductions to donors to such organizations; [61] a more limited provision for some such organizations grants estate tax deductions for bequests to them.[62]

Before 1972, most veterans' organizations were exempt from federal income tax under Section 501(c)(4).[63] Some were exempt under Section 501(c)(7).[64] A 1972 amendment established special exemption for them under Section 501(c)(19).[65]

None of these statutes conditions its benefit upon veterans' organizations' refraining from efforts to influence legislation. On the contrary, it has been clear for many years that Section 501(c)(4) organizations may engage in an unlimited amount of legislative activity without jeopardizing their exemption.[66] The legislative history of Section 501(c)(19) gives one no reason to believe that a different rule will obtain under the new exemption provision.[67] No published authority indicates that the Internal Revenue Service has ever asserted that a veterans' organization loses its qualification to receive deductible charitable contributions by reason of legislative activity.

NUMBER OF ORGANIZATIONS AFFECTED

The tax benefits for veterans' organizations are not merely of theoretical interest. They have very broad practical application. They affect such large and affluent national organizations as the American Legion and the Veterans of Foreign Wars, and the multitude of local posts and other subsidiary units of such organizations.[68] The American Legion and its affiliates have historically been among the most active lobbying organizations on the national scene. By reason of the tax rules which govern such organizations, they may, without quantitative limit, employ tax-deductible and tax-exempt funds to influence the views of the general public on legislative matters, to influence the positions which executive bodies take on legislative issues, and to influence legislative bodies themselves.

Here, too, then, the Treasury does not stand aside. By means of both contribution deductions and tax exemption, it provides the support of the tax system for the expression of legislative views by veterans' organizations.

FRATERNAL BENEFICIARY SOCIETIES

With only minor variations, the same observations are true of fraternal beneficiary societies. Here, also, the charitable contribution provisions of the income and gift tax statutes extend deductibility to donations to such organizations for charitable purposes, without imposing any limitation on a qualifying organization's legislative activity.[69] Here, also, the statutes providing income tax exemption for such organizations do not condition their benefits upon the organization's refraining from legislative activity.[70]

To be permissible under the charitable deduction sections, of course, the legislative activity of fraternal beneficiary societies must be in pursuance of charitable purposes. Within that limit, however, no authority suggests that the Internal Revenue Service asserts the existence of a restriction on the legislative efforts of fraternal beneficiary societies. The fact that the chapter of the Internal Revenue Service Exempt Organization Handbook dealing with fraternal beneficiary organizations does not mention the matter—in contrast to the Handbook's detailed discussion of the legislative limitations on charitable organizations—affords persuasive evidence that the Service does not take such a position. In any event, absent specific statutory authority for it, the Service would have to derive such a restriction from the definition of the term "charitable." It is clear, from what has been said on that subject above, that if the Service were to adopt this approach it would be wrong.

NUMBER OF ORGANIZATIONS AFFECTED

As with veterans' organizations, the tax rules relating to fraternal beneficiary societies are of more than theoretical interest. They apply to many thousands of organizations throughout the country, a considerable number of which are possessed of very substantial resources. The Elks, the Moose, the Eagles, the Masons, the Shriners, the Knights of Columbus, and their plethora of local chapters and affiliates qualify for these tax benefits. An Internal Revenue Service study in 1965 found that fraternal beneficiary societies were deriving premiums in the range of $500 million a year from their insurance business. The same study showed very large real estate investments by many of these societies.

That organizations of this magnitude, with resources so extensive, may express their views on legislative issues without losing their federal tax privileges [71] constitutes persuasive evidence of the absence of a "sharply defined" national policy against tax support of private legislative activities.

ABILITY OF LARGE CHARITIES TO LOBBY

One finds further evidence to the same effect in Section 501(c)(3) itself.

The vagueness of the substantiality test has frequently been remarked,[72] and we shall consider it in greater detail hereafter. However fuzzy its boundaries, the test seems

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clearly to require comparison of the legislative activities of a charity with its total program of exempt operations. The result is that a large organization with an extensive exempt program, can carry on more legislative activity without losing its tax privileges than can a small one. Congress itself has pointed out this aspect of the rule.[73]

For very large charities the consequence is that a considerable amount of lobbying can be carried on with tax-exempt and tax-deductible funds. Professor Clark noted the activities of the Roman Catholic Church in preventing modification of the Connecticut criminal statute on contraceptive devices.[74] Since the time of his article, the Roman Catholic Church has taken active part in the controversy over abortion legislation, apparently without adverse tax consequences.[75] Large universities and colleges lobby on issues which affect them, both in Congress and in state legislatures, and none appears to have lost its tax privileges for doing so.[76]

Here, too, one finds ground for questioning the presence of a "sharply defined" national policy against tax support of efforts to influence legislation.

LOBBYING BY FUNDED CHARITIES

Still another facet of the tax law is relevant. Because of the broad correspondence of the requirements of Section 501(c)(3) and those of Section 501(c)(4), and the absence of a limitation on legislative activities in Section 501(c)(4), charities which lose their qualification under Section 501(c)(3) by reason of legislative activity commonly establish exemption under Section 501(c)(4). The Senate Finance Committee specifically noted that fact in 1969:

"In addition, a well-endowed organization may engage in lobbying and, if it loses its exempt educational or charitable status, may avoid tax on its investment income by becoming exempt under another provision of the law." [77]

The staff of the Joint Committee on Internal Revenue Taxation recently reported to the Ways and Means Committee that:

"It should be pointed out that loss of exemption under Section 501(c)(3) because of legislative activities rarely, if ever, results in conversion of the organization's status from nontaxable to taxable. Rather, the organization usually retains its exempt status by reclassification under some other section of the Code, such as Section 501(c)(4)." [78]

After conversion to Section 501(c)(4) status, an organization may apply itself without limit to legislative endeavors—and it may use the endowment which it originally received in deductible contributions to support those efforts.[79] Once again, we find tax dollars supporting attempts to influence legislation. While the total amount is probably not great in this instance, the fact that the tax-writing committees of Congress are specifically aware of situations like this—and are willing to tolerate them for publicly supported charitable organizations [80]—is another item of evidence that one must tot up against the existence of a compelling government interest against tax support of legislative activities.

LOBBYING BY SOCIAL WELFARE ORGANIZATIONS

We have so far confined our attention to the legislative activities of organizations qualifying to receive deductible charitable contributions. The federal tax laws support the legislative efforts of private parties in two additional ways which deserve mention.

Beyond veterans' groups, which I have discussed separately because of their entitlement to deductible charitable contributions, Section 501(c)(4) has long conferred the valuable privilege of tax exemption upon a broad and heterogeneous potpourri of "social welfare" organizations, a number of which participate extensively in attempting to influence legislation. Included here, for example, are such organizations as the National Rifle Association, Common Cause, Ralph Nader's Public Citizen, and Taxation With Representation.

To the extent of the amounts which these organizations realize from dealings with their members, it is arguable that their exemption constitutes a statutory recognition that membership receipts of mutual organizations are not properly "income." [81] Absent the specific exemption, nonetheless, it seems clear that most such receipts would be treated as income and taxed accordingly.[82]

More broadly, the Section 501(c)(4) exemption also shelters important items as investment income and income from businesses treated as "related" to exempt purposes. These would be considered "income" by anyone's definition, and are generally applied by the exempt organization to pursuits that would be non-deductible to the members if carried on directly by them. Permitting the tax-free realization of income for such pursuits, the Section 501(c)(4) exemption represents a clear departure from general income tax principles and, therefore, required a special act of legislative grace.

For social welfare organizations which derive income from investments or related businesses, the result of that act of legislative grace is a direct increase in the funds available for influencing of legislation. Here again, far from standing demurely aside, the Treasury pitches—or, rather, is pitched, willy-nilly—into the legislative melee.

LOBBYING BY LABOR ORGANIZATIONS AND TRADE ASSOCIATIONS

Two other classes of organizations which engage in extensive legislative activities also have federal tax exemption. Labor and agricultural organizations are exempt under Section 501(c)(5). Trade associations, chambers of commerce, and similar business organizations are exempt under section 501(c)(6).

These organizations are species of mutual institutions, and most of the activities which they conduct could be carried on by their members with deductible funds.[83] It can, hence, be argued that the Section 501(c)(5) and (6) exemptions do not depart as far from otherwise applicable tax principles as, for example, do the exemptions of Sections 501(c)(3) and 501(c)(4).

Nonetheless, it is quite clear that, absent the specific grant of the Section 501(c)(5) and (6) exemptions, the organizations to which they apply would be subject to the federal income tax.[84] Moreover, where Congress has encountered compelling policy ground for withdrawing these exemptions, it has done so. Confronted by the prospect of competition between unrelated businesses conducted by organizations in these categories (and certain others) with taxable businesses, Congress in 1950 applied the income tax to the profits which Section 501(c)(5) and (6) organizations derive from such businesses.[85] Again, when Congress became concerned about tax-exempt organizations' acquisition of income-producing property with borrowed funds, its remedy was *pro tanto* restriction of the exemption—for Section 501(c)(5) and (6) organizations, as well as for other classes of exempt organizations.[86]

NUMBER OF ORGANIZATIONS AFFECTED

The tax rules which apply to Section 501(c)(5) and (6) organizations permit them great latitude to attempt to influence legislation in carrying out their exempt purposes.[87] Many of them make broad use of that ability. One need only name some of the organizations exempt under these provisions to suggest the dimensions of the legislative efforts.

The Section 501(c)(5) exemption applies to the AFL–CIO, the United Auto Workers, the American Farm Bureau, and the National Farmers Union.

The Section 501(c)(6) exemption applies to the American Medical Association, the National Chamber of Commerce, the American Petroleum Institute, the American Bankers Association, and a host of less well-known trade associations a considerable part of whose functions consist of attempting to influence legislation.

The legislative activities of organizations in both categories include both direct lobbying and grass roots appeals. Congress is not unaware of these organizations; it sees their representatives every day. That it has not responded to their legislative activities as it did to their unrelated business activities and their debt-financed property acquisitions—by restriction of their tax exemptions—would seem further persuasive evidence of the absence of any sharply defined national policy against tax support for the legislative activities of private parties.

SLEE DOES NOT STATE COMPELLING GOVERNMENT INTEREST

Reviewing the relevant federal tax law, then, we find tax benefits for a considerable variety of organizations which do—or may—engage in legislative efforts. Businesses may now deduct the expenses of direct lobbying. Veterans' organizations qualify for deductible charitable contributions and income tax exemption, and neither benefit is conditioned on their refraining from attempts to influence legislation. Fraternal beneficiary societies receive substantially the same tax benefits, and have the same freedom to influence legislation. Large charities may conduct a considerable amount of legislative activity with tax-deductible and tax-exempt funds. As a practical matter, funded charities may do the same thing—and Congress, manifesting specific awareness of both of these facts, has done nothing about them. The (tax exemptions) for social welfare organizations, labor organizations, and trade associations also provide federal support for a great number of institutions which participate in legislative controversies.

On this record, it is difficult to escape the contention that the policy stated in *Slee* and referred to in *Cammarano* is not a compelling government interest such as to justify the exemption and deduction restrictions on charities' first amendment rights to express themselves on legislative matters. The federal tax laws support the legislative efforts of a considerable number and variety of organizations, in several different ways. As we have seen with the Section 501(c)(5) and (6) exemptions, not all of those ways are precisely analogous to the support which the Section 501(c)(3) exemption and the related charitable contribution deduction provisions extend to charities. But all afford real assistance, through the mechanism of the federal tax system, for the legislative efforts of private parties.

Singly, no one of these provisions might indicate the absence of a compelling government interest in tax neutrality in this area. Together, however, they can not be viewed as consistent with the presence of any such interest.

ANOTHER POSSIBLE GOVERNMENT INTEREST

To make certain that we have given full weight to the constitutional case which can be made in favor of the restrictions on charities' legislative activities, another policy ground which might be asserted for the restrictions must be examined.

LIMITATION UPON LOBBYING BY RICH

Because it operates in a progressive tax rate structure, the charitable deduction provides larger benefits in high tax brackets than it does in low ones. The fact has been characteristic of the charitable deduction, pointed out repeatedly.[88] On the basis of this

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one might argue that the legislative restriction incorporated in the deduction provision constitutes a device for preventing disproportionate participation by the rich in legislative decisions.

One difficulty with the use of this argument to make out a compelling government interest in the legislative restrictions is simply that neither Congress nor the courts have ever recognized this principle to be the foundation or the justification for those restrictions.

Secondly, a number of the tax provisions which we have examined in evaluating the *Slee* statement are equally inconsistent with treatment of this principle as a compelling government interest. While the Section 170 (c) (2) deduction gives maximum advantage to high-bracket taxpayers, the deductions for gifts to veterans' organizations and fraternal beneficiary societies have exactly the same effect; and the advantage of the Section 170(c) (2) deduction itself extends to upper-bracket taxpayers supporting the legislative efforts of large public charities, or funded public charities. The business deduction for direct lobbying has a similar differential advantage for high-income corporations and individuals. In none of these situations has Congress found the advantage to upper-bracket taxpayers sufficient cause for restricting legislative activity.

EFFECT FOR LOBBYING SAME AS FOR OTHER CHARITABLE ACTIVITIES

The effect which the charitable deduction has for the upper-bracket taxpayer in this area is simply one limited facet of the impact of the deduction throughout the entire range of its operation. Because of the fact that it works in a progressive rate structure, the deduction affords the upper-bracket taxpayer an advantage in supporting education, religion, conservation, research, public interest law, and all of the other activities carried on by charitable organizations. Undoubtedly, that advantage, coupled with the greater resources which this group of taxpayers already has, gives them greater influence than the poor have on the subjects which our children are taught, the methods by which they are taught, the activities which our religious organizations undertake, the kinds of research done by our educational and other institutions, and the very large range of other activities of charities which shape, inform, influence, and direct our society.

With these ramifications of the charitable deduction throughout the area of its operation, it is difficult to make out a case for the existence of a compelling government interest in singling out legislative expression from the panorama of charitable activity and imposing special restraints on it to prevent undue influence by taxpayers in higher tax brackets.

CONCLUSION: STRENGTH OF CONSTITUTIONAL CONDITIONS ATTACK

In sum, the unconstitutional conditions challenge to the legislative restrictions on charities seems quite strong. The activities upon which those restrictions impinge—comment by charities on matters of legislative policy—are expressions of a kind which lie within the core of the first amendment protections. What authority there is suggests that those protections apply with undiminished force to corporations and trusts.

It may be that these propositions by themselves would be sufficient for the Supreme Court to hold the legislative restrictions unconstitutional. The analyses of Justice Brennan and Professor Van Alstyne seem to suggest so.

If not, the Supreme Court would have to embark upon an examination of the government interest supporting the restrictions and the burden which the restrictions impose on first amendment expression. A review of other provisions of the federal tax laws reveals a multitude of tax benefits for private legislative activities and, therefore, strongly suggests that there is no compelling government interest in the Section 501 (c) (3) and related restrictions.

On the other hand, the burden on charities—making substantial legislative activity cause for denial of the vital right to receive deductible contributions—is real, considerable, and of far greater magnitude than the burden to businesses of denying deductions for lobbying expenses. For those reasons, the *Cammanaro* decision would seem not to support the constitutionality of the restrictions.

In light of these facts, the case for application of the doctrine of unconstitutional conditions to Section 501(c) (3) and related legislative restrictions on charities appears imposing.[88.1]

EQUAL PROTECTION

A second ground exists for constitutional attack on the legislative restrictions.

The restrictions discriminate between charities with substantial legislative activities and those without them. Ordinarily, to satisfy equal protection standards which the due process clause of the fifth amendment applies to the Federal Government, a discriminatory legislative classification need only be supported by a showing that it rests upon a rational basis. However, where the classification bears on constitutional or other fundamental rights, considerably stricter scrutiny obtains.[89] Specifically, where the classification extends preferential treatment to those refraining from the exercise of first amendment rights, it will be sustained only if it guards a compelling governmental interest.[90]

If the equal protection argument is made in these terms, the critical issue becomes the one upon which we have focused in our analysis of the unconstitutional conditions doctrine. From what has been said here, it seems clear that, on the basis of the considerable number of other federal tax provisions supporting organizations which attempt to influence legislation, a strong case can be made for the proposition that the Section 501 (c) (3) and related legislative restrictions do not stand upon a compelling government interest. If that case is sound, the due process clause of the fifth amendment should invalidate the restrictions; but in doing so, it will only duplicate the impact of the unconstitutional conditions doctrine.

AMERICANS UNITED CASE

In a case recently decided by the Court of Appeals for the District of Columbia, a charity placed the equal protection argument in somewhat different terms.[91] The Internal Revenue Service had revoked a ruling holding Protestants and Other Americans for Separation of Church and State ("Americans United") exempt under Section 501 (c) (3) and qualified to receive deductible contributions under Section 170(c) (2), basing the revocation on the organization's legislative activity. To the Court of Appeals, Americans United argued that the Service's action constituted unconstitutional discrimination against it because larger charities, with more extensive programs of exempt activities, could carry on the same quantum of legislative activity without loss of their entitlement to receive deductible contributions. The court held that the contention presented "substantial constitutional questions" and remanded the case to the District Court with instructions to convene a three-judge panel to consider them.

In the course of the proceeding, the Government asserted the absence of constitutional issues, citing *Cammarano*.[92] Americans United responded by referring to the sentence of the *Cammarano* opinion confining the holding to "nondiscriminatory" denial of tax benefits. The court described the organization's arguments as follows:

"Americans United, on the other hand, alleges just that the discriminatory conduct found lacking in Cammarano. This discrimination relates solely to the "size" of the organization, which appellants allege is directly related to its wealth and power structure, and comes into play during, and because of the exercise of first amendment protected liberties. By allowing larger, richer organizations more "dollar punch" in terms of "propagandizing" and "influencing legislation" before their respective activities are considered "substantial," the Commissioner is accused of following the mandate of § 501(c) (3) and treating identical activity differently, solely on the basis of the size, or wealth, of the acting party." [93]

DIFFERENCE OF EQUAL PROTECTION ARGUMENT IN AMERICANS UNITED

This argument, plainly differs from the equal protection argument outlined in the preceding section. Here the contention is not that organizations identical in all respects but for their exercise of first amendment rights should be accorded equal tax treatment. Rather, the argument requires comparison of organizations which differ in characteristics beyond their exercise of first amendment rights. Without varying its principle, the argument could be extended to assert that the availability of deductions for contributions to veterans' organizations and fraternal beneficiary societies—without regard to the quantity of legislative activities which these organizations carry on—presents unconstitutional discrimination against charities.

Placed in these terms, the equal protection argument has the advantage of enabling the charity relying on it to compare itself with other organizations which are capable of using tax-deductible funds to support legislative activities on the same issues in which the charity itself is interested. In the *Americans United* case, for example, the argument makes it possible for Americans United to assert that the Section 170(c) (2) (D) rule allows churches to use tax-deductible funds on one side of a legislative controversy, but prevents Americans United from using such funds on the other side. Although equal protection is not, strictly speaking, a question of fairness of treatment, this phrasing of the argument plainly has litigating appeal.

CONCURRING OPINION IN AMERICANS UNITED

On the other hand, when one puts the equal protection argument in terms which require comparison of organizations differing in respects other than their exercise of first amendment rights, one opens the possibility of justification of the differential tax treatment on the basis of these other differences. The difficulty is illustrated by the concurring opinion in the *Americans United* case:

"In short, it is certainly arguable that small groups are not being treated differently by § 501(c) (3) because they are small, but because they are obviously operating for a different purpose if they devote their comparatively small funds on a much different proportionate basis to propaganda for legislation." [94]

The analysis suggested by the concurring opinion seems wrong. It fails to distinguish between purposes and means of carrying out those purposes. In fact, legislative activities are only a means of accomplishing an independent purpose. Where the purpose is charitable—as where it relates to the promotion of health, protection of the environment, or the like—under the law of charitable trusts the legislative activity would be permissible to the charity if it is reasonably related to the purpose.

Determining whether the purpose is charitable requires precisely the same analytic

Footnotes at end of article.

task whether the organization is small or large. Once the purpose is found to be charitable, the scale of the charity's legislative activities in pursuance of the purpose is not relevant to the question whether the organization is "charitable."

Nonetheless, the willingness of the concurring judge to inquire into the differences of large charities from small ones indicates the direction of possible response to the equal protection argument once it is couched in the terms used by Americans United. This is not to say that the equal protection argument may not ultimately be successfully cast in these terms. It may be that the courts will find no adequate justification for the discrimination challenged in the other characteristics of the organizations with which the charity compares itself. That result would seem particularly likely where the charity does not rest its entire case on the comparison with large Section 501(c)(3) organizations, but also includes reference to the treatment of veterans' organizations and fraternal beneficiary societies. The substantiality test of Section 501(c)(3) and its consequences for large charities may be argued to have justification in administrative considerations or the prevention of excessive Internal Revenue Service involvement in the affairs of churches and other large charities. However, it is very difficult to see what compelling government interest can be said to support withholding qualification to receive deductible contributions from charities which lobby but, at the same time, permit granting such qualification to veterans' groups and fraternal societies which lobby.

VAGUENESS

A third and independent attack can be made on the legislative restrictions of Section 501(e)(3) and the related charitable contribution provisions on the ground of their vagueness. A number of Supreme Court decisions hold that statutes which impinge upon first amendment conduct must be drafted with precision and clarity. The Supreme Court has summarized the law as follows:

"We emphasize once again that "[p]recision of regulation must be the touchstone in an area so closely touching our most precious freedoms. . . . [f]or standards of permissible statutory vagueness are strict in the area of free expression.* * * Because First Amendment freedoms need breathing space to survive, government may regulate in the area only with narrow specificity. * * * When one must guess what conduct or utterance may lose him his position, one necessarily will 'steer far wider of the unlawful zone. . . . ' For '[t]he threat of sanctions may deter . . . almost as potently as the actual application of sanctions.' . . . The danger of that chilling effect upon the exercise of vital First Amendment rights must be guarded against by sensitive tools which clearly inform [those subject to the limitations] what is being proscribed." [95]

The uncertainties of the legislative restrictions of Section 501(e)(3) and the related charitable contribution provisions have been pointed out frequently. The Senate Finance Committee itself observed in 1969 that:

". . . the standards as to the permissible level of activities under present law are so vague as to encourage subjective application of the sanction. . . ." [96]

In the 1972 Ways and Means Committee hearings on the Ullman bill, members of the committee repeatedly expressed their concern about the vagueness of the present standards.[97] Former Commissioner Caplin has made the same point.[98]

SOURCES OF UNCERTAINTY

The ambiguity of the legislative restrictions stems in part from the presence of the term "substantial," but it extends well beyond that portion of the statutory language. A key problem is to distinguish between "attempting to influence legislation" and permissible discussion of controversial topics. Further, where an attempt to influence legislation is found, one must determine what other conduct of the organization, perfectly permissible if no attempt to influence legislation were present—for example, research—must be included with the end product in assessing the substantiality of the organization's legislative activity. On none of these critical points do the Regulations under Section 501(c)(3) provide any significant assistance. Other authorities are of little more help.

VAGUENESS OF IRS EXPLANATION

Several sentences from the Internal Revenue Service's own exposition of the legislative restrictions indicate the vagueness of the restrictions, and their possible breadth:

". . . This includes all appeals to the general public, not merely those that contain a request to contact a legislator or take other specific action. * * * If the underlying purpose is the advocacy of particular legislation, then there has been an attempt to influence legislation within the meaning of the Code. * * * In determining substantiality, it is sometimes difficult to determine what supporting activities should be included with the proscribed attempts to influence legislation. * * * Attempting to influence legislation does not necessarily begin at the moment the organization first addresses itself to the public or to the legislature. * * * There is no simple rule as to what amount of activities is substantial. The one case on this subject is of very limited help." [99]

APPLICABILITY OF FREUND CLASSIFICATION

Professor Freund has found "three grades of certainty" in the language of statutes of general operation.[100] As a leading Pennsylvania Law Review article on the subject has pointed out, statutes unconstitutional for vagueness are largely those containing language which falls within Professor Freund's third category: "terms involving an appeal to judgment or a question of degree." [101] On all of the grounds noted above, the Section 501(c)(3) and related legislative restrictions seem well within that class.

CONSEQUENCES FOR ORGANIZATIONS WITH RULINGS

For a charity which has received a ruling from the Internal Revenue Service that it is exempt under Section 501(c)(8) and qualified to receive deductible charitable contributions under Section 170, the ambiguity of the legislative restrictions presents serious problems. The organization, first, will commonly be unable to determine whether proposed conduct is an attempt to influence legislation. It will, also, be unable to determine what other activities and expenditures will be lumped with the attempt to influence legislation if one is found. Finally, it will have no means of determining in advance whether proposed legislative activity comprises a "substantial" part of its program.

ADVANCE RULINGS DIFFICULTIES

The charity will not be able to obtain an advance ruling from the Internal Revenue Service on any of the difficult interpretative questions here. The *Americans United* case opens the possibility of obtaining declaratory judgments in certain instances.[102] But on some key issues here—as, for example, substantiality—the courts would be no better able to give an advance determination than the Internal Revenue Service. In any event, the charity with a continuing program possessing possible legislative overtones would find it impractical to have each of the questions facing it presented to a court before proceeding with the proposed conduct.

Under the legislative restrictions, hence, the charity must make a variety of difficult and uncertain judgments for itself—and it must be correct, or surrender its tax exemption for all of its income and its entitlement to receive deductible contributions. It would be difficult to think of a clearer instance of the chilling effect of statutory vagueness on first amendment activity.

CONSEQUENCES FOR NEW ORGANIZATIONS

Unless the Americans United holding very materially broadens the access of newly formed charitable organizations to the courts, the consequences of the vagueness of the legislative restrictions will continue to be even more severe for such organizations.

PRACTICAL NECESSITY OF ADVANCE RULING

Confronted by the need to have advance Internal Revenue Service assurance of its Section 501(c)(3) and Section 170 qualification if it is to secure funding, the new organization will have to steer entirely clear of doubtful areas. While court review of an adverse Internal Revenue Service determination is theoretically available by the usual procedures of tax litigation, the process ordinarily proves longer than the organization is able to survive. The effect, generally, is the death of the organization. Unable to obtain funding for staff salaries and other expenses, those who wish to form the organization are compelled by the pressure of economic circumstances to abandon the idea, and the organization, and to turn to other endeavors.

The consequence is a strong incentive for the organization to avoid, at all costs, any proposed activity which might be thought to bring the legislative restrictions into play. Even if one is satisfied that the activity is permissible, its presence may delay the issuance of the ruling—and, therefore, the organization's initial funding—for longer than the creators of the organization can afford to wait. Here again, the chilling effect of the vague statutory standards on First Amendment expression is plain and considerable.

DELEGATION OF AUTHORITY TO IRS PERSONNEL

These circumstances give staff personnel at the Internal Revenue Service a broad area of practical control over the application of the legislative restrictions to newly formed organizations. In somewhat different circumstances, the Supreme Court has held that the delegation of judgments under vague statutory standards to lower level administrative officials is not permissible under the first amendment.[103] The principle of that holding seems directly in point.

ASSESSMENT OF VAGUENESS ATTACK

The private interest controlled by the legislative restrictions—freedom of expression—is one which the Supreme Court has been most willing to protect under the vagueness doctrine.[104] The ambiguities of the restrictions are broad and unresolved by the regulations or other authority. The likelihood that many of the important decisions under these standards will be relegated to the administrative level would seem to increase suitability of the issue for resolution by application of the vagueness doctrine. The absence of a compelling government interest supporting the restrictions should also be influential.[105]

Overall, consequently, the attack on the legislative restrictions for vagueness would seem to have considerable strength.

RECENT COURT ACTION

The Court of Appeals for the Tenth Circuit recently declined to hold the legislative restrictions unconstitutional. However, because of the focus of the case on the power of the Federal Government to restrict the free exercise of religion, the decision would seem to afford no reliable guide to the ultimate development of the law on the constitutional issues which we have been discussing.

In Christian Echoes National Ministry, Inc. v. United States,[106] a non-profit religious organization sought a refund of social security taxes, asserting that it was entitled to its Section 501(c)(3) exemption despite a rather

Footnotes at end of article.

considerable program of appeals to the general public to take action upon legislative and political issues. Not questioning the District Court finding that the activities were a part of the religion represented by the organization, the Court of Appeals held that the Section 501(c)(3) and related legislative and political restrictions were not an abridgement of the free exercise of that religion. Although the Government had not commented on the point in its brief, the court held that these limitations did not invade the plaintiff's freedom of speech.

Over the years the Supreme Court has sustained a variety of government restrictions upon religious activities under the free exercise clause of the first amendment.[107] Thus, the Tenth Circuit's holding on the free exercise issue is hardly surprising. While an unconstitutional conditions argument can be made out on this issue, paralleling the argument outlined here on the free speech issue, such an analysis does not appear to have been presented to the Tenth Circuit.

The freedom of speech issue was not briefed by either party. The court's discussion of it is short and includes no evaluation of the real force of the government interest in the restrictions, along the lines suggested here. The holding on the issue is arrived at without recognition of either the equal protection or vagueness argument.

At this writing, it is not clear whether Christian Echos will seek certiorari, and, of course whether certiorari will be granted if sought. In any event, the brevity and summary character of the court's analysis of the free speech issue would seem to make the holding of limited utility in predicting the ultimate course of the law on the constitutionality of the legislative restrictions.

PRIVATE FOUNDATION RESTRICTIONS: DIRECT REGULATION OF SPEECH

Private foundations are subject to special additional limitations on their ability to attempt to influence legislation. With certain exceptions, Section 4945, added to the Internal Revenue Code by the Tax Reform Act of 1969, imposes an initial ten percent excise tax on expenditures for the influencing of legislation, an additional 100 percent tax where the expenditures are not "corrected" within a "correction period," and further excise taxes where such expenditures are repeated.[108] Under certain circumstances, excise taxes are also imposed personally on foundation managers who agree to the making of expenditures to influence legislation.[108 1]

These special restrictions on private foundations constitute a clear effort by Congress to prohibit certain classes of legislative commentary by foundations. From what has been said about the application of first amendment protections to entities other than natural persons, it seems likely that the first amendment protection of free speech would be held applicable to private foundations, as well as to other classes of charitable corporations and trusts. Hence, if New York Times v. Sullivan[109] and Garrison v. Louisiana[110] establish unqualified protection for speech of "governing importance," the Section 4945 restrictions are unconstitutional.

If, on the other hand, the protection is not found to be prima facie unqualified, a court presented with the constitutional issue would have to evaluate the burden which the 1969 Act restrictions impose on foundations and the strength of the government interest in those restrictions.

BURDEN ON FOUNDATIONS

The burden of the restrictions, where they apply, is considerable. The pattern of penalty taxes established by the 1969 Act is designed not merely to chill, but to freeze altogether, the foundation legislative activities to which they apply. The first time a foundation makes an expenditure of the proscribed kind, it is subject to a modest tax measured by the amount of the expenditure. If the foundation does not "correct" the expenditure within the prescribed time—generally, by recovering the full amount expended—it is subject to an additional 100 percent excise tax. The second time the foundation steps across the line, there is an additional statutory provision doubling the penalty taxes for repeated violations.[111]

TERMINATION TAX

Further, where a foundation makes several expenditures contravening the restrictions—perhaps over an extended period of time—it would seem to fall within the termination tax provisions of Section 507, under which a tax may be levied on the organization equal to the lesser of (a) the aggregate amount of the federal tax benefits which it and its donors have received over the entire period of its existence, plus interest, or (b) the foundation's net assets.

So long as the organization expending the prohibited sums is a "private foundation," these taxes apply whether or not it continues to be tax-exempt under Section 501(c)(3) and qualified to receive deductible charitable contributions under Section 170. In addition, "foundation managers" become subject to additional, personal penalty taxes for breach of the legislative restrictions under certain circumstances.

EFFECT FOR FOUNDATIONS

To term the impact of this many-layered structure of penalty taxes on foundation legislative communications "chilling" is much to understate the case. The purpose—and, undoubtedly, very largely the effect—is simply, directly, and entirely to rule out the proscribed sorts of foundation expressions on legislative matters.

GOVERNMENT INTEREST IN RESTRICTIONS

Is this regulatory scheme supported by a compelling government interest in preventing foundations from expressing legislative views? It is difficult to see that it is.

So far as I am aware, private foundations are the only class of institutions in the United States which the Federal Government attempts directly and entirely to prevent from stating views on legislative issues. Many categories of organizations, far from being foreclosed from legislative activity, are permitted to use tax-free funds to carry it on. Businesses, labor unions, trade associations, veterans organizations, fraternal beneficiary societies, social welfare organizations, and large charities which are not private foundations—all are in that class.

Moreover, even where they are not allowed tax-free resources to conduct legislative activities, businesses, labor groups, and individuals are not prevented from stating their views on legislation; they are merely required to use their own funds for the purpose.

SIZE AND LEGISLATIVE INVOLVEMENT OF FOUNDATIONS

Are the special, direct regulatory measures for foundations justified because foundations have particularly extensive resources, or a demonstrated proclivity to legislative involvement? Hardly.

While there is no completely accurate estimate of the total current value of private foundation assets, the amount is generally thought to fall in the range of $23 to $25 billion. Any reliable estimate places the total of assets at less than the annual budget of expenditures of the Department of Health, Education, and Welfare.

AMOUNT OF FOUNDATION EXPENDITURES

Even when the payout requirements of the 1969 foundation legislation become fully effective,[112] annual foundation expenditures for exempt purposes will be required to total only about six percent of foundation investment asset value. If the $25 billion figure is an accurate approximation of investment asset value, the required level of expenditures would be $1.5 billion.

MOST FOUNDATION EXPENDITURES FOR NON-LEGISLATIVE PURPOSES

Of total annual foundation expenditures, the great bulk are for purposes no more ideological than putting college students through school, carrying on medical research, providing disaster relief, and supporting drama and the arts. Data collected by the Peterson Commission in 1969 showed that, among about 200 foundations surveyed for the period 1966–1968, only three-tenths of one percent of total grants were for the study of public policy issues and publication of the results.[113]

COMPARISON WITH LEGISLATIVE EXPENDITURES OF BUSINESSES AND LABOR GROUPS

It seems probable that the Peterson Commission classification is substantially broader than the legislative restrictions of Section 4945.[114] Even if not, it seems clear that the aggregate annual amount which foundations expended on legislative subjects before the 1969 Act rules became effective is very small indeed when one compares it with the amounts which businesses and labor groups devote to the direct pursuit of legislative goals.

The petroleum industry's current advertising campaign on the energy crisis—reported by the Washington Post to cost $3 million—is by itself probably sufficient to match all foundation expenditures which would have been taxable under the Section 4945 rule had it applied in 1969. When one adds the legislative expenditures of other extractive industries, the aerospace industry, the defense industry, automobile manufacturers, railroads, medical groups and others concerned with health care, labor unions, farm groups, and the multitude of other industries and organizations which participate freely, regularly, and extensively in attempting to influence legislation—and which together possess resources many times as large as those of foundations—one can only conclude that neither the quantitative level of foundation funds nor the extent of their legislative involvement makes out the presence of a compelling government interest in singling them out, from all other U.S. institutions, for the special Section 4945 restrictions.

EVIDENCE PRESENTED TO CONGRESS IN 1969

The evidence upon which the Ways and Means Committee acted in 1969 in framing the Section 4945 rule is not contrary to this conclusion. No more than a dozen cases of legislative activity by private foundations were presented to the Committee. The total of the expenditures involved in all was not large. The Committee had before it no overall data on the extent of foundation participation in legislative matters. One searches the record of the Committee's hearings, and its report accompanying the legislation, in vain for any factual demonstration of a compelling government interest in prohibiting legislative expressions by foundations.

COMMITTEE REPORT RATIONALE

The Committee Reports disclose that the Section 4945 rule sprang from Congressional unwillingness to rely upon the Section 501(c)(3) legislative restriction—and its tolerance of some legislative activity—for charitable organizations which are not subject to the discipline of public support.[115] Congress devised the new, stringent restrictions for charities deriving their funds from one donor, or a small group of donors. A critic has recently placed essentially the same ground for concern about foundations in slightly different terms, arguing that they are the proper subject of special scrutiny because they "lack constituencies." [116]

Footnotes at end of article.

One may agree or disagree with this point; but it is difficult to find in it a constitutionally acceptable government interest in restricting foundations' freedom of expression. Surely a key aim of the First Amendment was to protect the expression of views by minorities. The application of special restrictions to the First Amendment activity of narrowly based organizations—because they are narrowly based—would seem squarely contrary to that purpose.

The Supreme Court decision in *Grosjean* v. *American Press* [117] struck down a tax on newspaper advertising as an unconstitutional burden on First Amendment activity. The taxes flowing from contravention of Section 4945(d)(1) are a more direct, and much more stringent, effort to foreclose such activity. Because of the apparent absence of a constitutionally acceptable government interest supporting these restrictions, there would seem at least substantial possibility of their falling when they come under constitutional attack.

A LOOK AHEAD: THE COURTS AND CONGRESS

As the courts are presented with the question of the constitutionality of the exemption and deduction limitations on charities' legislative activities, they will undoubtedly be influenced by the fact that those restrictions have been in effect for a number of years. They may also be influenced by the size of the class of organizations to which the restrictions apply. While neither consideration is directly relevant to the legal issues presented by the constitutional attack, both can be expected to make the courts reluctant to hold the legislative restrictions invalid.

On the other hand, one must recognize that the restrictions deal with activities which do not lie on the periphery of the First Amendment. They have the direct effect of constricting the speech of institutions which, by their very nature, are necessarily concerned with matters of public interest and public importance; and they limit the ability of those institutions to express their views upon the laws which govern our society. It would be difficult to imagine a class of expression more clearly within the center of the first amendment.

Consequently, the next step in the development of the law here may be invalidation of the legislative restrictions. Such a result would not necessarily mean the end of all restrictions on tax support for organizations involved in legislative activities. It would, however, return to Congress the task of developing restrictions on such activities which are consistent with first amendment protections. In light of the importance and constitutional sensitivity of the interests with which the restrictions deal, refinement of the rules, accommodating them to constitutional protections seems highly desirable.

FOOTNOTES

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[1] The terms "charity," "charities," and "charitable" are used in their generic sense throughout, including all organizations to which Section 501(c)(3) grants exemption except those "testing for public safety."

[2] I.R.C. § 170(c)(2)(D).

[3] I.R.C. §§ 2055(a)(2); 2106(a)(2)(A)(ii); 2522(a)(2).

[4] Clark, "The Limitation on Political Activities: A Discordant Note in the Law of Charities," 46 Va. L. Rev. 439 (1960).

[5] XXI Tax Lawyer No. 4 at 969.

[6] S. 1408, 92d Cong. 1st Sess. (1971), reprinted at 117 Cong. Rec. 4070 (3/30/1971).

[7] S. 3063, 92d Cong. 2d Sess. (1972), reprinted at 118 Cong. Rec. 287 (1/24/1972).

[8] H.R. 13720, 92d Cong. 2d Sess. (1972), reprinted at 118 Cong. Rec. 1954 (3/9/1972).

[9] See generally, Hearings before the House Committee on Ways and Means on H.R. 13720, 92d Cong. 2d Sess. (1972).

[10] See statement of Russell E. Train, Chairman of the President's Council on Environmental Quality, at Hearings before the House Committee on Ways and Means on H.R. 13720, 92d Cong. 2d Sess. (1972), p. 27.

[11] See statement of Edwin S. Cohen, Assistant Secretary for Tax Policy, Department of the Treasury, *Id.* at 5.

[12] See Geske, "Direct Lobbying Activities of Public Charities," XXVI Tax Lawyer No. 2 at 305.

[12.1] The statement on behalf of the American Civil Liberties Union to the Ways and Means Committee on the Ullman bill is a brief, but excellent, discussion of the constitutional issues. See statement of Hope Eastman, Acting Director, American Civil Liberties Union, at Hearings before the House Committee on Ways and Means on H.R. 13720, 92d Cong., 2d Sess. (1972). See also "David Meets Goliath in the Legislative Arena: A Losing Battle for an Equitable Charitable Voice?" 9 San Diego L. Rev. 944 (1972); "Regulating the Political Activity of Foundations," 83 Harv. L. Rev. 1843 (1970).

[13] 48 Stat. 690, 700, 755, 760 (1934).

[14] See remarks by Senator Reed, 78 Cong. Rec. 5861 (1934).

[15] The leading case is Slee v. Comm'r, 42 F.2d 184 (2d Cir. 1930). Several other early cases were to the same effect. Sophia G. Coxe, 5 B.T.A. 261 (1926), (A, C.B., VI–1, 2 (1927)); Herbert E. Fales, 9 B.T.A. 828 (1927); Joseph M. Price, 12 B.T.A. 1186 (1928).

[16] Reg. § 1.501(c)(3)–1(d)(2).

[17] Helvering v. Bliss, 293 U.S. 144 (1934). The present Regulations under Section 501(c)(3) provide that "[t]he term 'charitable' is used in section 501(c)(3) in its generally accepted legal sense and is, therefore, not to be construed as limited by the separate enumeration in section 501(c)(3) of other tax-exempt purposes which may fall within the broad outlines of 'charity' as developed by judical decisions."

[18] 4 Scott, *Trusts* § 374.4 at 2912 (3d ed. 1967).

[19] ALI: 2 Restatement of the Law of Trusts 2d., § 374, pp. 257, 260 (1959).

[20] See, e.g., Garrison v. Little, 75 Ill. App. 402 (1898); Taylor v. Hoag, 273 Pa. 194, 116 Atl. 826 (1922); Collier v. Lindley, 203 Cal. 641, 266 P. 526 (1928).

As recently as 1948, the English view was to the contrary, National Anti-Vivisection Society v. Inland Revenue Commissioners, (1948) A.C. 31, noted in 10 Camb. L.J. 104, 63 L.Q. Rev. 403. While the Section 501(c)(3) Regluations do not deal with problems arising from divisions of authority in the non-tax decisions, it sems clear that, at least where there is a well-developed body of United States authority enunciating a settled rule, that rule should prevail over a contrary English view. The ultimate issue is, after all, one of construction of a United States tax statue.

[21] Register of Wills of Baltimore County v. Cook, 241 Md. 264, 216 A.2d. 542 (1966). See also, Manners v. Philadelphia Library Co., 93 Pa. 165, 172 (1880); In re Murphey's Estate, 62 P.2d 374 (Calif. 1936); Krause v. Peoria Housing Authority, 370 Ill. 356, 19 N.E. 2d 193 (1939).

[22] 42 F.2d 184 (2d Cir. 1930).

[23] Reg. 45, Art. 517 (1919), in T.D. 2831, 21 Treas. Decs. Int. Rev. 285 (1920).

[24] Jackson v. Phillips, 96 Mass. 539 (1867).

[25] Bowditch v. Attorney General, 241 Mass. 168, 134 N.E. 796 (1922).

[26] 4 Scott, *Trusts*, § 368, pp. 2855–56 (3d ed. 1967).

[27] Van Alstyne, "The Demise of the Right-Privilege Distinction in Constitutional Law," 81 Harv. L. Rev. 1439 at 1445 (1967–68).

[28] Sherbert v. Verner, 374 U.S. 398 (1963).

[29] Keyishian v. Board of Regents, 385 U.S. 589 (1967).

[30] Slochower v. Board of Education, 350 U.S. 551 (1956).

[31] Spevack v. Klein, 385 U.S. 511 (1967).

[32] 357 U.S. 513 (1958).

[33] *Id.* at 518.

[34] Liberty Lobby v. Pearson, 390 F.2d 489 (D.C. Cir. 1968).

[35] Frost & Frost Trucking Co. v. Railroad Comm'n, 271 U.S. 583, 593–94 (1926).

[36] New York Times Co. v. Sullivan, 376 U.S. 254 (1964); Grosjean v. American Press Co., Inc., 297 U.S. 233 (1936).

[37] See Cammarano v. United States, 358 U.S. 498 (1959); United States v. Auto Workers, 352 U.S. 567 (1957); United States v. CIO, 335 U.S. 106 (1948).

[38] See Brennan, "The Supreme Court and the Meiklejohn Interpretation of the First Amendment," 79 Harv. L. Rev. 1, 13 (1965). (Emphasis added.)

[39] 376 U.S. 254 (1964).

[40] 379 U.S. 64 (1964).

[41] See also, Kalven, "The New York Times Case: A Note on 'The Central Meaning of the First Amendment'," in 1964 Supreme Court Review 191 (Kurland ed.)

[42] "A court need not 'weigh' or 'balance'; it need simply apply the literal mandate of a given constitutional provision flatly to forbid government from conditioning its largess on any waiver of such a provision regardless of the circumstances." Van Alstyne, "The Demise of the Right-Privilege Distinction in Constitutional Law," 81 Harv. L. Rev. 1439, 1447 (1967–68).

[43] Spevack v. Klein, 385 U.S. 511 (1967); Frost & Frost Trucking Co. v. Railroad Comm'n, 271 U.S. 583 (1926).

[44] Sherbert v. Verner, 374 U.S. 398 (1963); Speiser v. Randall, 357 U.S. 513 (1958); United Public Workers v. Mitchell, 330 U.S. 75 (1947).

[45] *Id.*

[46] Cammarano v. United States, 358 U.S. 498, 512 (1959).

[47] Slee v. Comm'r, 42 F.2d 184, 185 (2d Cir. 1930).

[48] Cammarano v. United States, 358 U.S. 498, at 513 (1959).

[49] Rev. Act. of 1962, § 3(a), P.L. 87–834 (Oct. 16, 1962).

[50] S. Rep. No. 1881, 87th Cong. 2d Sess. (1962), pp. 21–24.

[51] *Id.* at 22. Two other reasons were mentioned by the Finance Committee: the administrative problem of separating expenses disqualified under the Regulations and *Cammarano* from deductible business expenses; and the anomoly of permitting deductions for the expenses of attempting to influence administrative and judicial bodies, but denying them for the expenses of attempting to influence legislative bodies.

As was pointed out in connection with the subsequent American Bar Association legislative recommendation for liberalization of the Section 170 and 501(c)(3) restrictions, these reasons—and that stated in the text quotation—appear equally to support the removal of the exemption and deduction limitations on direct lobbying by charities. See XXI Tax Lawyer No. 4 at 969.

[52] See statement of Mortimer M. Caplin at Hearings before the House Committee on Ways and Means on H.R. 13720, 92d Cong. 2d Sess. (1972), pp. 35–36.

[53] See statement of George Cooper, *id.* at 259–620.

[54] See statement of Edwin S. Cohen, *id.* at 17-20.

[54.1] 117 Cong. Rec. 4070 (3/30/71).

[54.2] See Geske, "Direct Lobbying Activities of Public Charities," 26 Tax Lawyer No. 2, at 305, 316.

[55] 357 U.S. 513 (1958).

[56] Commarano v. United States, 358 U.S. 498, 513 (1959).

[57] Charities to which the deduction is not important may be able to convert to exempt status under Section 501(c)(4) without adverse tax consequences.

[58] "Americans United, et al. v. Comm'r, — F.2d —, 73—, U.S.T.C. ¶ 9165 (D.C. Cir. 1/11/73).

[59] I.R.S. Exempt Organizations Handbook, IRM (11) 671, April 19, 1972, § 762(4).

[59.1] There is an additional and independently sufficent answer to the argument that the Section 501(c)(4) alternative resolves the constitutional problems of the legislative restrictions in the charitable exemption and deduction provisions. If a charity has rights protected by the First Amendment, the constitutional objection to restraint of those rights is not answered by pointing out that another person might be created to exercise similar rights. That course of action would not protect the charity's rights. Beyond reasonable regulation of time, place, and manner, restraint upon a particular mode of First Amendment expression cannot be justified even by the fact that the same person could have expressed his views in a different mode. Schneider v. State, 308 U.S. 147 (1939); Amalgamated Food Employees Local 590, et al. v. Logan Valley Plaza,. Inc., 391 U.S. 308 (1968); Police Dept. of Chicago v. Mosley, 408 U.S. 92 (1972); Grayned v. City of Rockford, 408 U.S. 104 (1972). Where the alternative expression would have to be by a different person, the principle would seem to apply *a fortiori*.

[60] I.R.C. § 170(c)(3); originally enacted Revenue Act of 1924, Ch. 234, § 214(a)(10)(D), 43 Stat. 253.

[61] I.R.C. § 2522(a)(4), (b)(5).

[62] I.R.C. § 2055(a)(4). The provision is not present, however, in the charitable bequest section of the statute covering the estate taxation of non-residents who are not citizens. I.R.C. § 2106(a)(2).

[63] See I.R.S. Exempt Organization Handbook, IRM (11) 671, April 19, 1972, § 822.3.

[64] S. Rep. No. 1082, 92d Cong. 2d Sess. (1972), pp. 1, 2.

[65] P.L. 92–418, § 1(a), 92d Cong. 2d Sess.; S. Rep. No. 1082, 92d Cong. 2d Sess. (1972), p. 1.

[66] So long, of course, as the activity is in furtherance of their exempt purpose under Section 501(c)(4). Treas. Reg. § 1.501(c)(4)–1(a)(2)(ii); see I.R.S. Exempt Organization Handbook § 824.22 and rulings cited there.

[67] Indeed, the implication is to the contrary. In addition to creating Section 501(c)(19), the 1972 amendment made the unrelated business income tax inapplicable to certain insurance income of veterans' organizations. Although it states that this special rule will not apply to insurance income used for lobbying, the Finance Committee Report does not suggest that lobbying will jeopardize the status of an organization under Section 501(c)(19). S. Rep. No. 1082, 92d Cong. 2d Sess. (1972), pp. 1, 4.

[68] I.R.S. Exempt Organization Handbook § 822.3.

[69] I.R.C. §§ 170(c)(4), 2522(a)(3). An amendment to insert legislative restrictions patterned upon the Section 501(c)(3) language in the income tax deduction and exemption provisions relating to fraternal beneficiary societies passed the House in 1948, but was not enacted. § 113(b)(2), H.R. 6712, 80th Cong. 2d Sess. (1948). The estate tax provisions for the deduction of charitable bequests to such organizations do contain legislative limitations on the Section 501(c)(3) model. I.R.C. §§ 2055(a)(3), 2106(a)(2)(A)(iii).

[70] I.R.C. § 501(c)(8), (10).

[71] Other than qualification to receive bequests deductible for estate tax purposes.

[72] See, e.g., statement of Mortimer M. Caplin at Hearings before the House Committee on Ways and Means on H.R. 13720, 92d Cong., 2d Sess., 32–33 (1972); Clark, "The Limitation on Political Activities: A Discordant Note in the Law of Charities," 56 Va. L. Rev. 439, 451–452 (1960).

[73] See S. Rep. 91–552, 91st Cong., 1st Sess., 47 (1969).

[74] See, Clark, "The Limitation on Political Activities: A Discordant Note in the Law of Charities," 56 Va. L. Rev. 439, 459 (1960).

[75] A letter of May 15, 1972, from Laurence Woodworth, Chief of Staff of the Joint Committee on Internal Revenue Taxation, to Chairman Mills of the House Ways and Means Committee, based on information received from the Internal Revenue Service and reprinted on pages 228–229 of Hearings before the House Committee on Ways and Means on H.R. 13720, 92d Cong., 2d Sess. (1972), lists seven organizations whose Section 501(c)(3) determination letters were revoked by the Internal Revenue Service in the period from 1965 through 1970 on the basis of legislative activity. No Roman Catholic Church is included.

[76] *Id.*

[77] S. Rep. 91–552, 91st Cong. 1st Sess. 47 (1969).

[78] See letter cited N. 75. The letter disclosed that, of 293 cases in which the Internal Revenue Service revoked Section 501(c)(3) determination letters during the period from 1965 through 1970, there were "at least twenty" instances in which the organization was reclassified as tax exempt under some other provision, "substantially all" of which were conversions to Section 501(c)(4) status.

[79] If the Service could show that the conversion was intended at the time of the charitable contributions, and that the contributors knew of the plan, it would presumably be able to attack the charitable contribution deductions (if the contributors' years were still open). But in the usual case of conversion to Section 501(C)(4) status, there will have been no such plan when the endowment was contributed.

[80] The Tax Reform Act of 1969 added special, stricter, limitations for private foundations. See I.R.C. § 4945(d)(1) and (e).

[81] See McGlotten v. Connally, 338 F. Supp. 448 (D.D.C. 1972).

[82] Bittker and Kaufman, "Taxes and Civil Rights: 'Constitutionalizing' the Internal Revenue Code," 82 Yale L.J. 51, 66–67 (1972).

[83] But not all. Organizations of these kinds may carry on grass roots legislative activities, for which deductions would be denied their members by Section 162(e)(2)(B).

[84] They are either corporations or associations taxable as corporations and, without specific statutory exclusions, their receipts from most dealings with members, from investment income, and from business income would, hence, be included in gross income.

[85] The unrelated business income tax is now imposed by I.R.C. §§ 511–513.

[86] The Tax Reform Act of 1969 imposed tax on the "unrelated debt-financed income" of such organization. I.R.C. §§ 511, 514.

[87] I.R.S. Exempt Organization Handbook § 942 (I.R.C. § 501(c)(5)); Revenue Ruling 61–177 (C.B. 1961–2, 117) and I.R.S. Exempt Organization Handbook § (10)51(2) (I.R.C. § 501(c)(6)).

[88] See, e.g., Surrey, "Federal Income Tax Reform: The Varied Approaches Necessary to Replace Tax Expenditures with Direct Governmental Assistance," 84 Harv. L. Rev. 352, 381 *et seq.* (1970); McDaniel, "Federal Matching Grants for Charitable Contributions: A Substitute for the Income Tax Deduction," 27 Tax L. Rev. 377 (1972).

[88.1] The constitutionality of the Section 501(c)(3) and related prohibitions on participation in political campaigns is a separate question, not addressed here. To answer that question, one would, first, have to determine the effect of campaign participation on charitable status under the general law of charitable trusts. The authorities relied upon here for the conclusion that attempts to influence legislation for a charitable purpose are consistent with status as a charity do not reach this independent issue. Further, unless the Brennan and Van Alstyne views of first amendment protections are adopted, one would have to make a separate analysis of the nature and force of the government interest in the prohibitions against charities' entrance into political campaigns. With the rule of the Federal Corrupt Practices against corporate contributions to political candidates and the recurrent Congressional consideration of the general question of campaign financing, it seems clear that the analysis outlined here does not serve that additional purpose.

[89] Shapiro v. Thompson, 394 U.S. 618 (1968); Williams v. Rhodes, 393 U.S. 23 (1968); Bolling v. Sharpe, 347 U.S. 497 (1954).

[90] Dunn v. Blumstein, 92 S. Ct. 995 (1972); Bullock v. Carter, 92 S. Ct. 849 (1972).

[91] "Americans United," Inc., et al. v. Comm'r, — F.2d —, 73–1 U.S.T.C. § 9165 (D.C. Cir. 1/11/73).

[92] Cammarano v. United States, 358 U.S. 498 (1959).

[93] "Americans United," et al. v. Comm'r, N. 91, *supra*.

[94] "Americans United," et al. v. Comm'r N. 91, *supra*, concurring opinion of Judge Wilkey, pp. 80, 224.

[95] Keyishian v. Board of Regents of University of State of New York, 385 U.S. 589, 604 (1967). See generally, Note, "The Void-For-Vagueness Doctrine in the Supreme Court," 109 Pa. L. Rev. 67 (1960).

[96] S. Rep. No. 91–552, 91st Cong. 1st Sess. 47 (1969).

[97] See Hearings before the House Committee on Ways and Means on H.R. 13720, 92d Cong. 2d Sess. (1972), pp. 14, 23, 24.

[98] *Id.* at 32, 33.

[99] I.R.S. Exempt Organizations Handbook, §§ 762, 764.

[100] Freund, "The Use of Indefinite Terms in Statutes," 30 Yale L.J. 437 (1921).

[101] Note, "The Void-For-Vagueness Doctrine in the Supreme Court," 109 Pa. L. Rev. 67, 92–93 (1960).

[102] There appears to be conflict among the Courts of Appeals on the access of charities to the judicial process under such circumstances. Compare Americans United v. Comm'r, N. 91, *supra*, with Bob Jones University v. Connally—F.2d—, 73–1 U.S.T.C. ¶ 9185 (4th Cir. 1/19/73) and Liberty Amendment Committee v. United States, 9th Cir. Docket No. 26,507 (7/7/72), *cert. denied* 12/18/72. Because of the conflict, the issue may find its way to the Supreme Court shortly.

[103] Cox v. Louisiana, 379 U.S. 536 (1965).

[104] "The Void-For-Vagueness Doctrine in the Supreme Court," 109 Pa. L. Rev. 67 at 94 (1960).

[105] *Id.*, at 94.

[106] Christian Echoes National Ministry, Inc. v. United States—F.2d—, 73–1 U.S.T. ¶ 9129 (10th Cir. 1972).

[107] E.g., Reynolds v. United States, 98 U.S. 145 (1878); Hamilton v. Regents of the University of California, 293 U.S. 245 (1934).

[108] I.R.C. §§ 4945(a)(1); 4945(b)(1); 6684.

[108.1] I.R.C. §§ 4945(a)(2), 4945(b)(2).

[109] 376 U.S. 254 (1964).

[110] 379 U.S. 64 (1964).

[111] I.R.C. § 6684.

[112] I.R.C. § 4942. The provision requiring foundations to pay a percentage of their investment asset value for charitable purposes becomes fully effective for tax years beginning in 1975.

[113] Peterson Commission Report, pp. 83, 49.

[114] Among other things, the Section 4945

restrictions do not apply to making available the results of non-partisan analysis, study, or research. I.R.C. § 4945(e).

[115] S. Rep. No. 91-552, 91st Cong. 1st Sess. 47 (1969).

[116] See Hart, "Foundations and Social Activism: A Critical View," The Future of Foundations 43 (1973).

[117] 297 U.S. 233 (1936).

[From the Evening Star and Daily News, Apr. 30, 1973]

LOBBYING TAX PLAN SOUGHT

(By Ross Evans)

A public-interest law firm and its lobbying arm, in a suit to be filed today, are seeking the right to lobby Congress despite the fact they are supported by tax-deductible contributions.

The suit, to be filed in U.S. District Court here by Tax Analysts and Advocates (TAA) and its affiliated lobby, Taxation With Representation (TWR), hopes to invalidate on 1st- and 5th-Amendment grounds a law which prohibits "substantial" lobbying by organizations supported by deductible contributions.

In order to receive deductible contributions, TAA spun off its lobbying activities in 1970 to separately incorporated TWR, which has the same nondeductible tax status as other public-interest lobbies, such as Common Cause. Both TAA and TWR are exempt from paying taxes themselves.

The suit would enable public-interest lobbies to claim the advantages of deductible charity status which would include currently prohibited support from foundations, reduced postal rates and a "governmental seal of approval" popularly attached to deductible grass-roots contributions, according to Thomas F. Field, executive director of both TAA and TWR.

Field said he used to be a "purist" who did not back use of tax advantages by public-interest groups, particularly tax-reform groups like his own. But he said he changed his mind because TAA "would not have survived financially" without its deductible status.

Former Sen. Fred R. Harris, D-Okla., is an admitted "purist." His new Populist Action lobby does not claim tax exemption for itself or deductions for its contributors, and his long-range goal is to eliminate tax breaks for all lobbies, public and private. But Harris acknowledged recently that he is "sympathetic in the short run" to efforts by public-interest groups to claim the advantages currently enjoyed by business lobbies whom they often oppose.

Business contributions to trade lobbies have been deductible as a business expense since 1962. The Internal Revenue Service does not know the amount of these deductions, since they are lumped together with miscellaneous items on corporate income tax forms. Field said the figure may run as high as $1 billion a year, almost half of it absorbed by the Treasury.

The House Ways and Means Committee killed a bill last year which would have defined as "substantial" lobbying by $213,000 charitable groups such as TAA the spending of more than 20 percent of their funds for this purpose. The Nixon administration objected to the provision, while endorsing the effort to set a standard in principle.

[From the Philanthropy Monthly, May 1973]

THE ULLMAN BILL—TRYING AN END RUN

Tax Analysts v. *Shultz* represents an effort by a group of Washington lawyers to void existing restrictions on legislative activity by tax exempt charitable and educational groups. It also seeks to establish tax deductibility for dues and contributions paid to "public interest lobbies" such as Common Cause and Taxation with Representation.

The group, Tax Analysts and Advocates, already boasts a handsome record of accomplishments. In part through their efforts the IRS has made public the sections of the Internal Revenue Manual dealing with Operating Instructions for Rulings Personnel in connection with Exempt Organizations.

The current effort relates to the problems of non-profit organizations which may wish to engage in lobbying. The present statute says only that such activity for public charities may not be "substantial", a term that has never been defined. The Ullman bill, introduced in 1972, at which time public hearings were held (See May, 1972 REPORT) seeks to remedy such problems by clarifying legislation. However the Ullman bill is not moving perceptibly and in the present antiphilanthropic climate awaits a dubious fate in any case.

Therefore Tax Analysts and Advocates is seeking a solution in the courts. This is not necessarily a matter of deliberate choice. Were they to wait for legislative clarification, they face the possibility of liquidation first. This crucial dependence on tax deductibility for support is one of the points of the suit.

Thomas F. Field, executive director of the organization, pointed out when filing the complaint on April 30th that tax exempt business leagues, trade associations, labor unions, agricultural groups, chambers of commerce, fraternal societies, and veteran organizations are all free to lobby as much as they wish—and they can use tax deductible funds for that purpose.

"The result" according to Mr. Field, "is to muzzle charitable and educational groups when they seek to speak out on legislative matters in the public interest, while giving free rein to lobbying efforts by groups serving narrower pocketbook interests. In our view, this is not just bad policy, but a clear violation of the First Amendment's guarantees of freedom of speech and association and the Fifth Amendment's guarantee of equal protection of the laws".

Tax Analysts and Advocates are especially interested to hear from other groups which have been particularly damaged by not being able to lobby. Such organizations might want to make contact with Tax Analysts and Advocates, at 732 Seventeenth Street, N.W., Washington, D.C. 20006.

[In the U.S. District Court for the District of Columbia]

COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF THREE JUDGE COURT REQUESTED

Tax Analysts and Advocates, 732 Seventeenth Street, N.W., Washington, D.C. 20006 (202) 298-5556 and Taxation With Representation, 2369 North Taylor Street, Arlington, Virginia 22207 (703) 527-2605, v. George P. Shultz, Secretary of the Treasury, 15th Street at Pennsylvania Ave. N.W., Washington, D.C. 20220 (202) 964-2533 and Johnnie M. Walters, Commissioner of Internal Revenue, 1111 Constitution Avenue, NW., Washington, D.C. 20224 (202) 964-4115: Civil Action No. —.

1. This is an action to declare unconstitutional, null and void and unenforceable, portions of Secs. 501(c)(3) and 170(c)(2) of the Internal Revenue Code (the Code), and the related estate and gift tax provisions of Secs. 2055, 2106, and 2522 of the Code, as violative of Article I, Section 1 of, and the First and Fifth Amendments to the Constitution of the United States; to enjoin defendants from continued enforcement of these provisions and of all applicable regulations and rulings promulgated thereunder; and to obtain listing for plaintiff Taxation with Representation (TWR) in defendants' publication *Cumulative List, Organizations Described in Section 170(c) of the Internal Revenue Code* (the *Cumulative List*).

SUPPLEMENTAL STATEMENT OF POINTS AND AUTHORITIES IN SUPPORT OF PLAINTIFFS' APPLICATION FOR CONVENING OF A THREE-JUDGE COURT[1]

(In the U.S. District Court for the District of Columbia: Tax Analysts and Advocates, et al., Plaintiffs, v. George P. Shultz, Secretary of the Treasury, et al., Defendants; Civil Action No. 833-73)

STATEMENT

This case challenges the constitutionality of those portions of the Internal Revenue Code ("the Code") (26 U.S.C.), which abridge the rights of speech, petition, press, and due process of charitable and educational organizations.

In general, the Code requires tax-exempt charitable and educational organizations to refrain from any "substantial" legislative activity.[2] Charitable and educational organizations which seek to influence legislation lose their tax-exempt status and their qualification to receive tax-deductible contributions In practice, loss of these tax privileges is usually fatal to the organization. By contrast, tax-exempt business leagues, chambers of commerce, trade associations, labor unions, fraternal and veterans groups and others may lobby without restriction, while remaining tax-exempt and fully eligible to receive tax-deductible payments and contributions.

The question of the validity of the existing statutory restrictions on legislative activity by charitable and educational organizations presents a substantial constitutional issue. Accordingly, a three-judge court should be convened.

THE STATUTORY FRAMEWORK

Sec. 501(c) of the Code exempts the following groups, among others, from income tax:

Section 501(c)(3): "Corporations * * * organized and operated exclusively for * * * charitable * * * or educational purposes, * * * no substantial part of the activities of which is carrying on propaganda, or otherwise attempting, to influence legislation * * *." (Emphasis added)

Section 501(c)(4): Civic leagues or organizations not organized for profit but operated exclusively for the promotion of social welfare * * *"

Section 501(c)(5): Labor, agricultural, or horticultural organizations."

Section 501(c)(6): Business leagues, chambers of commerce, real-estate boards, boards of trade, or professional football leagues * * *."

Section 501(c)(8): Fraternal beneficiary societies, orders, or associations * * *."

Section 501(c)(10): Domestic fraternal societies, orders, or associations * * *."

Section 501(c)(19): A post or organization of war veterans * * *."

Other provisions of the Code (and the pertinent Internal Revenue Service administrative rulings) allow the organizations described above, and others, to receive funds which are tax-deductible by the payor or donor even though the funds are used for lobbying. For example, Sec. 162(a) of the Code, and the administrative rulings thereunder, grant taxpayers a trade or business expense deduction for dues payments made to labor unions and similar groups which are tax-exempt under Sec. 501(c)(5), even though all or some portion of the payments

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[1] Submitted in accordance with the Rules 5(f) and 9(b) of the United States District Court for the District of Columbia

[2] See Sections 170(c)(2) and 501(c)(3) of the Code. Theoretically, an insubstantial amount of legislative activity is permissible. However, as developed more fully below, the inherent vagueness of the statutory language and the dire consequences for its violation, have the practical effect of prohibiting all legislative activity.

may be used for attempts to influence legislation. And Sec. 162(e) of the Code, as added by the Revenue Act of 1962, grants individual and corporate taxpayers a trade or business expense deduction for payments to business leagues, chambers of commerce, trade associations, and similar groups which are tax exempt under Sec. 501(c)(6), provided that the payment is used to influence legislation directly related to the taxpayer's trade or business. As a final example, Sec. 170 (c) (3) and (4) of the Code grants taxpayers a charitable deduction for payments to veterans organizations and fraternal societies, even though all or some portion of the payment may be used in attempts to influence legislation.

By contrast, Sec. 170(c)(2) of the Code, and the related estate and gift tax provisions of Secs. 2055, 2106, and 2522,[3] deny taxpayers a deduction for payments made to charitable and educational groups such as Tax Analysts and Advocates, unless the group insures that "no substantial part" of the activities of the organization consists of "carrying on propaganda, or otherwise attempting, to influence legislation." No section of the Code grants taxpayers a deduction for payments made to social welfare organizations like Taxation with Representation which seek to influence legislation in the public interest.

PLAINTIFFS

Tax Analysts and Advocates (TAA) is a charitable and educational group incorporated in 1970 under the District of Columbia Nonprofit Corporation Act. The Internal Revenue Service (IRS) has ruled that TAA is exempt from all federal taxes under Sec. 501 (c)(3) of the Code and is qualified to receive tax-deductible contributions. TAA educates the public and the news media on tax issues, principally by publishing a weekly tax news magazine, called *Tax Notes*, for financial journalists throughout the United States. It also conducts a public interest law practice, which includes participation on behalf of the general public in IRS administrative hearings on tax matters.

Taxation with Representation (TWR) is a charitable and educational organization also incorporated in 1970 under the District of Columbia Nonprofit Corporation Act. The IRS has ruled that TWR is exempt from income tax, but not social security and unemployment taxes, as a Sec. 501(c)(4) "social welfare" organization. The IRS has also ruled that TWR is *not* eligible to receive tax-deductible donations. Revenue Ruling 71–530, 1971–2 Cum. Bull. 237. TWR's charitable and educational purposes are to serve the common good and social welfare of the people of the United States by assisting teachers of economics and tax law in presenting their views to Congress regarding tax legislation. In general, TWR performs the same charitable and educational activities with respect to Congress as TAA performs in the courts and the Executive Branch.

ARGUMENT: THE REQUIREMENTS FOR CONVENING THREE-JUDGE COURT

The tests to be employed when deciding whether a case is appropriate for a three-judge court have been formulated in the following way by the Supreme Court:

"When an application for a three-judge court is addressed to a district court, the court's inquiry is appropriately limited to determining whether the constitutional question is substantial, whether the complaint at least formally alleges a basis for equitable relief, and whether the case presented comes within the requirements of the three-judge statute." *Idlewild Bon Voyage Liquor Corp.* v. *Epstein*, 370 U.S. 713, 715 (1962).[4]

Judged by these standards, a three-judge court is clearly required in the present case. The remainder of this memorandum will show why each of the tests established by the Supreme Court is fully satisfied. The discussion will focus initially on the two procedural points, and will conclude by showing the substantially of the Constitutional questions presented by this action.

(1) The Complaint in This Action Alleges a Basis for Equitable Relief.

Paragraphs 13 through 26 of the complaint state the injuries suffered by plaintiffs in consequence of enforcement of the challenged statutes. TAA is prevented from performing its role as an effective advocate of the public interest in tax reform because it cannot carry on legislative activities. TWR may be forced out of existence because of the unavailability of tax-deductible donations.

Paragraphs 27 through 32 state the claims for relief of the plaintiffs, followed by the specific equitable relief requested. Paragraph 32 of the complaint affirms that plaintiffs are suffering irreparable injury and have no adequate legal remedy.

The absence of a legal remedy in the present case contrasts with the normal situation in a tax dispute. In the usual case, a taxpayer can contest a deficiency assessment in the Tax Court, or he can pay the tax and sue for a refund in the District Court or in the Court of Claims. These normal routes for tax litigation are designed for situations in which the taxpayer differs with the government over his liability for tax or the amount of tax owed.

This is not the situation here. TAA is not required to pay any kind of Federal tax, and does not. TAA is therefore unable to contest a deficiency assessment in the Tax Court or to sue for a tax refund. TWR pays social security and unemployment taxes, as it is required to do by the rules relating to social welfare organizations, but it is not resisting the collection or payment of those taxes; TWR intends to continue to pay them as required by law. Therefore, TWR is not in a position to take the Tax Court, District Court, or Court of Claims routes to obtain resolution of the questions presented by this case. Indeed, it would be strange if taxpayers were forced to raise arguments about the payment of taxes which they do not owe—or to whose payment they do not object—in order to obtain adjudication of Constitutional questions which have no relationship to the challenged taxes.[5]

In *Protestants and Other Americans United for Separation of Church and State, Inc.* v. *Walters*, C.A. No. 71–1299, Jan. 11, 1973, — U.S. App. DC, — F2d —, reported by Commerce Clearing House, 73–1 United States Tax Cases (U.S.T.C.), par. 9165, p. 80,215, the Court of Appeals for the District of Columbia adopted the view that Constitutional questions such as those involved in the present case should be presented directly to a three-judge court. The Court of Appeals also held that it is not necessary to attempt to cast such questions in the form of a refund suit or Tax Court contest. Americans United therefore disposes of any claim that 28 U.S.C. Sec. 2201 and Sec. 7421(a) of the Code bar the present suit on the ground that a legal remedy is available. Accordingly, the District Court need not reach those statutory issues here. As Americans United makes clear, the plaintiffs in the present case simply do not have a legal remedy for the injuries suffered by them as a result of the unconstitutional restrictions imposed on their activities. Their only remedy is to obtain equitable relief.

Thus the first requirement for convening a three-judge court is fully satisfied here.

(2) This Action Complies with the Other Procedural Requirements for Convening a Three-Judge Court

The purpose of the three-judge court provision (28 U.S.C. 2282) is to prevent a single United States District Court judge "from being able to paralyze totally the operation of an entire regulatory scheme. . . ." *Kennedy* v. *Mendoza-Martinez*, 372 U.S. 144, 154 (1963). In interpreting the predecessor to Sec. 2282, the Supreme Court held that the decision as to whether a three-judge court is necessary depends upon the presentation of an application for an injunction which would operate totally to restrain the enforcement of a federal statute and not on the mere drawing into question the constitutionality of an enactment. *International Ladies' Garment Workers' Union* v. *Donnelly Garment Co.*, 304 U.S. 243, 250 (1938). As the Court said in *Flemming* v. *Nestor*, 363 U.S. 603, at 607 (1960):

"[A three-judge court action must] seek affirmatively to interdict the operation of a statutory scheme. [It must] put the operation of a federal statute under the restraint of an equity decree . . . "(brackets added.)

This case complies fully with this requirement. The complaint in this action seeks totally to restrain the enforcement of a restrictive statutory scheme which is embodied in the income, estate and gift tax provisions of the Internal Revenue Code. This complaint requests a "permanent injunction restraining the enforcement, operation [and] execution of [an] Act of Congress for repugnance to the Constitution of the United States" (28 U.S.C. 2282). Judgment for plaintiffs on the merits of this case would require such an injunction. This relief may not be granted until the case is heard and determined by a three-judge court.

The restrictive provisions of the Code, which are being enforced by the defendants, are the object of the injunction sought in the instant case. But plaintiffs seek to do more than merely enjoin the defendants' enforcement of the law as to the specific plaintiffs here. It is not merely the result, the effect, or the execution of the statutes which is being challenged. The statute itself is under attack. Consequently, the instant complaint fully fulfills the requirements of *Krebs* v. *Ashbrook*, 275 F. Supp. 111, 118 (D.D.C.) (1967), aff'd 132 U.S. App. D.C. 176, 407 F.2d 306, *cert. den.* 393 U.S 1026, which held that "To come under Sec. 2282, the Act of Congress or operations under it must be the direct object of the injunction sought." See also *Flemming* v. *Nestor*, 363 U.S. 603, 607.

The second of the three tests for convening a three-judge court is therefore fully satisfied.

(3) The Constitutional Questions Presented by this Case are Substantial and of the

[3] These four sections, and Sec. 501(c)(3), all use the "no substantial part" language quoted more fully on page 2, *supra*. Subsequent references to this language will refer to its appearance in Sec. 501(c)(3); this reference is intended, however, to include all the sections where this restrictive language appears.

[4] It is useful to distinguish between the use of "substantial" in Idlewild, and its meaning in the challenged Internal Revenue Code sections, especially in view of plaintiffs' contention that the Code is impermissibly vague. The usage of "substantial" in Idlewild refers to the quality of the argument; the same language in the Revenue Code refers to quantity of the activity. The Idlewild meaning is that of "real; actual; true; not imaginary" (Webster's New World Dictionary, College Edition, World Publishing Co., Cleveland and New York, 1958, p. 1454). The Revenue Code meaning refers to an amount, perhaps a percentage, of organization activity.

[5] It is of course true that TAA and TWR could perhaps make themselves liable for tax deficiencies by refusing in the case of TWR to pay social security taxes or, in the case of TAA, by carrying on a "substantial" amount of legislative activity. But it is well settled that a plaintiff need not violate the law to test a First Amendment restriction.

Kind Requiring the Convening of a Three-Judge Court.

In determining whether a question is substantial, the Supreme Court has articulated the following criteria: A question may be insubstantial "either because it is 'obviously without merit' or because 'its unsoundness so clearly results from the previous decisions of this Court as to foreclose the subject and leave no room for the inference that the question sought to be raised can be the subject of controversy.'" *Ex parte Poresky*, 290 U.S. 30, 32 (1933) (challenge to Massachusetts compulsory automobile liability insurance law held insubstantial in view of prior decisions of the Court). And see *California Water Service Co.* v. *City of Redding*, 304 U.S. 252 (1938). The *Poresky* Court also stated that "the complainant should not be denied opportunity to be heard in the prescribed manner upon a question that is fairly open to debate. . . ." 290 U.S. at 32. *And see Harrell* v. *Board of Commissioners*, 269 F. Supp. 919 (D.D.C. 1967) (the question presented was not "reasonably debatable" and the three-judge court application was therefore denied).

All of the issues presented in the plaintiffs' case are constitutional in nature. The issues are set out as claims for relief in the complaint, paragraphs 27 through 32.

Stripped to its barest essentials, the constitutional problem is that the law forbids attempts by the plaintiffs to influence legislation with tax-deductible payments and contributions, and permits other tax-exempt organizations, including business groups, labor unions, and fraternal and veterans groups, to do just that. The several claims for relief present various aspects of this basic problem. This constitutional problem has recently been explored in detail in Troyer, "Charities, Law-Making, and the Constitution: The Validity of the Restrictions on Influencing Legislation", 31 *New York University Institute on Federal Taxation* 1415 (1973).

This problem clearly is of the degree of substantiality as to require the convening of a three-judge court. In *Americans United, supra*, the Court of Appeals held that the portion of Section 501(c)(3) of the Code which prohibits legislative activity is subject to a substantial constitutional challenge based upon the legal theory that it discriminates against one group of charities and in favor of another group of charities. In that case the discrimination complained of by plaintiff, a small charity, was that larger charities appear to be allowed more legislative activity under the "substantiality" test of Section 501(c)(3) than are smaller groups. Here the discrimination if even grosser, because the favored business, labor and other groups are allowed unlimited legislative activity, while the present plaintiffs—who are in all relevant respects similarly situated to the favored groups—are effectively prohibited from engaging in any legislative activity, while the present plaintiffs—who are in all relevant respects similarly situated to the favored groups—are effectively prohibited from engaging in any legislative activity.

Plaintiffs believe that *Americans United* is a controlling precedent which clearly demonstrates that the constitutional issues involved here are so substantial as to warrant the convening of a three-judge court. However, to demonstrate that this is so, we will briefly reiew the constitutional issues present in this case.

(a) The challenged statutes improperly require Tax Analysts and Advocates to relinquish First Amendment rights in order to be eligible for favored tax status.

This problem, relating to paragraph 27 of the complaint, is an example of the doctrine of unconstitutional conditions. This doctrine has been summarized in the following way in a recent Harvard Law Review article:

"Essentially, this doctrine declares that whatever an express constitutional provision forbids government to do directly it equally forbids government to do indirectly. As a consequence, it seems to follow that the first amendment forbids the government to condition its largess upon the willingness of the petitioner to surrender a right which he would otherwise be entitled to exercise as a private citizen. The net effect is to enable an individual to challenge certain conditions imposed upon [a governmental benefit] without disturbing the presuppostion that he has no 'right' to that [benefit]." Van Alystyne, "The Demise of the Right-Privilege Distinction in Constitutional Law," 81 *Harv. L. Rev.* 1439, 1445 (1967–68).

The Supreme Court has applied this rule in a wide variety of cases during the past two decades. For example, it has been held that unemployment benefits cannot be denied to a person who refuses to work on Saturday because his religion designates Saturday as the sabbath (*Sherbert* v. *Verner*, 374 U.S. 398 (1963)). It has also held that public employment cannot be denied in cases in which an employee refuses to refrain from exercising his constitutionally protected right of free speech (*Keyishian* v. *Board of Regents*, 385 U.S. 589 (1967)). Nor can a public school teacher be discharged for invoking the privilege against self-incrimination (*Slochower* v. *Board of Education*, 350 U.S. 551 (1956)) or an attorney be disbarred for invoking that privilege (*Spevack* v. *Klein*, 385 U.S. 511 (1967)). In each of these cases it has been held to be unconstitutional to condition enjoyment of a government benefit on a surrender of Constitutionally protected rights.

Even more closely in point for present purposes is the Supreme Court decision in *Speiser* v. *Randall*, 357 U.S. 513 (1958). In that case, the Court held that California could not condition a veteran's property tax exemption on the veteran's agreement to take an oath not to advocate overthrow of government. The language of the decision (*Id.* at 518) is instructive:

"It is settled that speech can be effectively limited by the exercise of the taxing power. *Grosjean* v. *American Press Co.*, 297 U.S. 233, 56 S. Ct. 444, 80 L.Ed. 660. To deny an exemption to claimants who engage in certain forms of speech is in effect to penalize them for such speech. The appellees are plainly mistaken in their argument that, because a tax exemption is a 'privilege' or 'bounty', its denial may not infringe speech."

So, here, it is a mistake to argue that because tax exemption is a privilege, Tax Analysts and Advocates may therefore be required to give up its rights of speech, press, and petition. The numerous Supreme Court opinions just cited render that argument highly suspect and raise a substantial constitutional question, requiring convening a three-judge court.

(b) The challenged statutory restrictions are impermissibly vague; the vague language is particularly objectionable because it chills the exercise of First Amendment rights.

This issue relates to paragraphs 28 and 29 of the complaint which set forth the plaintiff's second and third claims for relief.

It is firmly established that due process requires certainty in statutes. *Dombrowski* v. *Pfister*, 380 U.S. 479 (1965); *Cramp* v. *Board of Public Instruction*, 368 U.S. 278 (1961); *Baggett* v. *Bullitt*, 377 U.S. 360 (1964); *Champlin Ref. Co.* v. *Corporation Comm'n.*, 286 U.S. 210 (1932); *Cline* v. *Frink Dairy Co.*, 274 U.S. 445 (1927); *Connally* v. *General Const. Co.*, 269 U.S. 385 (1926); *U.S.* v. *L. Cohen Grocery Co.*, 255 U.S. 81 (1921). Likewise it is firmly established that "[even] stricter standards of permissible statutory vagueness may be applied to a state having a potentially inhibiting effect on speech; a man may the less be required to act at his peril here, because the free dissemination of ideas may be the loser." *Smith* v. *California*, 361 U.S. 147, 151 (1959). See also *Interstate Circuit* v. *Dallas*, 390 U.S. 676 (1968); *Ashton* v. *Kentucky*, 384 U.S. 195 (1966); *Baggett* v. *Bullitt, supra*.

Vagueness impinging on speech is suspect not only because it prevents a statute from giving notice of its meaning, but also because the vagueness itself chills the exercise of First Amendment rights. A current formulation holds that "where a vague statute abut[s] upon sensitive areas of First Amendment freedoms, it operates to inhibit the exercise of [those] freedoms. Uncertain meanings inevitably lead citizens to steer far wider of the unlawful zone . . . than if the boundaries of the forbidden areas were clearly marked." *Grayned* v. *City of Rockford*, 408 U.S. 104 (1972) (Justice Marshall, writing for Justices Brennan, Stewart, White, Powell and Rehnquist, and Chief Justice Burger) (brackets in original; quotation marks and footnotes omitted).

This case presents a classic example of the chilling effect that a vague statute can have on the exercise of First Amendment freedoms. As the complaint in this case indicates, Section 501(c)(3) of the Code prohibits any "substantial . . . activities . . . which [consist of] carrying on propaganda or otherwise attempting, to influence legislation . . ." (brackets added). That statute, both on its face and as interpreted administratively by the IRS, is impermissibly vague under the strict First Amendment standards as well as under due process standards. As the complaint in this case indicates, the vagueness of Section 501(c)(3) is having the undesirable effect feared by the Supreme Court. This is true not only in the case of the plaintiffs themselves but also in the case of many other charitable and educational organizations which are subject to the same statutory scheme.

Defendants' regulations, promulgated pursuant to the statutes challenged, have done nothing to lessen the vagueness of the law. While the regulations spell out with some particularity what constitutes propaganda and other legislative activity, there is no regulation which attempts to explain what is meant by "substantial". See 26 C.F.R. 1.501(c)(3)–1(b) and (c), *passim*. Nor is there any judicial decision which has been acquiesced in by the defendants that clarifies the statutory language. In fact, the IRS itself has conceded the difficulty of interpreting the law; its own *Exempt Organizations Handbook*, prepared to give official guidance to IRS employees, states:

"In determining substantiality, it is sometimes difficult to determine what supporting activities shall be included with the proscribed attempts to influence legislation. . . There is no simple rule as to what amount of activities is substantial. The one case on this subject is of very limited help." *Exempt Organizations Handbook*, Part XI, Internal Revenue Manual (11)671, Sec. 764.

The vagueness issue by itself presents a substantial constitutional question which makes a three-judge court necessary to hear the merits of this action.

(c) The challenged statutes subject both plaintiffs to an arbitrary classification which improperly burdens their First Amendment rights, in violation of the equal protection standards of the Fifth Amendment.

This issue is raised by the fourth and fifth claims for relief which are set forth in paragraphs 30 and 31 of the complaint.

As noted earlier, the tax laws distinguish sharply between two groups of organizations, both of which are exempt from tax. One group, consisting of business leagues, trade associations, chambers of commerce, labor unions, agricultural groups, veterans and fraternal organizations, and others, is eligible to receive payments and donations which qualify the payor or donor for a tax deduction. The organizations in this group are also free to engage in lobbying activities without restriction.

In the second group, to which both plaintiffs belong, are organizations that are forced to make a difficult and undesirable choice. They can, like TAA, receive deductible donations, but they must then refrain from all but insubstantial efforts to influence legislation. Or, like TWR, they can carry on legislative activities, but they must then support their activities with donations which are *not* tax-deductible by the donors. As a result, it is very difficult—and sometimes impossible—to raise the funds that these groups need to represent the public interest in competition with business, labor, and other groups that enjoy both tax-exemption and tax-deductibility for their receipts. This clearly discriminatory treatment is only sustainable if the government can establish a compelling governmental interest to warrant this burdening of plantiffs' exercise of their fundamental constitutional rights of free speech, press and petition. *Dunn* v. *Blumstein*, 405 U.S. 330 (1972); *Bullock* v. *Carter*, 92 S. Ct. 849 (1972) (Chief Justice Burger, writing for a unanimous court); *Shapiro* v. *Thompson*, 394 U.S. 618 (1969); *U.S.* v. *O'Brien*, 391 U.S. 367 (1968); *Harper* v. *Va. Bd. of Elections*, 383 U.S. 663 (1965); *Sherbert* v. *Verner, supra; NAACP* v. *Button*, 371 U.S. 415 (1963); *Bates* v. *Little Rock*, 361 U.S. 516 (1960); *Thomas* v. *Collins*, 323 U.S. 516 (1945); *Korematsu* v. *U.S.*, 323 U.S. 214 (1944); *Skinner* v. *Oklahoma*, 316 U.S. 535 (1942).

On its face the discrimination between business, labor and other groups, on the one hand, and charitable and educational groups, on the other, is arbitrary and unjustifiable. The charters and stated purposes of plaintiffs, and of many other charitable and educational organizations, give them a legitimate interest in expressing their opinion to the legislatures. But they are prevented from doing so, while other tax-exempt groups can. Business and labor groups have similar legislative interests, although their legislative activities are liable to be more narrowly focused than the plaintiffs' and to be mainly concerned with promoting the immediate pocketbook interests of their members.

For example, chambers of commerce and trade associations (which are tax-exempt under Section 501(c)(6) of the Code) often lobby with tax-deductible funds in favor of proposed legislation which would lower the tax burden on their members, thus shifting a portion of the overall tax burden to others. Plaintiff TAA is prevented by the Code's restrictions on legislative activity from opposing this shifting of tax burdens. Plaintiff TWR is free to represent the public interest in such cases, but, without the availability of tax-deductible contributions, it does not have the resources to carry on its work.

A thorough search of the legislative history of the lobbying prohibition in Section 501(c)(3) of the Code fails to disclose any compelling governmental interest in this discriminatory classification of tax-exempt groups. And where, as here, no overriding government interest exists to justify a statutory discrimination, the statute cannot stand.

The arbitrariness of the Internal Revenue Code's classification of tax-exempt groups with respect to their legislative activity raises a substantial constitutional question, requiring resolution by a three-judge court.

(d) The challenged statutes are unconstitutionally overbroad; their sweeping language imposes restrictions on First Amendment freedoms far beyond the range of any compelling governmental interest.

Even if the government were to carry its burden of demonstrating the necessary compelling interest to justify the statutory scheme here attacked, it must nevertheless refrain from regulating broadly in areas beyond the range of such interest. *United States* v. *Robel*, 389 U.S. 258 (1967); *Keyishian* v. *Board of Regents, supra; Elfbrandt* v. *Russell*, 384 U.S. 11 (1966); *Baggett* v. *Bullitt*, 377 U.S. 360 (1964); *NAACP* v. *Button*, 371 U.S. 415 (1963); *Shelton* v. *Tucker*, 364 U.S. 479 (1960). And whenever First Amendment freedoms are regulated, the government must be able to demonstrate that no less restrictive alternative would be sufficient to accomplish its legitimate end. *Sherbert* v. *Verner, supra.*

It is difficult to imagine any compelling interest which the government might have in prohibiting all but insubstantial lobbying by charitable and educational organizations. It is true that there is a governmental interest in prohibiting illegal, unethical or improper conduct by lobbyists. But that interest has nothing to do with the present case. A separate statutory framework has been designed to serve this important but narrow interest. See, for example, 2 U.S.C. Secs. 261–270, which requires registration of lobbying organizations.

In contrast to necessary registration and regulation statutes, the statutory scheme under attack in the present case serves no legitimate government interest. Indeed, it undermines sound public policy by stripping large numbers of charitable and educational groups of their fundamental freedoms of speech, press, petition, to the public detriment.

CONCLUSION

Accordingly, plaintiffs request the Court to approve their motion for appointment of a three-judge court.

THE NEED FOR PAYROLL TAX REFORM AS PART OF COMPREHENSIVE TAX REFORM BY CONGRESS

Mr. KENNEDY. Mr. President, perhaps the most welcome piece of news to come out of the Department of Health, Education, and Welfare in recent weeks is the current report that Secretary Caspar Weinberger is now considering various options for reform in the social security payroll tax.

My own view is that Congress itself should go on record too, by serving notice now that payroll tax reform must be a part of the comprehensive tax reform package already scheduled to be taken up as our first priority when the new session of Congress begins next January.

For too long, the payroll tax has been the forgotten cousin in the movement for tax reform. Yet, as we know, the recent increases in the payroll tax have had a heavy and regressive impact on those who can least afford it—tens of millions of ordinary American working men and women at the bottom and middle of the national wage scale.

In part, the long neglect of the payroll tax in the drive for tax reform is the product of the dramatic recent growth in the payroll tax. From a relatively modest and unassuming tax in its early and middle years, the payroll tax has mushroomed dramatically in recent years, to the point where it now has an excessively heavy and unfair impact on the vast majority of those who bear its burden. The figures tell the story:

For the first 13 years of social security, 1937 to 1949, the payroll tax rate on the employee was only 1 percent, applied only to the first $3,000 of earnings.

By 1960, the rate had climbed to 3 percent, and the wage base had risen to $4,800.

During the decade of the sixties, the growth in both the tax rate and wage base rose in more rapid steps. By 1970, the rate was 4.8 percent and the base was $7,800.

But in the past 3 years, the accelerations in the rate and wage base have been more substantial. Today, in 1973, the rate is now a sizable 5.85 percent; the base is $10,800, and in January 1974, it will rise to $12,600.

And the increasing rate and base have been matched by enormous increases in the revenue yield of the payroll tax. As recently as 1960, the payroll tax was a relatively sleepy tax, generating Federal revenues of "only" $22 billion a year, or 20 percent of all Federal revenues. Today, it is estimated that the payroll tax is generating $78 billion a year or 30 percent of Federal revenues—a 50 percent increase in the percentage share and an absolute increase of nearly $60 billion a year in the short span of a single decade.

The steady upward march in the rate and base of the payroll tax reflects the pressure of many factors in recent years—principally the soaring inflation that has required substantial increases in social security benefits to enable 20 million senior citizens to maintain a decent standard of living; but also the historic expansion of the payroll tax to include medicare and to cover the continuously rising costs of health care for the elderly.

Because of its flat rate and the relatively low cut off on earnings subject to the tax, the payroll tax today is heavily regresive in its impact. The truly surprising thing about the payroll tax is the absence of substantial efforts for reform as its burden has accelerated in recent years.

Now, however, thanks in part to the impetus of Secretary Weinberger's initiative in HEW, the sleeping giant phase of payroll tax reform may well be over, and the effort for reform can now begin in earnest. And, thanks as well to the recent studies of private groups, like the outstanding work of the Brookings Institution, there is no absence of well-thought-out proposals for reform, designed to keep the payroll tax but to make it fairer and more progressive.

A single table—derived from a current Brookings study—demonstrates the substantial benefits that payroll tax reform can bring to millions of wage earners in the low- and middle-income classes. It also demonstrates the immense free ride that upper income taxpayers now enjoy at the expense of the average worker, as a result of the severely regressive nature of the payroll tax. The figures are based on a simple, two-part package of reforms that would, first, provide a $750 personal exemption and a $1,300 minimum standard deduction under the payroll tax—the same exemption and deduction now allowed under the income tax; and second, remove the ceiling on the wage base. These reforms would be a "balanced" package in the sense that they would involve little or no revenue gain or loss to the Federal Treasury, in the early years. But the benefits to low- and middle-income working men and women would be substantial, as indicated by the following figures:

Income class (thousands of dollars)	Effective rate (percent)		Changes in effective rate as result of reform package	Approximate annual dollar savings
	Current law [1]	Reform package		
0 to 3	4.6	0.9	−3.7	0-111
3 to 5	4.8	1.3	−3.5	105-175
5 to 10	7.4	3.7	−3.7	185-370
10 to 15	8.7	6.0	−2.7	270-405
15 to 20	7.8	7.3	−.5	75-100
20 to 25	6.7	7.8	1.1	220-275 (−)
25 to 50	5.3	7.7	2.4	600-1,200 (−)
50 to 100	2.4	6.2	3.8	1,900-3,800 (−)
100 to 500	.6	3.6	3.0	3,000-15,000 (−)
500 to 1,000	.1	1.4	1.3	6,500-13,000 (−)
1,000 and over	[2]	.5	.5	5,000- (−)
All classes	6.3	6.2	−.1	

[1] Effective tax rates include the total of employee and employer contributions.
[2] Less than 0.05 percent.

Thus, this simple package of reforms would bring welcome, obvious, and immediate payroll tax relief to all those earning $20,000 a year or less, including the overwhelming majority of American working men and women.

My hope is that in the coming weeks, Congress will make its intention clear to give payroll tax reform the same high priority already reserved for income tax reform, and that we will include payroll tax reform as part of the comprehensive tax reform legislation planned for early next year. Only in this way can we bring real tax justice to every citizen, and end the unjust reign of the payroll tax.

One final comment—5 years ago, the movement for income tax reform began in earnest when Joseph Barr, the Secretary of the Treasury in the Johnson administration, announced that 155 taxpayers with incomes of more than $200,000 a year had paid no income tax at all. My hope is that Health, Education, and Welfare Secretary Weinberger's recently quoted statement:

> This year, for the first time, more than half the nation's taxpayers will pay more Social Security tax than federal income tax.

Will have a similar impact, and will launch an equally vigorous national movement for payroll tax reform.

IMPACT AID AND SCHOOL EQUALIZATION

Mr. FANNIN. Mr. President, we have all become aware of the inequities that have existed in the financing of our public school system. The historic reliance on the local property tax by the Nation's school districts to finance educational endeavors has resulted in glaring dollar disparities among our schools. As the evidence of these disparities became more apparent the pressure for reform grew intense. Efforts were made to eliminate the inequities, but the basic system of relying on the local property tax remained. Then, numerous cases were filed challenging the constitutionality of an educational finance system based on the local property tax. The Serrano decision in California, which in effect invalidated the application of the local property tax in supporting local schools, sent a shock wave throughout the country with the result that countless States began reassessing their system of school finance.

During this period of reassessment, however, other courts were hearing and deciding similar cases as that in California. The spirit for reform received further encouragement when a Federal district court in Texas found the Texas school finance system unconstitutional under the equal protection clause of the 14th amendment. This case, known as Rodriguez, set the stage for a review by the Supreme Court. And on March 21, the Court in an historic opinion decided that the issue of educational discrimination through local school financing was not a constitutional one. It determined instead that while inequities were clearly apparent, the issue was one which State and local governments were responsible for resolving.

Even though the Court decided not to involve itself in the thicket of school finance the Court was nevertheless clearly distressed by the present system and issued a clear challenge to State and local lawmakers. It was Justice Powell who wrote:

> We hardly need add that this Court's action today is not to be viewed as placing its judicial imprimatur on the status quo. The need is apparent for reform in tax systems which may well have relied too long and too heavily on the local property tax. And certainly innovative new thinking as to public education, its methods and its funding, is necessary to assure both a higher level of quality and greater uniformity of opportunity. These matters merit the continued attention of the scholars who already have contributed much by their challenges. But the ultimate solutions must come from the lawmakers and from the democratic pressures of those who elect them.

Under the conditions of court review and increasing public concern many States accepted the challenge issued by Justice Powell and put into motion efforts to reform their school finance systems. In many States, the basic form for change was the establishment of a State equalization program whereby the State would provide additional funds to equalize educational costs and by doing so, hopefully eliminate existing disparities between school districts. In other States where an equalization program was already in existence, efforts were directed toward increasing State funds. But some States in either developing a State equalization program or expanding an established one are finding it difficult to do so, because of Federal law. It is this aspect of the Federal-State partnership that concerns me.

In computing the amount of State aid that a local school district could receive, many States would take into account impact aid funds as being a local tax resource. The effect of such action was to reduce the funds that would otherwise be available to impacted districts and to reduce by a corresponding amount the costs of the State aid program. As might be expected, reductions in State assistance as a result of Federal assistance were opposed by impact aid school districts. In Virginia, for example, the impact aid school districts sued the State and won. Others sought relief through legislation and Congress responded by enacting as a part of Public Law 90–576 a prohibition preventing a State from taking into account impact aid funds as a local tax resource. This legislation provided that—

> No payments may be made during any fiscal year to any local educational agency in any State which has taken into consideration payments under this subchapter in determining the eligibility of any local educational agency in that State for State aid (as defined by regulation), or the amount of that aid, with respect to free public education during that year or the preceding fiscal year, or which makes such aid available to local educational agencies in such a manner as to result in less State aid to any local educational agency which is eligible for payments under this subchapter than such local educational agency would receive if it were not so eligible.

But, according to the Battelle Institute study of impact aid, this prohibition tends to "reduce the effectiveness of attempts by States to provide relatively equal educational opportunities with limited State funds and to discourage States without equalization formulas from adopting them."

The Education Commission of the States in recent testimony also registered their concern with this prohibition by arguing that this "constraint has the definite effect of impeding the efforts of many States in developing equitable school finance structures."

In more practical terms, the effect of the current prohibition is to force a state not to treat all districts alike under its equalization formula. To compute financial need under an equalization program, a State would want to take into account local resources, but current Federal law prevents the inclusion of 874 funds in that calculation, with the result that an impact aid district will receive more State aid than it really deserves. This is clearly an inequity since the basis of equalization is need and the realization of that objective is thwarted by Federal law. So, instead of closing the gap between educational need and financial resources, Federal law widens it.

In my opinion, this legislative prohibition is no longer relevant to the changing needs of school finance. Where there was once a need for a Federal policy to prevent abuses in calculating the presence of impact aid funds in school finance formulas there is now a need for a policy which will encourage, not discourage, increased State aid to eliminate financial disparities. States are desirous of increasing State aid, not of reducing it and the elimination or modification of this prohibition will facilitate that objective.

Mr. President, by changing this provision, the Congress will assure greater State efforts on behalf of equal educa-

tional opportunity. But in a larger sense repeal will strengthen the Federal-State partnership in education in a far more positive way than the law does presently. We have a choice, either we increase Federal funds, and Federal involvement to achieve equalization or we assist the States to achieve equalization on their own terms. I prefer the latter as being the better policy since it supports the value of local and State control of education. The States deserve encouragement and the Congress, by changing current law, will do much to help achieve that objective.

EXPORT PRIORITIES ACT

Mr. WEICKER. Mr. President, I am pleased to join with Senators JAVITS and STEVENSON in cosponsoring legislation which mandates a necessary balance between our interests in foreign trade and the needs of our domestic economy. This proposal, S. 2411, institutes a system that requires the Secretary of Agriculture, at the beginning of each crop year, to estimate crop production for raw agricultural products and determine the amounts necessary for domestic use, including a reasonable carryover to build up U.S. stock. Through this process, the amount of various commodities available for export will be known in advance, and foreign buyers can react accordingly.

This Nation has begun to suffer the effects of uncontrolled market action in all agricultural commodities, especially in corn, wheat, and soybean futures. This reckless speculation has raised the issue of imposition of export controls. Such stopgap measures applied at short notice this summer to soybeans and cotton seed oil, for example, have seriously disturbed and disrupted the system of international trade. With an adequate advance assessment of our domestic needs and production, such disruptive action would have been avoided.

With the devaluation of the dollar making our commodities more competitive and a food crisis gripping many nations of the world, the American market has experienced an unprecedented foreign demand and sudden, upward pressure on prices of American agricultural commodities. The administration has sorely failed to develop a logical and comprehensive policy to stem this tide of inflation at home. No one can escape the spiraling cost of food. In August alone, food prices skyrocketed by an astounding 20 percent, while the critical Wholesale Price Index increased by 6.2 percent.

I strongly believe the United States will continue to play a vital role as a supplier of foodstuffs for the rest of the world. By increasing our productivity to meet increasing demands, we can secure our position as the major supplier of agricultural commodities for world consumption. As one who is committed to a free and open market system, I am fully aware of the benefits of agricultural exports on both our balance of payments and our international relations. However, while playing this vital supplier role on the international level, we must institute a system that assures adequate supplies are available to meet our domestic needs.

In a recent report on the Russian wheat deal by the General Accounting Office, the nature of the issue confronting the Congress was capsuled in the following GAO statement:

> U.S. agriculture's productive capacity has traditionally resulted in surplus stocks which were stored at great expense or exported with subsidy. Although exports are important to achieving U.S. trade objectives, they can have an adverse effect. Recent dramatic changes in the world supply demand situation surfaced a need for assessing agricultural exports in a broader national context.
>
> Congress should consider requiring that agencies develop definitive ground rules so that expected benefits from exports can be appropriately weighed against their impact on various segments of the domestic economy.

Given the present conditions in the world market, it is this balanced perspective that is called for in the legislation which I am cosponsoring today. The weaknesses in our present system are exemplified by a close analysis of the wheat export situation. As of August 3, 1973, the Department of Agriculture reported export commitments aggregating 1.2 billion bushels. Including carryover, the total supply of wheat available for domestic consumption and export is 2.125 billion bushels. Assuming a domestic need of 800 million bushels and a need to maintain a minimum carryover of 250 million bushels, it becomes increasingly evident that despite a bumper crop of wheat we could face domestic shortages by early spring.

This overselling has resulted in huge increases in future prices of wheat. Within the past year, the cost of flour has soared by over 300 percent. Despite slow increases in the price of bread during that time, in August, a loaf of bread increased by 7 cents in New York and other major cities.

There is little excuse for this present situation, and certainly no excuse for such bungling of agricultural policy in the future. Therefore, in cosponsoring the Javits-Stevenson legislation, I urge Congress to act to assure that rational assessment of domestic food needs and reasonable regulation of the commodity markets are the policy rule rather than the exception.

WAGE INCENTIVES EFFECTIVELY INCREASE PRODUCTIVITY

Mr. PERCY. Mr. President, earlier this month I brought to the attention of my colleagues an example of the way one hose manufacturing plant in Missouri had successfully increased its productivity growth rate. Today I would like to mention the Darlington, S.C., steel mill of the Nucor Corp., where a substantial incentive pay plan has permitted weekly bonuses averaging 29 percent for millworkers who increase their production.

In the August 9, 1973, Wall Street Journal, Jim Montgomery described the success of the Nucor incentive pay plan and profitsharing plan in his article, "Raking It In: Steelmaker Raises Output and Productivity With Incentives That Make Everybody Hustle." Mr. Montgomery relates the story of Nucor worker, James Samuel, Sr., an exsharecropper, who did not go beyond grade school and made less than $4,000 a year before 1969. At his job with Nucor, Mr. Samuel last year earned $12,110 plus $807 in profitsharing through his increased production rate.

The bonus system at Nucor extends to all employees—production line workers as well as department heads. Nucor's profitsharing plan also covers all employees, except eight top officials, with 6 months or more of service. The success of this plant in expanding productivity growth through these means is a most interesting story and an encouragement to all of us involved in seeking increased growth in the U.S. productivity rate. Mr. President, I ask unanimous consent that Mr. Montgomery's article be printed in the RECORD.

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

RAKING IT IN: STEELMAKER RAISES OUTPUT AND PRODUCTIVITY WITH INCENTIVES THAT MAKE EVERYBODY HUSTLE

(By Jim Montgomery)

DARLINGTON, S.C.—South Carolina's 300,000 hourly paid factory workers earned an average of $6,049 each last year. James Samuel Sr. is one of the 300,000, but he got a lot more than that—$12,110 plus $807 in profit sharing. And that isn't bad for a 47-year-old black ex-sharecropper who never reached high school and never made more than $4,000 a year before 1969.

It was in 1969 that Mr. Samuel and most of his 240 fellow hard-hats, a third of them black, signed on as $1.90-an-hour trainees at Nucor Corp.'s new mini steel mill in this town of 6,990 people. "Fewer than 20 of them had ever been in a steel mill before," an executive recalls, and they were so startled by the fireworks of the first heat that "they all ran out of the mill."

Now they run up fat paychecks for producing some of the lowest-cost steel in the world. Their secret is productivity; they turn out some 150,000 tons a year at a cost per ton of less than four man-hours—only 3.48 in one recent week—in contrast to a national average of more than eight man-hours and an average of six in Japan, one of the most efficient foreign producers.

THE $20,000 MILLHANDS

Nucor is as new to steelmaking as most of its employes are, though the company previously fabricated steel joists from steel made by others. But it has found a quick route to success in the form of its lavish incentive-pay plan. Officials say the plan has made real hustlers out of everybody in the place from the billet molds to the executive office. Weekly bonuses for exceeding production goals often run 30% to 40%, and sometimes more than 60%, of employes' base pay. Last year, bonuses averaged 29% in the mill here and five joist plants elsewhere in the U.S., accounting for $2 million.

(It was just 10 years ago that Kaiser Steel Corp. and the United Steelworkers Union launched the industry's first big incentive-type pay plan. While it's "not exactly a pay incentive plan," a spokesman says, it has added $28.3 million since the start to the normal paychecks of hourly employes. It's paid monthly and represents a share in cost savings on labor, material and supplies. But it didn't keep employes from staging a 44-day strike at Kaiser's big Fontana mill during contract negotiations last year.)

On the average, hourly-paid workers at Nucor earned just over $10,000 last year, not counting profit sharing, about the same as the $10,771 that the Bureau of Labor Statistics figures was earned by hourly paid production workers in the industry as a whole. (But $10,000 goes further here in Darlington than it does in Pittsburgh.) But some of Nucor's hourly paid millhands cleared more than $20,000 and several melters topped $25,000. There were "a bunch of folks," according to the company, who made more than $12,000.

One of them was Mr. Samuel, who quit a $1.65-an-hour job in a local veneer plant to work at the mill at a base that has risen to $3.35 an hour. Mr. Samuel, a strand tender, controls the level of molten steel poured into a casting machine that spits out more than 20 tons of steel billets an hour.

It's a hot job, peering down from a grillwork platform at the white-hot metal filling the molds below, and Mr. Samuel and two other strand tenders must spell each other often to rest their eyes. But Mr. Samuel says he has no complaints. In four years he has been able to buy a sporty Plymouth Duster and a $15,500 home far more comfortable than his seven-member family ever could have dreamed of owning previously. He used to share his crops with his landlord to pay his rent. And he says it still seems unreal to get a bonus of more than $4,000 in cash each year for producing bumper crops of steel billets.

ENVY DOWN THE ROAD

The production quota in the melting and casting operation is 10 tons of billets an hour. Each ton over that brings a 4% bonus for crew members. So far this year, actual output has exceeded 20 tons an hour on every work turn, and so every worker in the operation has collected bonus pay of at least 40% every week. One crew recently turned out 31 tons an hour in a day. Had they kept up the pace for a week, it would have got them an 84% bonus.

Even 40% bonuses "used to scare" Nucor's 47-year-old president, F. Kenneth Iverson. Now, he says, he worries only when bonuses are small, "If a man produces a great deal," he says," you'd be amazed at how much you can pay him."

The pay at Nucor amazes a lot of people. It's a big topic of conversation on paydays at nearby beer parlors. After one session of beer guzzling and check comparing, union employees (Nucor is nonunion) at a metal-working plant down the road, reportedly in sheer envy, staged a wildcat strike. There isn't much chance of their going to work for Nucor, however. The backlog of applicants numbers 100 or so, and only some eight jobs a year open up.

Everybody at Nucor has an extra incentive to produce. Bonuses for department heads, such as plant controllers and rolling-mill superintendents, depend on whether they meet their plant budgets. Their bonuses normally don't exceed 20%, although last year a superintendent and a controller got 42%.

NO CORPORATE FRILLS

One profit-sharing plan covers all employes, except eight top officials, with six months or more of service. The company contributes nearly 10% of its pretax earnings to the plan. The eight senior officials share in another incentive-compensation plan. Last year, they got 10% of pretax earnings above $2 million. Nucor actually earned $8.9 million before taxes. Mr. Iverson, the president, picked up $176,824 in incentive pay, half of it deferred, on top of his $60,000 salary. To give the same incentive pay this year, however, the company's pre-tax earnings will have to rise by $3 million, because the incentive-pay base has been increased to $5 million from $2 million.

Nucor partly offsets this generosity by enforcing a bare-bones policy on corporate overhead. All executives—and there aren't many—fly economy class. The closest thing to an executive dining room is the cafeteria of a shopping center across the street from the company's modest, rented corporate headquarters in Charlotte, N.C. Only nine people work there, five of them secretarial and clerical employes. Mr. Iverson shares a secretary with Samuel Siegel, financial vice president, treasurer and corporate secretary. Marvin A. Pohlman, vice president and a director and general manager of the Darlington mill, has no secretary. "We run very lean," Mr. Iverson observes.

This philosophy has paid off for shareholders as well as for employees. The first cash dividend, a quarterly of five cents a share, is to be paid Aug. 15. Eight years ago, Nucor was running in the red. Sales had stagnated at $20 million a year. Since the present management took over in 1966, sales have risen by an average of 25% a year. Operating earnings have increased by an average of 35% a year. In 1972, net income hit a record $4.7 million, or $2.35 a share, on record sales of $83.6 million. For this year, Mr. Iverson expects per-share earnings in the neighborhood of $2.60 on sales of $95 million to $100 million. Next year, he expects profits to be enhanced by a second mill now nearing completion at Norfolk, Neb.

Still, it hasn't always been just one big happy family at Nucor. The Steelworkers Union attempted to organize the Darlington plant "a couple of years ago," says M. C. Weston Jr., director of the USW district based in Atlanta, and "got around 50% (of employes) signed up." Mr. Weston says, however, that "the drive just stalled there" because 'the company and the area where it's located are extremely anti-union." During the organization drive, at least, Mr. Weston adds, Nucor workers were reporting to the union earnings "anywhere from 30% to 35% less" than industry levels.

STATEMENT OF SENATOR CHARLES H. PERCY: THE CAPITAL CRUNCH FOR SMALL BUSINESS

Mr. PERCY. Mr. President, every aspect of our economy is presently affected with the problems of inflation, but there is one area of the economy where a specific crisis endangers the vitality of the American competitive market system. Today, small and medium-sized corporations are facing a "capital crunch" which could seriously damage their ability to compete with the larger corporations and conglomerates. If the present trend of record high-interest rates continues and the smaller businesses are pushed out of the capital markets, the long-term effect could be the increased consolidation of economic power into fewer and fewer hands.

The three traditional sources of capital for smaller corporations are rapidly disappearing. First, the issuance of stock by these businesses has ceased to provide a flow of capital because individuals are no longer investing heavily in the stock market. The large banking institutions, which make the majority of investments in the market, hold portfolios containing higher price securities rather than stocks of smaller businesses. The second and third methods of raising capital are short- and long-term loans. However, the unprecedentedly high-interest rates make the cost of servicing debt an unbearable burden for the smaller corporations. All of this is occurring at a time when the projected need for equity capital for American business will double in the next 10 years.

I call to the attention of my colleagues the work of our distinguished colleague Senator LLOYD BENTSEN, JR., Democrat, of Texas, on the subject of the "capital crunch" as described in an article in the September 22, 1973, issue of Business Week. The article presents the complex problems of current corporate investment, along with some possible solutions. The four solutions proposed by the article are: First, setting formal limitations on the percentage of a corporation that any one institution can hold; second, encouraging both institutions and individuals to invest in smaller corporations; third, increasing the market participation of individuals by making capital gains taxes more flexible; and, finally, making foreign investment more attractive by reducing the Federal withholding tax on foreign capital. There is another possible solution to the investment problems of small business which we should also consider a higher investment tax credit for these smaller corporations. All of these solutions require further study in order to find a viable answer to the capital crunch on American small business.

Mr. President, I ask unanimous consent that the article referred to be printed in the RECORD.

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

CAN U.S. INDUSTRY FIND THE MONEY IT NEEDS?

"A great deal of American capitalism will be dead," warns Senator Lloyd M. Bentsen, Jr. (D-Tex.), if institutional concentration in a few "religion" stocks eliminates the ability of U.S. markets to provide capital for thousands of other corporations.

As Bentsen's subcommittee on financial markets resumes hearings next week, it is clear that his concern is well founded. Institutional dominance of trading has combined with historically high interest rates to drive most individual investors out of the marketplace. Institutional concentration in a tiny handful of high-priced, high-visibility securities has driven most stocks down to historically low p/e ratios. Unable to raise new equity, companies are contracting ever-increasing interest costs that cut down their existing equity's attractiveness. Except for the benefit of a few famous institutional favorites, the equity markets have ceased to fulfill their primary purpose. Stock issues have effectively ceased. In just the first six months of 1973, more than 300 offerings were withdrawn as unsalable. The stream of equity capital to U.S. industry has run dry.

In the view of James M. Roche, until recently chief executive of General Motors Corp., such a situation could scarcely have come about at a less appropriate point in time. "In the next few years," he stated recently, "the American economy faces an unprecedented need for capital." The domestic oil industry, according to the economists at Chase Manhattan, will require some $200 billion by 1985. Power utilities will want about $70 billion in outside capital in just the next five years. Just one company, American Telephone & Telegraph Co., will, according to executive vice-president and treasurer John J. Scanlon, need $40-billion to $50-billion for itself and its subsidiaries in the next decade. And Stewart S. Cort, chairman of Bethlehem Steel Corp., says his industry needs $3 billion to $4 billion a year between now and 1980 to replace obsolete facilities,

install pollution control equipment, and expand capacity by the additional 20-million to 25-million tons it expects to need.

"Our competitive free enterprise system," Roche emphasizes, "has succeeded in large part because of the success of our capital-raising mechanism." When this mechanism falters, as it is faltering today, it rapidly affects thousands of American companies. They drop into debt. They cut back. They get taken over—sometimes by companies whose institutional sponsorship has provided or preserved a higher p/e multiple, and sometimes by foreigners.

THE DANGERS OF EQUITY SHORTAGE

If the short-term effect of the equity shortage is painful for individual American corporations, the long-term effect on the American economy could be agonizing.

This is why some thoughtful securities industry leaders see the Bentsen committee as among the most significant on Capitol Hill today. Whereas other important—and more celebrated—Congressional committees are considering problems vital to the securities industry, Bentsen is examining questions vital to all industry. Among them: the possibility he raises that "the current two-tier market system may be stimulating the takeover of U.S. companies by foreign entities," and "the effect of institutional investors on the ability of new or small and medium-size firms to acquire the capital they need to survive and compete with U.S. corporate giants and foreign producers."

Institutional dominance of the markets has, of course, impaired the equity-raising ability of many U.S. corporate giants too, unless they're lucky enough to be numbered among the institutions' "sacred cows." Donald T. Regan, chairman of Merrill, Lynch, Fenner & Smith, has noted that "it's just as essential, from an economic viewpoint, that an established corporation should be able to raise capital as that capital should be available to emerging companies." Other early witnesses before Bentsen's committee, which first met for three days in July, left no doubt of the urgency or the global nature of the problem. C. V. Wood, Jr., chairman of the Committee of Publicly Owned Companies (BW—June 2), asked: "Can small and medium-sized—and even a large number of very big companies—survive? Can they have access to equity capital?" Wood's group now claims as members nearly 600 corporations, and he testified. "They feel keenly that they are being starved out of the capital markets."

Among his preliminary ideas, Bentsen told BUSINESS WEEK, he is leaning toward limitations on institutional holdings. Such legislation could have two highly desirable effects. On the one hand, a reduction of institutional concentration in a few stocks would eventually spread an enormous amount of wealth among hundreds of others. The top 10 U.S. banks alone have concentrated about $27-billion in just 10 sacred cows. This huge equity represents 3% of the value of all 2,700 stocks listed on both New York and American stock exchanges. At the same time, limitations on institutional concentration would do much to eliminate the violent sell-offs in fallen institutional favorites—the plunge by Levitz Furniture Corp. from $60 to $6 being a prime example—that have done so much to destroy individual investors' confidence in the market.

A restoration of such confidence, it is clear today, is essential if the market is to recommence its function as a provider of equity capital, a function it has ceased to perform (tables). Merrill Lynch's Regan, the first witness before Bentsen's committee, testified that the value of new industrial equity issues had tumbled from $4.8-billion in the first half of 1972 to $1.2-billion in the first half of 1973. And James W. Davant, chairman of Paine, Webber, Jackson & Curtis, says: "Whatever the situation in the first six months, you can bet it's a lot worse in the last three."

Last year Davant's firm brought to market eight companies offering stock to the public for the first time; this year, there was one. "The use of equity financings for emerging companies," says Davant, "has not just diminished; it's ceased." The figures bear him out. In July and August last year, according to *New Issue Outlook*, there were 78 new issues; in July and August this year, 7.

THE TREMORS ARE INDUSTRYWIDE

The result is grim for literally thousands of companies, large and small, established as well as emerging. The problems of Reliance Steel & Aluminium Co. (box) are typical of those plaguing medium-sized corporations in the sort of basic industries in which sophisticated financial institutions have lost interest. So are those of Franzia Winery, Stouffer Foods, and American Metal Climax.

Franzia, California's fifth largest winery, has increased sales from $16-million two years ago to an estimated $30-million in fiscal 1973. Earnings, too, are expected to double the 1971 figure of $542,000. But when Franzia planned an equity offering to help finance 1973 capital expenditures of $3-million, "the market was a disaster," and the issue was abandoned. In its place came an acquisition offer from bibulous Coca-Cola Bottling Co. of New York (BW—July 7), which also took over Mogen David wines in 1970. Like that institutional darling and more famous relative, "Coke" of Atlanta, Coca Cola of New York has managed to maintain the reasonably high multiple essential to takeovers.

Stouffer Foods also was taken over when a public share offering was seen as unlikely to produce a satisfactory price for its owners, Litton Industries. In its place, Litton accepted a bid from Switzerland's Nestlé, and ownership of the familiar household brand passed into foreign hands. So did much of the aluminum business of American Metals Climax, the fourth-largest U.S. fabricator of aluminum, Eager to expand capacity, but strapped for equity and burdened with a debt that had tripled since 1967, Amax (BW—Aug. 25) sold a half-interest in its aluminum operations to Japan's Mitsui for $125-million.

While a handful of banks (such as California's Security National) and famous retailers (such as Gimbel's) are among the U.S. corporations whose control has passed to foreigners since the establishment of the two-tier market, power over even more of them seems rapidly to be passing to creditors—particularly to bankers.

Reginald Jones, chairman of the General Electric Co., recently fretted that the volume of corporate long-term debt issues had virtually "exploded," with debt-to-equity ratios for the S&P Industrials leaping from 26% to 41% in just 10 years. And Thomas I. Unterberg of Unterberg, Towbin, a New York investment firm with a respected record in the underwriting of smaller companies, answers the question of what happens to such companies when they cannot raise equity cash: "They merge. They reduce expansion. They pay the banks 1½% over prime, plus 20% compensating balances. They go out of business."

The list of companies forced by the two-tier market to cut back on expansion or fall back on their bankers would stretch from coast to coast—and from Florida to Minnesota.

In Miami last month, diversified Pershing Industries withdrew an offering of 200,000 shares at $7 a share and, says President Maurice Revitz: "This has caused us to approach any sort of expansion with a lot more caution." To acquire additional cars for Pershing's leasing division, he would have to pay "2% to 2½% over prime, which means the customer would pay $30 to $40 a month more for his car."

In Minneapolis, Wilson Learning Laboratories, manufacturers of video educational programs, had seen sales soar 90% last year and was seeking $1-million in equity to finance further expansion. Instead, they were obliged to turn to banks—"a hard route," says founder and chairman Larry Wilson, "because you never get as much money as you really need." Wilson emphasizes that "not getting the money from the stock offering has hurt. We are running from month to month, project to project—with a real cash flow crunch."

Among the young, thriving electronics companies in the San Francisco peninsula's "silicon valley," Advanced Memory Systems withdrew a 460,000 share offering in May, and added $2.5-million to its $6.5-million in short-term bank borrowings. Said a spokesman: "It would have been nice to sell these additional shares, rather than borrow more from the bank with interest rates so high."

In Fayettsville, N.C., the building business of American Classic Industries dropped a series of expansion and development projects when its public offering was withdrawn. Says Barry Barnard, vice-president for finance: "We've leveraged ourselves a little more highly than before. We are pretty much trapped between high interest rates and not being able to go public."

A bottling firm in Baltimore withdrew an offering of common stock intended to replace high-cost indebtedness. Instead, worries its treasurer, "our interest cost is bearing on our earnings." His lament points up a problem like an exposed nerve in a tooth cavity—a cavity which, left unfilled, could rapidly deteriorate into the general decay of profitability. As C. V. Wood told the Bentsen committee:

"When we can't raise [equity] money for expansion, replacement of facilities, or pollution control, we have to go to the banks and saddle our companies with very high interest rates and fixed charges." Salomon Bros.' chief economist, Henry Kaufman, recently noted that bank loans to business had expanded, in the first seven months of this year, nearly four times as fast as even in 1969. The result of consistent debt financing, as GE's Jones makes clear, is to "exacerbate the compression of profit margins." Jones quotes statistics showing that in the early 1950s, nonfinancial corporations earned a pretax 23% on total capital. "Ten years ago it had dropped to about 18%, and in 1971 was down to 13%."

LITTLE ROOM FOR OPTIMISM

With short-term interest rates at their historic highs, and long-term rates nearing them, there is no reason to suppose that this situation has improved since 1971. Nor are there grounds for optimism that it will—miraculously or otherwise—get better in the foreseeable future. In 1946, AAA bonds yielded an average 2.5%, but those days are gone forever. With an "inflation expectations component" (BW—Sept. 8) of 4% to 5% to be added to the "real" rate of interest of another 4% to 5% that is normal for a period of economic expansion, the cost of servicing debt can only bear down more heavily on corporate profits. Economist Kaufman warns that "Many corporations face refinancing requirements. There's $37.9-billion in corporate bonds maturing by 1985 that needs to be refunded."

In debt financing, as Paine Webber's Davant points out, "The government pays half." Interest, for corporations as for individuals, is deductible dollar for dollar against taxes, so its net effect on the earnings per share of most companies is only 50% of its actual cost. Furthermore, Davant says, "companies that borrow are expecting their return on new investment will be higher than their normal return." Take a steel company with

$1-billion in debt outstanding and a return on investment of 8%. Suppose it borrows an additional $100-million. At 10%, its interest cost is $10-million. If it can make 12%—half as much again as its normal return—it can add $1-million post-tax to earnings. But if the economy goes into a recession, or even just a dip, and return on the new investment drops to the level of the old, it represents a drain of $1-million on post-tax earnings. Unfortunately, in practice, corporate results frequently fail to live up to corporate expectations. Speaking of the performance of the S&P Industrials in the five years from 1966-71, GE's Jones notes that "many a company didn't earn the equivalent of interest charges on newly added funds."

David Healy, vice-president and director of research at Drexel, Burnham, who has specialized in analysis of the steel industry, notes that steel's earnings coverage (of interest costs) got "really bad" at the beginning of this decade "because of deteriorating profits and increasing debt."

This combination, it should be noted, is what pushed the Penn Central into bankruptcy. On the eve of its collapse, moreover, the Penn Central was planning a further massive increase in its debt burden. But if added debt financing is undesirable for the majority of U.S. companies—and all evidence suggests that most of them should be decreasing rather than increasing their borrowings—where is the capital they need to come from?

This is the central problem confronting Bentsen and his committee, and it is a vital as well as a thorny one. Unless corporations can obtain large infusions of equity, they will be obliged either to stop expending, or to expand via debt.

In taking on more debt, at inevitably high interest cost, they increase what Healy calls the reverse leverage on their equity. Their expansion reduces, rather than improves, their per-share earnings—as does the necessity of refinancing old debt on which interest costs represented substantially less of an earnings drain. The "embedded" cost on AT&T's total debt has risen 1.15% since the beginning of this decade. This, Scanlon notes wryly, "costs us $250-million extra a year."

THREE SOURCES OF EQUITY CAPITAL

The high cost of new debt will trap most corporations in a tightening noose from which they can escape only by selling off operations or going out of business—unless they can obtain equity, and obtain it soon. Apart from retained earnings, there are for U.S. corporations today essentially three sources of equity capital for plant and equipment: institutional investors, individual investors, and venture capitalists.

Of these, the richest and the most reluctant are the institutions. Largely because of the banks' traditional policy of concealing the scope and size of their holdings, there is much confusion as to exactly how much of American industry they now effectively control. It is a common practice of bankers to pooh-pooh the notion that institutions now dominate the markets. Thus Samuel R. Callaway, executive vice-president of Morgan Guaranty, cites SEC figures showing that, at the end of 1972, individuals owned 63% of all equities, and claimed this as "impressive evidence that the individual is not out of the market." SEC figures cited by another banker (C. Roderick O'Neill, executive vice-president of Manufacturers Hanover) show, however, that individual ownership at the end of 1971 had been 66.8%. The rapid decline, 3.8% in one year, appears to indicate that the individual is quitting the market in a hurry. In terms of dollars, the 3.8% shift means that individuals own some $40-billion less of the equity of U.S. corporations, and institutions own some $40-billion more—in one single year.

Furthermore, such figures do not by any means tell the whole story of the new institutional dominance. This was well illustrated when James J. Needham, chairman of the New York Stock Exchange, told the Bentsen committee that institutions owned approximately 30% of Big Board-listed equities by the end of 1972. But he emphasized that this figure specifically excluded the banks' personal trust holdings. He said that were these and other smaller institutional groups to be included, the figure would probably total 45%. Figures released last week by the FDIC reveal that just 300 U.S. banks control trust assets of $365-billion. Institutional holdings of equities now total half a trillion dollars, give or take a billion or two.

By restricting their sponsorship to what Needham calls an "ever-narrowing circle" of investments, the institutions have created a self-perpetuating downward spiral for other stocks. According to the Economic Report of the President for 1973, individuals have been selling more of their holdings of equities than they have bought since 1962—and the stocks they have been selling have been those not favored by the institutions. Since the institutions control the pension money that provides virtually the only fresh flow of funds into the market, there has been no way for these stocks to go but down. The result, as expressed in Securities Industry Assn. (SIA) testimony before Bentsen: "When the valuation mechanism is distorted, the whole capital formation process—and the nation—suffers."

HERD PSYCHOLOGY AND STARVATION

While one product of the institutional philosophy of concentration (less politely known as "herd psychology") is equity undernourishment for nonglamour companies of any size, another is equity starvation for small and emerging companies of almost every type. Few big banks—and the top 20 U.S. banks control 48% of all America's trust and pension assets—will consider investments in companies capitalized at less than $5-million. Chalkley J. Hambleton, president of the Harris Trust & Savings Bank in Chicago, a forward-looking bank that is the nation's 12th largest in terms of trust assets, says the $5-million worth of stock in the hands of the public is the smallest situation in which Harris Trust would invest—"but we would much prefer a minimum of $50-million."

Morgan Guaranty is unquestionably the most progressive of the really big banks in its seeking out of smaller companies as potential investments: Whereas First National City Bank and Bankers Trust are invested in about 400 companies each, and Manufacturers Hanover in around 250, Morgan is invested in 569. Callaway told the Bentsen committee that the bank had established two funds: one specializing in "smaller companies, defined as those with market capitalizations of up to $100-million," and another specializing in "small to medium companies," which Morgan defines as from $100-million to $500-million. Although the bank invests, through these funds, in some 268 companies, Callaway allows that they do not represent a very large proportion of Morgan's equity investments. Of the bank's $21.4-billion in common stocks, well over $19-billion is in the shares of "larger" companies, those with capitalizations of more than $500-million. Moreover, Callaway says that "while I'm sure we have invested in companies with capitalizations of as little as $5-million, we'd have to be really interested to do so."

If institutions are limiting themselves to corporations worth $5-million—or, as in most cases, a great deal more—it is evident that equity capital for emerging companies is going to have to come from somewhere else. The same is true of nonglamour companies—that overwhelming majority of small, medium, and large companies whose industries just do not interest the institutions. The major potential source, because of his propensity to save 6% to 8% ($50-billion a year) of his disposable income, is the individual investor.

Just as Bentsen's prime concern in establishing his committee was the new institutional dominance of the markets, so one of his primary objectives is to bring the individual investor back. Several witnesses, however, raised questions about his absence. Morgan Guaranty's Callaway, as noted, questioned whether the individual had ever gone. And Merrill Lynch's Regan suggested that he might be coming back already. Regan pointed to the fact that Merrill Lynch is opening new accounts at "the highest rate in our history"—a sentiment echoed by Paine Webber's Davant and (with some exceptions) by brokers all over the U.S., in a survey conducted by Business Week.

One explanation was provided by Stan West, research director of the New York Stock Exchange: "Given the well-publicized problems of the Street, a lot of shareholders may be switching to well-capitalized firms as a matter of self-protection. These people show up as new accounts at Merrill Lynch, even though they're not new shareowners. And when a firm like Reynolds takes over Courts in Atlanta, the people that go with Courts' registered representatives to Reynolds won't show up as new account openings. But, if Courts' R. R.s take them to Robinson-Humphrey [another Atlanta firm] they'll show up as new."

Just as consolidations produce new accounts for some firms without actually bringing new investors into the market, so do liquidations. The 48,000 investors who had accounts at Weis Securities will show up as new accounts somewhere, even if all they do is liquidate what is left of their holdings.

WHERE IS THE INDIVIDUAL?

In any case, however many accounts are opened, individual business in the equities market is off sharply. Through Aug. 10, business on the Annex—which is dominated more than 70% by individuals' trading—was off 32%, in relation to the same period last year; business on the Big Board—which is dominated to about the same extent by institutions—was by contrast off only 7%. If the individual was indeed coming back he was doing so very slowly.

Furthermore, Business Week's survey showed that many erstwhile investors had grave doubts about coming back to the market at all:

Gary A. Daum, administrative vice-president of General Nutrition Corp., a Pittsburgh food supplements retailer, says: "I'm a gambler by instinct, and I still have a yearning to play the market. But not now. There's too much risk involved, because the worth of a company no longer determines the value of its stock. Stocks move to the pressures of big investors."

Other investors find the interest rates on fixed income securities too tempting for equities to appear attractive. Says Barry E. Tague, an investor who is vice-chairman of the Philadelphia-Baltimore-Washington Stock Exchange: "It's that time now when you should be content with 9% on your money, and go fishing for a while."

And others, of course, are indeed girding their loins and preparing to reenter the fray. For example, David W. Eaton, a Los Angeles management consultant, is anxious to get back—despite punishing losses in 1968-69:

"I bought companies at $35 that are going for 7¢," he says.

It is perhaps investors like Fred Torres, general sales manager of Cleveland's Woodhill Chemical Co., who represent the biggest challenge to the Bentsen committee. Torres says he has "definitely lost confidence in the stock market," and he has cut his investments to perhaps 20% of what they were a few years ago. For one thing, he has bought a house. For another, he has put some of the money into bonds. And he has been "shaken by what has been happening to the brokerage industry." Torres had money in an account with Dempsey-Tegeler, another brokerage firm that went under, and he says "I almost never did get that thing straightened out."

If many people feel as do Torres and most of the ex-investors in Business Week's sample, Bentsen faces a severe struggle to get them back in the equity market.

One additional difficulty in doing so is noted by former SEC chairman G. Bradford Cook. He feels that, in these days of increased Social Security and improved pension possibilities, many of the sort of people who once invested in the stock market to build up a nest egg no longer do so. Instead, feeling that their nest egg needs will be taken care of, and disillusioned by market gyrations and manipulations, they look to other outlets for spare money and savings. Among the most important, Cook suggests, may be second homes.

The present prospects for raising large amounts of fresh equity capital from these investors appear bleak. Indeed, these prospects appear downright forbidding when the third basic source of equity is also considered—for the venture capitalists are not able to provide more than a tiny percentage of what is needed.

No exact figure exists on how much the equity venture capitalists do provide, but the generally accepted figure is $100-million a year.

HOW U.S. INDUSTRY'S CASH NEEDS SOAR

[In billions of dollars]

	Planned capital expenditures 1973	Projected capital expenditures 1985
Selected manufacturing groups:		
Steel	$2.0	$4.5
Machinery	4.1	9.6
Electrical machinery	2.7	7.7
Instruments	.9	4.2
Chemicals	4.5	8.9
Paper and pulp	1.9	6.3
Rubber and plastics	1.6	4.0
Petroleum	5.7	12.6
Food and beverages	3.0	7.5
Selected nonmanufacturing groups:		
Airlines	2.7	15.2
Communications	13.9	37.1
Electric utilities	17.0	41.1
All business (including other industry groups not shown above)	106.0	233.0

Source: McGraw-Hill.

Obviously, this is a drop in the bucket of equity capital that U.S. companies require. Obviously, too, although some venture capitalists are now taking advantage of low p/e multiples to move in on relatively large businesses, they only invest, in principle, in a rather restrictive type of company: the type that can provide them, as Leroy W. Sinclair of Technimetrics says, "with at least 40% on their investment, compounded annually."

STARTUP CAPITAL IS TIGHT

Venture capitalists are now able to make investments on terms that attract them, says Stanley M. Rubel, who runs his own venture capital consulting firm in Chicago, "because a lot of companies are desperate for capital." Despite this demand, and despite the fact that as much money is available for venturing as ever, an anomalous situation has developed. "Startup capital is tight," Rubel says. "More venture capital money is flowing into secondary financing, because venture capitalists are waiting to see how companies perform before they invest."

This impression is confirmed by venture capitalists themselves—such as Edgar F. Heizer, of Chicago's Heizer Co. Because of low multiples in the stock market, he says "startup investors don't see their stock being tradeable for five or six years, and they're backing off from startup investing."

The multiples that venturists are looking for moreover are clearly very different from those being paid these days on most emerging companies. It is evident, too, that while there is equity ready, waiting, and to spare for a new Polaroid, an Itek, or a Digital Equipment, venture capitalists are not going to solve the equity problems of stodgier, more basic, less spectacular companies.

Here, in fact, is one of the most exasperating examples of the waste that is a byproduct of the two-tier market. Venture capitalists have plenty of money available for the right deal. Indeed, they are scrambling over each other to get into the deals that offer some prospect of venture capital-sized returns. In the same way among the few established companies that qualify for institutional interest, there is no practical limit on the amount of equity available. This is, says Paine Webber's Davant, an effect of the institutionalization of savings. Says Davant: "Where decisions are made by a handful of money managers, instead of by a large number of individuals, only the institutional darlings are able to sell equity."

An excellent example is Digital Equipment, A "religion" stock as far as institutions are concerned, it recently sold 750,000 shares to bring in some $66-million. Digital's p/e was then 40, and it is interesting to note the primary object of its offering: the repayment of Digital's bank debt. By paying off the debt with capital obtained at 40 times its earnings, the company would be able to improve these earnings still further, thus, conceivably, justifying the institution's putting an even loftier multiple on its stock.

THE EUROPEAN PATTERN

Digital Equipment illustrates another problem put by C. V. Wood to the Bentsen committee: "Will America follow the pattern of Europe—where the economy is controlled by a few great banking houses?" While the concept is utterly foreign to the U.S., it no longer appears altogether implausible. The economist Richard Scott-Ram says: "Unless we can get the stock market back on course, many companies won't be able to raise equity capital. The banks are going to be called on to provide most financing—just as they do in Germany."

As part of the "Universalbank" or total financial services concept that characterizes the German banking system, the banks there function as the only underwriters. They are heavy purchasers of the issues they sell, with the result that they maintain absolute authority over a large part of German industry. Bentsen says some observers estimate that 60% of German business is now effectively controlled by banks.

Woodrow Wilson noted in 1911 that, "The great monopoly in this country is the monopoly of money." The investment policies of banks are now preventing most companies from raising equity capital and obliging them to come back to their bankers for borrowings. One of Miami's leading bank officials says frankly that the kind of companies that generally go to the public for risk capital, and are currently stymied, now have to pay 2% to 2½% above prime for expansion money—plus compensation balances. At that rate, companies are effectively paying 14% to 16%.

Although few companies relish the idea of paying this sort of short-term interest cost, they may find the thought of locking themselves into today's levels of long-term interest rates even more distasteful. Economist Paul Markowski, a vice-president of Laidlaw-Coggeshall, reckons that any company with a credit rating lower than BAA would have to pay 10½% or more on long-term money today. This means in effect, that smaller companies, and those of medium or lower quality, have nowhere to turn but their banks. The reason is that public marketing of debt at 10½%, as the Penn Central discovered three years ago, is just not feasible.

As for private placements, volume in the first half of this year soared to an all-time high, with lenders expanding from the traditional small band of huge "life" companies to include more than a thousand varied institutions; among them are savings and loans, insurance companies of all sorts and sizes, and pension plans. However, the "letter stock" fiascos of 1969–70 have dulled institutional taste for private equity deals, and—with the exception of some convertible preferred—private placements now consist almost entirely of debt. In any case, as Markowski observes, smaller and non-blue chip companies find it extremely difficult to tap the institutions in the private market—"unless they're willing to give up control."

INTERNAL SOURCES ARE DRYING UP

This points up the crucial problem that is about to confront the management of almost every U.S. company outside the institutions' "favorite 50"—if indeed it is not already staring them in the face.

Corporate capital expenditures are now running at around $100-billion a year. Between now and 1985 (box), they are expected to total well over a trillion dollars. In the last two years, corporations have been able to rely more heavily than usual on retained earnings, partly because profits have been so high, partly because—owing to dividend restrictions—they have been limited in the amount they could pay out to stockholders. Now this situation has changed in two key ways. First, shareholders are allowed higher dividends, and indications from Wall Street are that they are going to demand them. Second, as Salomon Bros.' Kaufman points out: "Corporate profits are going to come down, and internal cash generation is going to slow." For equity capital, in other words, corporations must look much more to external sources.

When they do, their welcome is likely to be more frigid than many of them would imagine in nightmares. Jim Davant stresses that many of the hundreds of equity offerings that have been withdrawn this year could have been sold—"if the managements had been willing to accept 5 or 10 times earnings, where they had been expecting 15." Economists confirm such gloomy predictions. Kaufman says: "It's a question of price. If companies have the earnings, they can probably get the equity money—if they're willing to pay the price." Scott-Ram feels most companies will be forced to sell equity at eight or nine times earnings, or less.

The question immediately arises, is this worth it? A. Gary Shilling, the chief economist of investment bankers White, Weld, points out that, already, the height of some companies' debt-equity ratios may force them to sell equity "at multiples they won't

like." The electric utilities, says AT&T's Scanlon "are being obliged to sell equity at or below book value. They don't want to erode any further the interest coverage on their debt."

But for thousands of companies selling "below book," this option is hardly practicable. Tom Killefer, vice-president for finance at Chrysler Corp., whose stock is selling at $24 against a book value of nearly $50, says: "We just couldn't do an issue of equity in these circumstances. It doesn't make sense, and the stockholders would never tolerate the dilution." Chrysler, happily, can finance expansion internally: but what happens to a less fortunate company—such as a steelmaker with less cash flow and a lower rate of return? "You have a heart-breaking decision," Killefer suggests. "You pay the money, or you put off your plans." W. B. Boyer, chairman of Republic Steel Corp., leaves little doubt of what his company's answer would be. "We're not interested in maintaining a share of industry," Boyer says. "We're interested in profits. If that means we have to contract the company, we'll do it."

QUESTIONS AND ANSWERS

Unless Bentsen and his committee can come up with some solutions to U.S. corporations' capital crunch, it is clear that choices and prospects for many of these companies are less than brilliant. Like Republic, they can cut down or cut back. They can go deeper into debt. They can, if their earnings are presently high enough, raise equity capital by selling stock at ridiculously low multiples—a process eventually as harmful, since it cuts down earnings per share, as an excessive reliance on debt.

There are basically four ways Bentsen can move to solve the problem:

1. By placing limits on the dominance of institutions. Almost everyone who has examined the question feels that some sort of action is essential. The exchanges agree. The SIA agrees. Don Regan agrees. Wood agrees, vehemently. Even some institutions agree by implication—since they say they self-impose certain limits, in theory, already.

Bentsen favors formalizing such limitations, to the extent of setting a limit on how much of a company any one institution can hold. He also favors the bill recently introduced by Senator Harrison A. Williams (D-N.J.), under which institutions would be obliged to stop concealing their holdings and their trading, through prompt, regular disclosure of both.

The advantages of such measures are evident. Surveys by the NYSE, and SIA, and Arthur D. Little, Inc., all reveal one fundamental reason for the individual's absence from the market. As GM's Roche puts it: "More than seven out of 10 believe the market is manipulated."

2. By encouraging both institutions and individuals to invest in "noninstitutional" stocks. Regan, who would like to see institutions make public all their transactions monthly or even weekly, says: "I can see no logical objection to the point that the new power of institutions puts on them a new responsibility to disclose quickly." Were they to do so, and were each institution to be limited to, say, 3% of any company, the benefits to the market would certainly be at least twofold.

First, there would be a steady inflow of institutional cash into the stocks of hundreds of sound corporations that, despite steady and even startling earnings growth, have not benefited from this inflow, simply because they were not numbered among the institutions' favored few. Second, the fact that this process was taking place, and that because of disclosure it was seen to be taking place, would also encourage individuals to invest again. Some authorities, such as Charles F. O'Hay, senior vice-president and director of research at the Provident National Bank in Philadelphia, believe that the mere existence of the Bentsen committee and its leanings are exerting a healthy effect on securities prices. In the last few weeks, hundreds of low p/e stocks have advanced while a series of "superglamors" such as IBM, Avon, Merck, and Polaroid have hit or approached new 1973 lows. This at least suggests that the movement is under way.

Regan would also like to see a greater effort by the banks to assist the development of emerging companies. "They're the ones that can afford it," he says with emphasis.

But whatever the banks can be encouraged to do, the main burden of financing emerging companies with equity will still fall on the individual. Nashville broker J. C. Bradford says: "The institutions always want the hot issues but are usually unwilling to buy the ordinary ones. I'd say 90% of an average issue goes to our retail customers." The Philadelphia firm of Suplee-Mosley, Inc., is typical of the underwriters who normally bring half a dozen new companies public each year, and who depend on the individual investor to do so. "This year," says Senior Vice-President William Z. Suplee III, "we'll be lucky to do one."

3. By increasing the market participation of individuals. Bentsen is leaning toward some sort of relief on tax treatment of gains—and everyone concerned with the health of the equity-raising markets seems to agree that it is essential. GE's Jones admits that this may be contrary to "the rhetoric of loopholes" but stresses: "Our present tax structure has a vigorous bias against private saving and capital attraction." Equity would seem to demand some adjustment. Morgan Guaranty's Callaway makes the point that taxes put the individual investor at a considerable disadvantage in competition with the institutions, and Bentsen notes that the "indirect tax subsidy" from the Treasury to private pensions alone is estimated at $3 billion to $4 billion a year. Even on long-term capital gains, the SIA points out, the individual can wind up losing very nearly half of any profit when state and city taxes, and a basic federal tax rate, which now reaches 36½%, are factored into the whole equation.

Regan proposes replacing this with a sliding scale to provide a taxbite graduated according to the length of time an asset is held. His range: 30% after six months, descending to 10% after five to seven years. He makes the point that a large factor in most assets' appreciation is inflation, and he does not see why investors should be taxed on this unwanted ingredient of their profit.

SIA Chairman John C. Whitehead also proposes a sliding scale and demonstrates that the present level of capital gains taxation is actually keeping large amounts of revenue from the government. At least $200-billion of capital gains are "locked in," Whitehead explains. If just half of these were unlocked, and if they were taxed at 20%, they would produce a bonus of $20-billion for the Treasury. The market can also benefit: By their nature, holdings of high-flyers such as IBM and Xerox account for a preponderance of locked-in gains; were these gains to be unleashed, economists believe, a hefty proportion would gravitate into "value" securities with lower multiples.

In the view of Regan, Whitehead, and the NYSE's Needham, equity would seem to call for some revision of the tax treatment of losses, particularly if individuals are to invest again in the relatively high-risk situations represented by most emerging companies. Regan and Whitehead suggest, simply, that the tax treatment of losses should match that of gains. Needham proposes raising investors' loss deduction from its present $1,000 to $5,000. He also favors treating brokerage commissions as "investment expenses," deductible against ordinary income. Bentsen says he is "very sympathetic" to that idea.

4. By making foreigners and their surplus dollars more welcome. "Foreigners," says Merrill Lynch's Regan, "find it difficult to understand why we seem to want to make it hard for them to invest in our securities." One particular bugbear is the tax (generally 30%) the U.S. withholds from dividends and interest due foreign investors. Regan told the Bentsen committee that Merrill Lynch could sell an estimated 15% to 30% more U.S. common stock abroad if withholding were ended. He said: "There is lots of money out there looking for a happy home."

Indeed there is. John Scanlon spent last week with AT&T Chairman John D. deButts talking with investors in London, Paris, Zurich, Geneva, and Amsterdam. Says Scanlon: "There are those vast pools of dollars accumulated abroad, maybe $100-billion. I think it would be good to eliminate this [withholding tax] deterrent."

If foreigners can be encouraged to increase their investment, if individual U.S. investors' confidence can be repaired, much of the erstwhile robust health of America's capital-raising process may be restored, Most important, as Whitehead told the Bentsen committee: "Distortions caused by institutional dominance must be corrected if national markets are again to do their job of allocating resources, and attracting new capital to risk situations popular and unpopular, large and small."

Bentsen recently told Business Week: "We don't want a situation in this country like you have in Germany." As he said in the Senate: "Mr. President, unless changes are made in the current investment picture, I am concerned we will see many of our companies acquired by foreign interests, while those which retain U.S. ownership will be subject to the control of a few institutions."

CONCLUSION OF MORNING BUSINESS

The ACTING PRESIDENT pro tempore. Is there further morning business? If not, morning business is closed.

MESSAGE FROM THE HOUSE

A message from the House of Representatives by Mr. Berry, one of its reading clerks, announced that the House had passed the following bills in which it requests the concurrence of the Senate:

H.R. 1353. An act for the relief of Toy Louie Lin Heong;

H.R. 1356. An act for the relief of Ann E. Shepherd;

H.R. 1367. An act for the relief of Bertha Alicia Sierra;

H.R. 1376. An act for the relief of J. B. Riddle;

H.R. 1463. An act for the relief of Emilia Majowicz;

H.R. 1696. An act for the relief of Sun Hwa Koo Kim;

H.R. 1955. An act for the relief of Rosa Ines D'Elia;

H.R. 2513. An act for the relief of Jose Carlos Recalde Martorella;

H.R. 2514. An act for the relief of Mrs. Gavina A. Palacay;

H.R. 2628. An act for the relief of Anka Kosanovic;

H.R. 3043. An act for the relief of Mrs.

Nguong Thi tran (formerly Nguyen Thi Nguong, A13707-473D/3);

H.R. 3207. An act for the relief of Mrs. Enid R. Pope;

H.R. 3334. An act for the relief of Maria Lourdes Rios;

H.R. 3754. An act for the relief of Mrs. Bruna Turni, Graziella Turni, and Antonello Turni;

H.R. 6829. An act for the relief of Mr. Jose Antonio Trias; and

H.R. 8217. An act to exempt from duty certain equipment and repairs for vessels operated by or for any agency of the United States where the entries were made in connection with vessels arriving before January 5, 1971.

The message also announced that the House had passed the bill (S. 278) for the relief of Manuela C. Bonito with amendments in which it requests the concurrence of the Senate.

The message further announced that the Speaker had affixed his signature to the following enrolled bills:

S. 84. An act for the relief of Mrs. Naoyo Campbell;

S. 89. An act for the relief of Kuay Ten Chang (Kuay Hong Chang);

S. 396. An act for the relief of Harold C. and Vera L. Adler, doing business as the Adler Construction Co.;

S. 1914. An act to provide for the establishment of the Board for International Broadcasting, to authorize the continuation of assistance to Radio Free Europe and Radio Liberty, and for other purposes; and

S. 2419. An act to correct typographical and clerical errors in Public Law 93-86.

HOUSE BILLS REFERRED

The following bills were severally read twice by their titles and referred, as indicated:

H.R. 1353. An act for the relief of Toy Louie Lin Heong;

H.R. 1356. An act for the relief of Ann E. Shepherd;

H.R. 1367. An act for the relief of Bertha Alicia Sierra;

H.R. 1376. An act for the relief of J. B. Riddle;

H.R. 1463. An act for the relief of Emilia Majowicz;

H.R. 1696. An act for the relief of Sun Hwa Koo Kim;

H.R. 1955. An act for the relief of Rose Ines D'Elia;

H.R. 2513. An act for the relief of Jose Carlos Recalde Martorella;

H.R. 2514. An act for the relief of Mrs. Gavina A. Palacay;

H.R. 2628. An act for the relief of Anka Kosanovic;

H.R. 3043. An act for the relief of Mrs. Nguong Thi tran (formerly Nguyen Thi Nguong, A13707-473D/3);

H.R. 3207. An act for the relief of Mrs. Enid R. Pope;

H.R. 3334. An act for the relief of Maria Lourdes Rios;

H.R. 3754. An act for the relief of Mrs. Bruna Turni, Graziella Turni, and Antonello Turni; and

H.R. 6829. An act for the relief of Mr. Jose Antonio Trias; to the Committee on the Judiciary.

H.R. 8217. An act to exempt from duty certain equipment and repairs for vessels operated by or for any agency of the United States where the entries were made in connection with vessels arriving before January 5, 1971; to the Committee on Finance.

FURTHER CONTINUING APPROPRIATIONS, 1974

The ACTING PRESIDENT pro tempore. Under the previous order the Senate will proceed to the consideration of House Joint Resolution 727, which the clerk will state.

The assistant legislative clerk read as follows:

A joint resolution (H.J. Res. 727) making continuing appropriations for the fiscal year 1974, and for other purposes.

The Senate proceeded to consider the joint resolution which had been reported from the Committee on Appropriations with an amendment.

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

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

The second assistant legislative clerk proceeded to call the roll.

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

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

The clerk will state the committee amendment.

The assistant legislative clerk read as follows:

On page 1, after line 7, strike out:

SEC. 2. The third proviso of section 101 (a) (4) of such joint resolution is amended to read as follows: ": *Provided further*, That the aggregate amount made available to each local educational agency under title I-A of the Elementary and Secondary Education Act of 1965 shall not be less than 85 per centum of the amount made available for that purpose for 1973;".

SEC. 3. None of the funds made available by this Act shall be used by the Cost of Living Council to formulate or carry out a program which discriminates among petroleum marketers in the method of establishing prices for petroleum products.

Mr. McCLELLAN. Mr. President, at a meeting of the full Appropriations Committee on October 1, 1973, the committee approved House Joint Resolution 727 with an amendment, and voted the resolution reported to the Senate.

As my colleagues are aware, the purpose of this resolution is to provide continuing appropriations for fiscal year 1974 for those programs and activities of the government for which regular appropriation bills have not yet been enacted.

The original continuing resolution for fiscal year 1974 was enacted on July 1, 1973, and became Public Law 93-52. It contained a termination date of September 30, 1973. The pending resolution would extend that date to the sine die adjournment of this session of Congress.

Of the 13 regular appropriation bills that Congress will consider this year, 3 have been signed by the President, 1 is awaiting the President's signature, 5 have been passed by both the House of Representatives and the Senate and are either awaiting conference or in some stage of the conference process, 1 has been passed by the House but has not yet passed the Senate, and 3—the bills for foreign operations, the Defense Department, and military construction—lack necessary authorizing legislation.

Mr. President, the terms of House Joint Resolution 727 are explained in the committee report. The committee recommends the same version of the continuing resolution that was reported by the House Committee on Appropriations. In so doing, the committee has deleted section 2 and section 3 of the resolution as it came over from the House of Representatives. Those two sections were added to the resolution on the House floor.

Section 2 and section 3 are as follows:

SEC. 2. The third proviso of section 101(a) (4) of such joint resolution is amended to read as follows: ": *Provided further*, That the aggregate amount made available to each local educational agency under title I-A of the Elementary and Secondary Education Act of 1965 shall not be less than 85 per centum of the amount made available for that purpose for 1973;".

SEC. 3. None of the funds made available by this Act shall be used by the Cost of Living Council to formulate or carry out a program which discriminates among petroleum marketers in the method of establishing prices for petroleum products.

Mr. President, it was the consensus of the Committee on Appropriations that a continuing resolution is not the proper vehicle for amendments of this nature, but the passage of this resolution is necessary to insure orderly continuation of those functions of the Government for which appropriations have not yet been enacted, and I urge its early adoption, because the date of the original continuing resolution has already expired.

Mr. President, I request that the two sections of the amendment be regarded as separate amendments and so considered during the processing of this bill.

The PRESIDING OFFICER (Mr. McGOVERN). Under rule XVIII, the Senator has the right to divide the amendment, and since the Senator from Arkansas has made that request, the Senate will consider section 2 and section 3 of the joint resolution separately.

Mr. CURTIS. Mr. President, will the Senator yield for a question?

Mr. McCLELLAN. I yield.

Mr. CURTIS. As I understand the request of the distinguished chairman of the Appropriations Committee, it is that there be a division of the two parts of the committee amendment; is that correct?

Mr. McCLELLAN. That is correct.

Mr. CURTIS. And the first part he wishes to consider is the portion from line 8 on page 1 to line 3 on page 2?

Mr. McCLELLAN. That would be line 8 on page 1 through line 3 on page 2, which would be the first amendment, and the second amendment would be all of section 3, from line 4 through line 8 on page 2.

Mr. CURTIS. I might say to my distinguished friend that I favor the division of the question, and I wish to be heard on the second portion which deals with lines 4 through 8 on page 2.

Mr. McCLELLAN. Very well.

The PRESIDING OFFICER. The question, then, is on agreeing to the first part of the committee amendment.

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

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

The question is on agreeing to the first part of the committee amendment.

Mr. JAVITS. Mr. President, what is the pending business?

The PRESIDING OFFICER (Mr. McGOVERN). The pending business is the committee amendment, which has been divided. The pending question is on the first part of the committee amendment, beginning on line 8, page 1, and continuing through line 3 on page 2.

Mr. JAVITS. Mr. President, I intend to address myself to that amendment.

CALL OF THE ROLL

Mr. JAVITS. I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk called the roll, and the following Senators answered to their names:

[No. 454 Leg.]

Aiken	Fulbright	McGovern
Allen	Gurney	Montoya
Baker	Hatfield	Ribicoff
Beall	Inouye	Schweiker
Bentsen	Javits	Talmadge
Cotton	Mathias	Young
Curtis	McClellan	

The PRESIDING OFFICER. A quorum is not present.

Mr. INOUYE. Mr. President, I move that the Sergeant at Arms be directed to request the presence of absent Senators.

The PRESIDING OFFICER. The question is on agreeing to the motion of the Senator from Hawaii.

The motion was agreed to.

The PRESIDING OFFICER. The Sergeant at Arms will execute the order of the Senate.

After some delay, the following Senators entered the Chamber and answered to their names:

Abourezk	Fong	Moss
Bartlett	Goldwater	Muskie
Bellmon	Gravel	Nelson
Bennett	Griffin	Nunn
Bible	Hansen	Packwood
Biden	Hart	Pastore
Brock	Hartke	Pell
Burdick	Haskell	Percy
Byrd, Harry F., Jr.	Hathaway	Proxmire
Byrd, Robert C.	Helms	Randolph
Cannon	Hollings	Roth
Case	Hruska	Saxbe
Chiles	Huddleston	Scott, Hugh
Church	Hughes	Scott, William L.
Clark	Humphrey	Sparkman
Cook	Jackson	Stafford
Cranston	Johnston	Stevens
Dole	Long	Stevenson
Domenici	Magnuson	Symington
Dominick	Mansfield	Taft
Eagleton	McClure	Tower
Eastland	McGee	Tunney
Ervin	McIntyre	Weicker
Fannin	Metcalf	Williams
	Mondale	

Mr. ROBERT C. BYRD. I announce that the Senator from Mississippi (Mr. STENNIS), the Senator from Massachusetts (Mr. KENNEDY), and the Senator from Indiana (Mr. BAYH) are necessarily absent.

Mr. GRIFFIN. I announce that the Senator from Massachusetts (Mr. BROOKE), and the Senator from New York (Mr. BUCKLEY) are necessarily absent.

I further announce that the Senator from South Carolina (Mr. THURMOND), is absent to attend the funeral of a friend.

I also announce that the Senator from Kansas (Mr. PEARSON), is absent because of illness.

The PRESIDING OFFICER. A quorum is present.

Mr. JAVITS and Mr. McCLELLAN addressed the Chair.

Mr. JAVITS. Mr. President, of course I yield to the chairman of the committee.

Mr. McCLELLAN. Mr. President, I wanted to observe, just for a moment, that I was waiting for someone else to come to the floor.

Very well, let us proceed.

Mr. JAVITS. Mr. President, I ask unanimous consent that Mr. Roy Millenson, of the minority staff, may have the privilege of the floor during this debate.

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

Mr. McCLELLAN. Mr. President, I ask unanimous consent that Mr. Emon Mahoney, of my staff, may have floor privileges during the consideration of this measure.

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

Mr. MATHIAS. Mr. President, I ask unanimous consent that Mr. Colbert King and Mr. Michael Smith may have privileges of the floor during the consideration of this measure.

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

Mr. BENTSEN. Mr. President, I ask unanimous consent that Mr. Roy Katz, of my staff, may have privileges of the floor during the consideration of this measure.

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

Mr. BEALL. Mr. President, I ask unanimous consent that Mr. Joe Carter, of my staff, may have privileges of the floor during the consideration of this measure.

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

Mr. JAVITS. Mr. President, I rise in opposition to the first part of the committee amendment, which strikes out section 2 of the House measure.

Mr. ROBERT C. BYRD. Mr. President, may we have order in the Senate? There are about a dozen conversations around the floor, and gatherings. Could we have order?

The PRESIDING OFFICER. The Senate will be in order so the Senator from New York may be heard.

Mr. JAVITS. The basis——

Mr. ROBERT C. BYRD. Mr. President, the Senate is not in order.

The PRESIDING OFFICER. Will the Senators suspend momentarily until we can get order in the Senate?

The Senator from New York is recognized.

Mr. JAVITS. Mr. President, the basis for my opposition is as follows:

Before I go into the details, may I say to the chairman and the ranking minority member of the committee that, having lived with this problem for some months now I yield to no one in my appreciation of its complexities. We are all discussing a most difficult and complex problem. I wish to affirm that I am sure the chairman and the ranking minority member and all members of the committee did everything they could to try to resolve it in what they thought was the best prescription for all. The reason that we disagree does not denigrate in any way their good work and efforts for all of us to try to resolve this matter.

The continuing resolution extends the last enacted continuing resolution, now Public Law 93–52. And the particular matter to which I voice my opposition—and by the way, it could have been done by an amendment, but as long as the issue was raised by the committee amendment, it might as well be argued on that score—relates to that provision which stipulates that no State will receive less under title 1 (a) of the Elementary and Secondary Education Act than it received 2 years ago, in fiscal year 1972.

The reason stated for this proviso was to forestall diminution in these title 1 funds, which aggregate in round figures about $1,800 million, so that no State is to receive less than it received 2 years ago, in fiscal year 1972. And it is used to forestall the diminution in those title 1 funds received by a State because of the use of the 1970 census in counting eligible students instead of the 1960 census which had been used in prior years. The authorizing legislation, the Elementary and Secondary Education Act of 1965, requires that the latest available census figures be used.

Here is the situation which affects this matter. Normally we hold harmless on the basis of the preceding year's allocation and not based on the allocation of 2 years ago or on an outdated census. Thus, using the fiscal 1972 base, we find that some States which were reduced in fiscal 1973 from the fiscal 1972 figure are now being increased in fiscal 1974 based solely on this proviso which employs the hold harmless base of 2 years ago. There is an unfortunate precedent that could encourage "shopping trips" for a "good year" in future legislation, a precedent which we will very much regret.

The amendment agreed to in the other body—the so-called Quie amendment—made a fair resolution of the difficulties of putting the money where the children are, to use an expression of the Senator from New Hampshire. It is a very vivid and proper expression to use. At the same time it not so seriously reduces the share of each particular district, as title I funds are allocated, in effect, by local educational districts. It is an effort to limit to 85 percent, the amount which such local areas might lose because of the diminution in their eligible child population, carrying it through a transition period.

We respond to the 85 percent hold harmless provision agreed to in the other body with the proposition which was,

quite understandably, that the local school budget adopted for the current fiscal year would be very seriously embarrassed by some of the reductions imposed on the local school districts if we did not have some kind of hold harmless clause.

We feel that the 100 percent State hold harmless provision, if we were to follow the recommendation of our committee, would be more prejudicial than it would be to the basic pirnciple of putting the money where the children are.

We are told that the Appropriations Committee has endeavored to work out a compromise in respect to this problem which will be incorporated in the Labor-HEW appropriations bill. That compromise, from what we know about it, as far as my State is concerned, would mean that we would be worse off with that compromise than if we took the appropriations bill as it passed the House. However, be that as it may, right now, the important thing is that the HEW appropriations bill will take some little while to pass, and when passed it has an excellent chance of being vetoed. If it is vetoed—and there is a good chance that it will be—we are really locked in with a continuing resolution perhaps until the end of the fiscal year. The administration's lawyers say that when a bill is vetoed, that the veto wipes it out and it does not qualify under that provision of the continuing resolution. We are taking the previous continuing resolution and just extending the time. It says the standard of the House or Senate in the continuing resolution shall obtain. We have had that struggle with the administration lawyers.

Then the continuing resolution just continues still further. And we are all stuck with the 100 percent State hold harmless provision which works out very inequitably, as I have described.

Mr. President, I have had printed in the RECORD a tabulation which is found on page 32504 in this morning's RECORD, a reprint of which is on everyone's desk. I include in my remarks at this point tables based upon an appropriation of roughly $1.8 billion for title I of the ESEA, and with 100 percent of the hold harmless provision at the 1972 level, which is the first column. Then the second table compares that with what would happen in fiscal year 1974; that is, in fiscal year 1974 if we applied this particular formula, this would be the result. Also we analyze what happens with an 85-percent hold harmless provision which shows that a majority of the States do better than they would with a 100-percent hold harmless provision.

I ask unanimous consent to have two tables printed in the RECORD.

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

TABLE A

State	Fiscal year 1974 ESEA I, part A estimated allotments with 1972 floor	Fiscal year 1974 ESEA I, part A estimated allotments without 1972 floor	Loss or gain under hold harmless	Percent of formula allotment with fiscal year 1972 floor
Alabama	$42,202,992	$22,685,091	+$19,517,901	186.04
Alaska	4,108,676	4,745,528	−636,852	86.58
Arizona	11,523,805	13,047,637	−1,523,832	88.32
Arkansas	26,470,169	13,383,963	+13,086,200	197.78
California	151,796,957	183,335,748	−31,538,791	88.80
Colorado	14,061,868	16,598,162	+2,536,294	84.72
Connecticut	17,099,599	20,457,938	−3,358,339	83.58
Delaware	8,649,464	4,212,224	−562,760	86.64
Florida	39,837,839	40,721,904	−884,065	97.83
Georgia	42,188,006	32,050,692	+10,137,314	139.63
Hawaii	4,636,313	5,594,705	−958,392	82.87
Idaho	3,977,755	4,307,637	−329,882	92.34
Illinois	82,549,907	100,027,048	−17,477,141	82.53
Indiana	20,487,387	24,353,714	−3,866,327	84.12
Iowa	16,645,654	12,594,561	+4,051,093	132.17
Kansas	12,478,897	11,930,161	+548,736	104.60
Kentucky	38,302,224	23,014,304	+15,287,920	166.43
Louisiana	37,989,922	31,943,897	+6,046,025	118.93
Maine	6,549,274	7,617,589	−1,068,315	85.98
Maryland	24,621,223	29,564,565	−4,943,342	83.28
Massachusetts	33,505,700	40,254,091	−6,748,391	83.24
Michigan	65,576,522	78,255,320	−12,678,798	83.80
Minnesota	23,183,881	22,160,878	+1,023,003	104.66
Mississippi	44,154,990	22,829,237	+21,325,753	193.41
Missouri	28,547,584	24,025,663	+4,521,921	118.82
Montana	4,379,638	4,425,127	−45,489	98.97
Nebraska	$8,461,135	$7,789,028	+$672,107	108.63
Nevada	1,666,084	1,950,597	−284,513	85.41
New Hampshire	2,801,095	3,304,210	−503,115	84.77
New Jersey	60,773,155	73,044,917	−12,271,762	83.20
New Mexico	11,203,896	10,614,276	+589,620	105.56
New York	255,282,719	309,962,830	−54,680,111	82.36
North Carolina	61,621,074	35,255,652	+26,365,422	174.78
North Dakota	5,447,877	4,140,123	+1,307,754	131.59
Ohio	51,107,359	61,063,079	−9,955,720	83.70
Oklahoma	20,300,817	17,010,041	+3,290,776	119.35
Oregon	12,858,310	15,009,650	−2,151,340	85.67
Pennsylvania	74,583,599	88,482,429	−13,918,830	84.27
Rhode Island	6,041,948	7,252,309	−1,210,361	83.31
South Carolina	37,107,533	18,991,562	+18,115,971	195.39
South Dakota	6,870,494	4,632,141	+2,238,353	148.32
Tennessee	38,712,613	20,021,999	+18,690,611	193.35
Texas	93,439,492	81,923,055	+11,516,437	114.06
Utah	5,302,785	6,304,179	−1,001,374	84.12
Vermont	3,014,806	3,268,002	−253,196	92.25
Virginia	37,084,416	29,347,081	+7,737,335	126.36
Washington	19,676,262	23,307,758	−3,631,496	84.42
West Virginia	21,681,593	12,118,337	+9,563,256	178.92
Wisconsin	19,931,228	23,752,279	−3,821,051	83.91
Wyoming	1,821,060	1,891,064	−7,004	101.59
District of Columbia	13,478,984	16,197,598	−2,718,614	83.22

TABLE B

State	Fiscal year 1973 [1] actual allotments	Fiscal year 1974 [2] ESEA I, pt. A, estimated allotment with 85 percent of 1973 floor
Alabama	$36,401,903	$31,524,245
Alaska	3,733,423	4,673,262
Arizona	10,996,734	12,698,616
Arkansas	23,079,131	20,428,998
California	125,654,918	170,843,900
Colorado	13,203,916	15,962,163
Connecticut	14,082,445	19,322,569
Delaware	3,493,086	4,148,008
Florida	37,021,551	40,952,113
Georgia	42,634,436	37,055,629
Hawaii	4,137,759	5,183,201
Idaho	3,943,640	4,253,677
Illinois	75,824,607	92,778,336
Indiana	22,141,108	23,156,157
Iowa	15,708,515	13,788,634
Kansas	11,130,264	11,438,319
Kentucky	33,227,526	28,619,608
Louisiana	34,566,397	30,464,800
Maine	6,513,282	7,181,685
Maryland	22,269,455	27,777,141
Massachusetts	28,935,270	37,794,665
Michigan	61,674,584	74,181,276
Minnesota	22,830,751	20,727,689
Mississippi	37,905,476	32,844,431
Missouri	26,213,359	23,336,876
Montana	4,228,832	4,395,566
Nebraska	8,041,771	7,338,379
Nevada	1,313,805	1,862,867
New Hampshire	2,584,343	3,147,063
New Jersey	$51,464,849	$68,540,040
New Mexico	8,944,790	10,099,386
New York	212,916,666	286,662,020
North Carolina	56,460,652	50,055,178
North Dakota	5,265,065	4,875,990
Ohio	49,873,001	57,783,899
Oklahoma	18,554,868	16,610,786
Oregon	11,776,238	14,647,518
Pennsylvania	72,188,475	82,577,993
Rhode Island	5,572,597	6,782,218
South Carolina	32,163,595	28,589,346
South Dakota	6,065,968	5,348,790
Tennessee	33,551,724	29,337,452
Texas	91,309,880	86,089,986
Utah	4,785,278	5,971,062
Vermont	2,987,323	3,206,751
Virginia	34,407,313	30,616,220
Washington	17,234,129	22,326,879
West Virginia	18,328,333	16,018,586
Wisconsin	20,489,168	22,559,486
Wyoming	1,739,326	1,858,127
District of Columbia	11,571,059	15,176,036

[1] 1973 allotment based on $1,585,000.
[2] 1974 allotment based on $1,810,000.

Mr. JAVITS. Mr. President, there is one other thing that is critically important in this matter is in title 1 of the ESEA. The law indicates the payments which a particular county is entitled to receive according to the formula set out in the basic law and not on a State basis. Thus, the 100 percent hold harmless provision works out, as I have said, quite unfairly because that hold harmless is on a State basis. That means that local districts in that State may have to absorb a loss. However, the district which has an increase may get a very much larger part of their increase because of the State hold harmless.

That is why I favor and I believe many other Senators do—the 85 percent hold harmless standard incorporated in the House bill as it comes to us and which is applicable on the basis of local educational agencies. That gives some minimal protection to the local educational agencies in each State. It does not inhibit other educational agencies which have had material increases in their child population and would therefore be entitled to a great deal more.

The fund of $1,800,000,000 is a pot of money which is available. And they would not get full entitlement either, because

of the inadequacy of the appropriation. However, it is a reasonable accommodation as between the problems in adjusting a school budget and the material shifts in population and between the two Censuses. And again I repeat that it is only fair to see that the money should go where the children are.

Mr. President, that constitutes, as I see it, our case for adopting the House standard rather than riding along on the proposition, which our own Appropriations Committee wishes us to do, "Well, leave it at the old basis here, continue the old inequity here; you will be bailed out of it, hopefully, by the appropriation bill for HEW."

Again I repeat what I have emphasized before, that an HEW appropriation bill is going to be a little while in coming, and could easily fall on its face.

So, Mr. President, for all of those reasons I would urge the Senate to reject the first amendment of the Appropriations Committee.

Mr. YOUNG. Mr. President, will the Senator yield?

Mr. JAVITS. I yield.

Mr. YOUNG. As the Senator knows, the Senate Appropriations Committee wrestled with this problem all day long. No matter what formula you come up with, someone seems to get hurt. The Quie amendment, even for the State of Minnesota, reduces their payment about $3 million. He has a more rural district, so he is probably better off.

My State would be better off with the committee amendment, in the HEW appropriation bill because so much of the population has shifted to the cities. Many of the rural districts have no schools at all; they send the children to other school districts.

Under the Senate proposal, the money would not go directly to the districts, as I understand the Senate proposal and this bill; it would go to the States to allocate where most needed. This is in accord with Federal provisions.

Mr. JAVITS. Mr. President, there is a real problem here, and I hope our experts can help us. The Senator says, "Under the Quie amendment." He means under the 90–110?

Mr. YOUNG. Yes.

Mr. JAVITS. That is what is going to be rolled into the Labor-HEW appropriations bill?

Mr. YOUNG. Yes.

Mr. JAVITS. I do not pretend to be an expert, though I have tried to be thoroughly briefed—as the Senator knows, I do my utmost not to speak unless I am briefed—but let me describe to the Senator the situation as I understand it, and see if he tracks me on it.

As I understand it, the difficulty which we face is that if a State gets more, that does not necessarily mean that it can distribute more to districts as it chooses. Further, as I understand it, the State is really only a transmission belt. What is calculated in terms of the formula is the individual district, so that an individual district which has lost children therefore would get less money under the law—of course, that individual district, by the 100 percent hold harmless provision, is raised up to where it was in 1972. If that individual has gained or lost many more children, the State cannot distribute beyond its allowable allotment. It cannot balance it out beyond its allowable allocation. It can only transmit to it what is its allowable.

Now, of course, that particular State which has gained is going to get something out of the gain conditioned by the fact that the whole pot of money has a drain on it of 100 percent hold harmless for individual States which substracts so much money from the pot, even though it is not justified by the number of children.

As I understand, the Quie amendment tries to say, "We have got to go along with some of this, but we are not going along with 100 percent of it. We will go along with 85 percent at the local level and not at the State level."

Mr. YOUNG. I am no authority on this type of legislation. The Senator understands it as well as I do. As I understand, under the HEW appropriations bill the State distributes it, but they would have to follow a formula, a formula set by the Federal Government.

Mr. JAVITS. That is true; the formula is set by the Federal Government. Really it is academic to argue about the Labor-HEW appropriation bill; we do not know whether it will pass. It is not here. Our very distinguished colleague the Senator from New Hampshire (Mr. COTTON) will be handling it on this side. We have a record of veto in respect to it. That was one of my arguments for the Quie amendment: At least there is enough of a chance that we will not have the HEW appropriations bill to repair to, but will be bound by this continuing resolution until the end of the current fiscal year, that we have to give it the kind of finite attention which we normally do not give to a short extension on a continuing resolution. That is why I am here arguing against this committee amendment which deletes the Quie amendment.

Mr. MATHIAS. Mr. President, will the Senator yield for just a brief observation?

Mr. JAVITS. I yield.

Mr. MATHIAS. The Senator from North Dakota is exactly right. In the determination by formula, the determining question, as the Senator from New Hampshire has so aptly put it, is where the children are. The formula is based on an outdated definition of what a poor child is, and to that formula we apply a census figure. That census figure is altering and changing, and because the change is being reflected in decisions of the Department of Health, Education, and Welfare, which were not announced to local school boards until September of this year, we are having the difficulty in the application of the formula, and so the Senator is exactly right, we are bound by a formula, and that is the origin of our problem this morning.

Mr. JAVITS. I think that is true. I think the real point is that we are bound by a formula in the authorizing act as to districts. Therefore what we do for the State is not necessarily transmitted to the individual district, in that the State may have the best good will and intentions in the world, but it could not do anything for the districts, because all of the districts are bound by a Federal law. We would have to go back to title I of the ESEA to change that, and I doubt very much that we would do that in this particular area.

Mr. YOUNG. Under the Quie amendment, or most any other proposal, someone seems to get hurt. Under the Quie amendment, Minnesota gets $18,233,236; but under the Senate Health, Education, and Welfare appropriations provision Minnesota would get $23,332,047.

Mr. JAVITS. Mr. President, if the Senator will yield, I am not "fronting" for Representative QUIE, but I think he has come through with a good formula. Sure, some States lose and some gain. My State gains; a majority of the States gain. But at least what QUIE is trying to track is the basic principle of the ESEA, a lot better than what we have in the joint resolution before us. Sure, he is giving some bonus to the districts which, on the figures, have lost and lost very materially, but he is not giving as much of a bonus as the Appropriations Committee does and it goes where it is needed.

So we say, "OK, we have to take a loss, but at least let us limit our loss, and we believe that the fair way is the best way to limit it."

I am not God. Maybe 86 percent is fair; maybe 90 percent is fair. I do not know. Maybe 89 percent is fair. But this is a shot at it. The House passed it, and we believe what we ought to do is try to pursue the settlement—which is what it is, an arbitrary settlement—which the House legislated.

Mr. YOUNG. Mr. President, will the Senator yield?

Mr. JAVITS. I yield.

Mr. YOUNG. Would the Senator not think that under the Senate proposal, under which no district would lose more than 10 percent and no district would gain more than 10 percent, would be a fair solution until new legislation can be enacted?

Mr. JAVITS. We do not think it is a fair solution, because many States, including my State, would lose overall on that, because they have gained much more eligible population in a given area than the 10 percent. Therefore, the floor is not of particular importance to them but the ceiling is, which costs them in balance more than the floor gives them. But that is a battle we will fight on the HEW appropriations bill and there is no use struggling with that here. Here, what I am contending for—and I hope that a majority at least of the Senate will feel that way, is that the House has adopted a reasonable compromise in a very difficult situation on an ad interim basis. I would hope that enough Senators would feel that that is a fairer way to handle the matter than to continue the State hold harmless 100 percent on a 1972 base.

Mr. YOUNG. Mr. President, I ask unanimous consent to have printed in the RECORD a table entitled "Estimated Comparative Distributions for Local Educational Agency Grants." This table was by the Department of Education.

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

ESTIMATED COMPARATIVE DISTRIBUTIONS FOR LOCAL EDUCATIONAL AGENCY GRANTS—PT. A OF TITLE I OF THE ELEMENTARY AND SECONDARY EDUCATION ACT

			1974 continuing resolution		1974 regular bill	
	1972 actual	1973 actual	House 85 percent 1973 LEA floor (Quie)	Senate 100 percent 1972 State floor (cont. res.)	House 100 percent 1972 State floor	Senate committee 1972 90/110 State
Total amount for all parts of title I	$1,597,000,000	$1,585,185,000	$1,810,000,000	$1,810,000,000	$1,810,000,000	$1,810,000,000
Total for States and District of Columbia part A, local grants	1,364,707,215	1,316,037,468	1,444,083,033	1,444,076,531	1,444,076,531	1,444,267,379
Alabama	40,257,134	34,549,166	29,366,791	40,257,134	40,257,134	36,231,421
Alaska	2,054,974	2,415,064	3,112,266	2,655,487	2,655,487	2,260,471
Arizona	8,648,415	8,134,242	9,257,236	8,648,415	8,648,415	9,513,256
Arkansas	24,214,456	20,963,618	17,819,075	24,214,456	24,214,456	21,793,010
California	122,028,439	111,618,375	153,404,740	130,967,857	130,967,857	134,231,283
Colorado	10,100,532	10,237,378	12,368,915	10,556,709	10,556,709	11,110,585
Connecticut	11,813,005	11,747,931	16,324,230	13,935,021	13,935,021	12,994,306
Delaware	2,242,296	2,323,748	2,749,533	2,345,989	2,345,989	2,466,526
Florida	26,445,029	24,111,072	24,848,859	26,445,029	26,445,029	29,089,532
Georgia	39,947,788	40,573,812	34,487,740	39,947,788	39,947,788	43,942,567
Hawaii	3,250,669	3,715,263	4,704,115	4,016,317	4,016,317	3,575,736
Idaho	2,730,118	2,719,220	2,778,090	2,730,118	2,730,118	3,003,130
Illinois	63,243,090	69,554,901	85,026,804	72,593,588	72,593,588	69,567,399
Indiana	16,999,801	18,773,439	18,959,995	16,999,801	16,999,801	18,699,781
Iowa	15,464,659	14,601,661	12,411,412	15,464,659	15,464,659	17,011,125
Kansas	10,427,273	9,147,430	8,991,779	10,427,273	10,427,273	11,470,000
Kentucky	37,131,906	32,212,788	27,380,870	37,131,906	37,131,906	35,180,193
Louisiana	34,683,312	31,322,489	26,624,116	34,683,312	34,683,312	38,151,643
Maine	5,607,754	5,633,673	6,075,788	5,607,754	5,607,754	6,168,529
Maryland	19,423,141	19,380,669	24,059,507	20,539,171	20,539,171	21,365,455
Massachusetts	23,858,101	24,893,505	32,812,419	28,011,501	28,011,501	26,243,911
Michigan	47,703,517	51,768,916	61,617,453	52,597,354	52,597,354	52,479,369
Minnesota	21,120,043	20,897,155	18,307,236	21,120,043	21,120,043	23,232,047
Mississippi	42,074,152	35,922,629	30,534,235	42,074,152	42,074,152	37,866,737
Missouri	25,579,100	23,367,302	19,862,207	25,579,100	25,579,100	28,137,010
Montana	3,013,338	2,865,542	2,776,673	3,013,338	3,013,338	3,314,672
Nebraska	7,523,056	7,187,530	6,236,637	7,523,056	7,523,056	8,275,362
Nevada	883,771	923,899	1,390,428	1,186,804	1,186,804	972,148
New Hampshire	+1,908,409	+2,007,413	+2,463,298	+2,102,611	+2,102,611	+2,099,250
New Jersey	44,860,594	44,232,287	59,670,251	50,939,928	50,939,928	49,346,653
New Mexico	9,629,504	7,393,185	8,229,186	9,629,504	9,629,504	10,592,454
New York	−193,459,929	−196,835,764	−266,054,680	−227,155,522	−227,155,522	−212,805,922
North Carolina	56,260,988	51,556,663	43,823,164	56,260,988	56,260,988	50,634,889
North Dakota	4,271,181	4,101,267	3,386,077	4,271,181	4,271,181	4,698,299
Ohio	41,269,978	42,248,122	48,388,037	41,305,249	41,305,249	45,396,976
Oklahoma	18,199,914	16,649,246	14,151,859	18,199,914	18,199,914	20,019,905
Oregon	9,382,231	8,421,321	10,541,490	9,382,231	9,382,231	10,320,454
Pennsylvania	67,113,702	64,998,125	73,654,917	67,113,702	67,113,702	73,825,072
Rhode Island	5,189,238	4,873,849	5,940,772	5,189,238	5,189,238	5,708,162
South Carolina	34,313,120	29,853,231	25,375,246	34,313,120	34,313,120	30,881,808
South Dakota	6,266,048	5,470,551	4,649,968	6,266,048	6,266,048	6,433,549
Tennessee	36,288,395	31,273,191	26,582,212	36,288,395	36,288,395	32,659,556
Texas	69,566,731	67,675,754	57,524,391	69,566,732	69,566,732	76,523,404
Utah	3,593,198	3,894,921	4,909,818	4,191,122	4,191,122	3,952,518
Vermont	2,107,682	2,093,957	2,142,393	2,107,682	2,107,682	2,318,450
Virginia	33,803,541	31,522,692	26,794,288	33,803,541	33,803,541	37,183,895
Washington	12,255,022	13,445,639	17,638,391	15,054,763	15,054,763	13,480,524
West Virginia	20,524,496	17,319,813	14,721,841	20,524,496	20,524,496	18,472,046
Wisconsin	16,546,374	17,340,875	18,567,927	16,546,374	16,546,374	18,201,011
Wyoming	1,235,793	1,170,817	1,182,467	1,235,793	1,235,793	1,359,372
District of Columbia	8,187,278	10,096,368	13,301,211	11,355,265	11,355,265	9,006,006

Mr. JAVITS. Mr. President, I ask unanimous consent to have printed in the RECORD some tables comparing the 85 percent hold harmless with the 100 percent hold harmless.

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

FISCAL YEAR 1974, ESEA, TITLE I, $1,478,000,000 LEVEL,* LOCAL AGENCIES ONLY, VARIOUS HOLD HARMLESS PROVISIONS

State	No hold harmless	Quie, 85 percent of fiscal year 1973	Continuing resolution, 100 percent of fiscal year 1972	Loss or gain with 85 percent	Loss or gain with 100 percent
Alabama	$21.0	$29.4	$40.3	+$8.4	$+19.3
Alaska	3.3	3.1	2.7	−.2	−.6
Arizona	11.1	10.5	9.6	−.6	−1.5
Arkansas	11.2	17.9	24.2	+6.7	+13.0
California	168.2	157.9	137.2	−10.3	−31.0
Colorado	13.5	12.7	11.0	−.8	−2.5
Connecticut	18.0	17.0	14.7	−1.0	−3.3
Delaware	3.1	2.9	2.5	−.2	−.6
District of Columbia	14.1	13.3	11.4	−.8	−2.7
Florida	27.0	25.5	26.4	−1.5	−.6
Georgia	29.8	34.1	39.9	+4.3	+10.1
Hawaii	5.1	4.8	4.1	−.3	−1.0
Idaho	3.1	2.9	2.8	−.2	−.3
Illinois	93.2	87.5	75.9	−5.7	−17.3
Indiana	20.9	19.7	17.0	−1.2	−3.9
Iowa	11.5	12.4	15.5	+.9	+4.0
Kansas	9.8	9.2	10.4	−.6	+.6
Kentucky	21.9	27.5	37.1	+5.6	+15.2
Louisiana	28.7	27.0	34.7	−1.7	+6.0
Maine	6.8	6.4	5.7	−.4	−1.1
Maryland	26.6	25.1	21.6	−1.5	−5.0
Massachusetts	36.3	34.2	29.6	−2.1	−6.7
Michigan	68.0	63.9	55.4	−4.1	−12.6
Minnesota	20.1	18.9	21.1	−1.2	+1.0
Mississippi	21.0	30.5	42.1	+9.5	+21.1
Missouri	21.2	20.0	25.6	−1.2	+4.4
Montana	$3.0	$2.8	$3.0	−$0.2	0
Nebraska	6.8	6.4	7.5	−.4	+$0.7
Nevada	1.6	1.5	1.3	−.1	−.3
New Hampshire	2.7	2.5	2.2	−.2	−.5
New Jersey	65.2	61.2	53.1	−4.0	−12.1
New Mexico	9.0	8.5	9.6	−.5	+.6
New York	292.6	274.3	238.5	−18.3	−54.1
North Carolina	30.4	43.9	56.3	+13.5	+25.9
North Dakota	3.0	3.5	4.3	+.5	+1.3
Ohio	52.9	49.9	43.0	−3.0	−9.9
Oklahoma	14.9	14.2	18.2	−.7	+3.3
Oregon	11.5	10.8	9.4	−.7	−2.1
Pennsylvania	80.9	76.2	67.1	−4.7	−13.8
Rhode Island	6.6	6.2	5.3	−.4	−1.3
South Carolina	16.5	25.4	34.3	+8.9	+17.8
South Dakota	4.0	4.7	6.3	+.7	+2.3
Tennessee	17.8	26.6	36.3	+8.8	+18.5
Texas	58.2	57.6	69.6	−.6	+11.4
Utah	5.4	5.1	4.4	−.3	−1.0
Vermont	2.5	2.4	2.2	−.1	−.3
Virginia	26.1	26.8	33.8	+.7	+7.7
Washington	19.3	18.2	15.7	−1.1	−3.6
West Virginia	11.0	14.7	20.5	+3.7	+9.5
Wisconsin	20.5	19.3	16.6	−1.2	−3.9
Wyoming	1.4	1.3	1.3	−.1	−.1

*Based on $1,800,000,000 appropriation for title I of which total amount shown here goes to part A of title I.

Note: Figures in millions of dollars, to the nearest 10th.

Mr. COTTON. Mr. President, I personally want to compliment the Senator from New York on his, as usual, firm grasp of the problems in this situation and on which he has expounded so lucidly. As I understand it, and I hope correctly, from all that we have been informed about it in the past few days in the committee, by the staff, and the assistance of the Senator from New York and his staff, there is no way on Earth that we can, as of the present time, do anything to achieve real equity in the distribution of these funds. This is because of the fact that the formula is such that it has gone to the local agencies and the State is only the conduit to pass that money on to them. So that there is no way for a local school district, unless and until some time in the future the legislative committee changes the fundamental act. If school district A in a certain State has a doubling of its school population and school district B has a loss of half of its school population, whether we have the 85 percent made whole or whether it is 100 percent, there still will be the inequity between the two school districts. The one that lost will get more than it deserves, and the one that has gained will get less.

Mr. JAVITS. Senator COTTON, I wish I could say that you are wrong, but you are right. That is what I tried to point out. We are in a difficult situation for the reasons the Senator has very properly stated—to wit, that is the best we can do unless we eliminate the hold harmless provisions. That would be a question of equity. The difficulty there is that—and I would be foolish to argue for it, but as a purist, that is what we should do—is that the school districts have just commenced the school year. They have already had their first quarter allocation on the basis of the 100 percent State hold harmless provision. Now they are up to their second quarter, and HEW is not letting them know what that will be receiving either by States or school districts, until they see what we do on this continuing resolution.

We cannot overturn the whole applecart and say that we are not going to follow the rule book absolutely and strictly, when one-quarter of the school year is over and there are three-quarters to go. We cannot well do it. The best we can do is to work out some compromise.

All I am pleading for with the Senate is that this compromise, which was worked out in the House, appeals to this one Senator, and I hope to many others, as a reasonable compromise, considering the dilema in which we find ourselves—nothing more.

Mr. COTTON. But if we held harmless all the school districts within every State in the Union and provided the money to cover all that, there still would be frozen in the inequity between the districts whether we give them more or less; is that not correct?

Mr. JAVITS. That is correct, and I quoted the Senator. The principle we should follow, and I hope we will get to do it, if we have to, in the next fiscal year, is that the money should go where the children are.

Mr. COTTON. That is right.

Mr. JAVITS. I have quoted the Senator from New Hampshire. It is an axiom and no one can disagree with that.

Mr. COTTON. But we cannot accomplish that until the legislative committee has an opportunity to act for next year, or as soon as it can, to accomplish that.

Mr. JAVITS. No, the legislation is on the books, but it is really until the Appropriations Committee says the time has come to wipe out these inequities and we are going back to the law as it is—to wit, that the money shall go where the children are. But all we are doing now is to find some way to get through the school year when people had certain ideas about what they would get without causing too much pain and anguish. So it is a transmittal position, really, that we are working on, to get the school districts through until the time when the authorizing law can again be applied.

There does not seem to be anything wrong with the law in its substantive aspects. It is the adjective—to use a lawyer's word—aspect; to wit, where the money goes to the district on a formula basis, which represents the greatest problem, and that is what has got us into this rigid state now.

Mr. COTTON. But the formula, that is in the law.

Mr. JAVITS. All I was saying was that the law is right but the method of distribution may have to be reconsidered by the Labor and Public Welfare Committee, of which I am the ranking minority member. I can promise the Senator that I am taking this deeply to heart.

Mr. COTTON. Now the Senator brings me back—and I must have misunderstood his previous statement—that the Appropriations Committee could not possibly bring about the complete, ultimate and fair play of the money to go where the children are.

Mr. JAVITS. It could, if it appropriated——

Mr. COTTON. It could not, until we changed the formula.

Mr. JAVITS. It could, Senator COTTON, if it appropriated the money which was required to meet the test of the ESEA. As long as it is underfunded—and it is—we get into this rigidity because of the difficulty that the individual school districts find themselves very unhappy about when they lose as much as they do by the shifts in population. Senators do not like to stand by and see their individual school districts precipitously reduced.

In other words, with complete funding, if it were fully funded, to eliminate the hold harmless provisions, we could get equity, but in the absence of that, we get into conflicts.

Mr. MAGNUSON. Mr. President, will the Senator from New York yield?

Mr. JAVITS. May I finish first?

Mr. COTTON. That would be a matter of an additional half million dollars.

Mr. JAVITS. I am not pleading for that, Senator COTTON. I have joined the Senator in agreeing that we are in a box here, and what do we do about it.

Mr. COTTON. The difference between the continuing resolution as reported by the Senate and the House resolution would be 85 percent——

Mr. MAGNUSON. Eighty-five percent.

Mr. COTTON (continuing). Hold harmless which is, in one sense, that it just juggles somewhat which States gain and which States lose. It is still under either formula. There is no great marked difference in the distribution of funds; is that not correct?

Mr. JAVITS. We think there is a marked difference in the equity. There is difference enough in the distribution of the funds to make it worth fighting for.

Mr. COTTON. We are taking funds away from the school districts, but by the 85 percent we are taking some from 28 States and giving to 22 States.

Mr. JAVITS. About the same; that is correct. As to the aggregate amount—what goes to each district in the 28 States—there will be some reduction in what the hold harmless operation gives to individual districts, and that will work in favor of where population of the children has shifted.

Mr. COTTON. In any event, whichever takes place, there still will be the inequity as between the districts both in the 28 States and the 22 States.

Mr. JAVITS. That is correct.

Mr. COTTON. Whether or not the State on paper gains a total, that total is gained by certain districts in the States that are frozen in and may have lost population.

Mr. JAVITS. That is correct.

Mr. COTTON. So we cannot possibly have absolute justice in this case.

Mr. JAVITS. No.

Mr. COTTON. It can be done in two ways: One is when the Senator's legislative committee acts, and the other is for the Appropriations Committee to dip into the Treasury and fund the whole thing clear up to its authorization, in which case, of course, the bill would be vetoed, the veto would be sustained, and nobody would get anything.

Mr. JAVITS. Another way would be if all hold harmless provisions were eliminated. Then the money would go where the children are. Whatever was in the pot would go where the children are.

The hold harmless provisions are creating the difficulty we are in. If they are all wiped out, the money will go to where the children are; and whatever States would benefit, would benefit, and whatever States would lose, would lose.

Mr. MAGNUSON. Mr. President, will the Senator yield?

Mr. JAVITS. I yield.

Mr. MAGNUSON. What we are trying to do—Senator COTTON, Senator JAVITS, and I agree—we have a phaseout period in which the legislative committee will either have to change the formula or leave it as it is. I am not sure that is an equitable formula. It goes where the children go. In the meantime, 44 Senators are going to say they do not want to lose the money, and the other Senators will say that they need a little more.

We are trying to figure out a sensible

way—which we hope we did—of making it 90 in the appropriation bill which will come up tomorrow—90, 100, and 10. No one will lose more than 10 percent and no one can go over 10 percent.

I would just as soon leave it alone and have no formula. But Senator COTTON and I are dealing with a bill we have to get signed at the White House. I think some people would rather have less and know what they can do than have all this confusion about continuing resolutions. If this bill is vetoed, we will have to have a continuing resolution to continue the continuing resolution. I do not know whether the formula will be helped that way at all, I think 90, 100, and 10 is not bad for the phase-in period. That will be in the appropriation bill.

I do not think I agree with the Senator from Arkansas that 85 percent belongs on this continuing resolution. It should not be there, because we are going to discuss the HEW bill here tomorrow, and we will finish it by tomorrow or Friday, and then we will have established some kind of formula. If a Senator does not like the formula, he can submit an amendment.

This is the only way we can figure out to phase in and do some sort of equity to everyone concerned.

Mr. JAVITS. There are two points: One, the 90–110 is applied to States. It is not applied to districts, and that is one of its defects.

Mr. MAGNUSON. Yes.

Mr. JAVITS. That is a very serious defect, it so happens, in the case of my State.

Mr. MAGNUSON. Because a State may do the wrong thing with the districts.

Mr. JAVITS. It cannot do anything with the additional, because it is nothing but a passthrough agency. It simply adds to the rigidity to confine the 90–110 to the State.

The other point, which I think is important is the Labor-HEW appropriation bill of the Senator from Washington—we all honor him; he is one of the most loved Senators on this floor—is that we know that even his bill may take awhile before it is enacted. But let us assume that it will move fairly quickly, even with this struggle, which we will resolve somehow. Then we will have the problem of a veto of an HEW bill. If it is vetoed, the President's lawyers—we had this fight with them last year—hold that where a bill is vetoed, it wipes out both the House and the Senate bills, and then we go back to the continuing resolution, just perpetuating the inequity.

So we are in a position where we have to try to protect ourselves in the continuing resolution, which may very well remain the law until the end of the fiscal year.

Mr. MAGNUSON. But I do not think the approach of the Senator from New York is going to help. A continuing resolution means just what it says—it continues what has been going on. This bill will be passed, signed, sealed, and delivered, and sent to the White House in the next 10 days. That is when the Senator ought to make his motion.

Mr. JAVITS. I feel that the continuing resolution originally had a short-term interim 100 percent hold harmless provision.

Mr. MAGNUSON. The continuing resolution would be for only 20 days, anyway.

Mr. JAVITS. We hoped before that it would be only for 30 days or some short period of time. Here it is October, and what we see down the road is a rather long stretch for continuing resolutions. So we decided to seize the situation by the forelock, as they did in the House, and try to deal with it.

Mr. MAGNUSON. They went to the 85 percent.

Mr. JAVITS. And that is what I am pleading for here.

Mr. BEALL. Mr. President, will the Senator yield?

Mr. JAVITS. I yield.

Mr. BEALL. I agree with the Senator from New York. I suggest that not only should action be taken in the continuing resolution, but also, it probably should be taken in the general appropriations bill for HEW, so that we can have a solution to this problem.

I suggest that the problem is not one of the formula. The formula is based on the census, and the census measures children where they are. The problem arises from the applicability and the effective date.

For example, if we did nothing, the State of Maryland would make money; however, since under title I, a State only channels funds to the local educational agencies as directed by the formula, the State has no ability to provide relief in hardship cases.

Whether the formula is right or wrong is not the issue in my judgment. The issue is do we allow the change to take place after the school year has begun and the local districts budgeted on the assumptions such funds would be forthcoming.

This announcement was made to the State of Maryland after the school year had begun, so that our school districts found themselves in a quandary. On the one hand, we have large school districts which were told that they would receive more money. School had started, and their problem was how they would spend the additional money. On the other hand, we have smaller counties in our State.

For example, one of them was receiving $142,075 a year, had budgeted on the basis of $142,075; and, lo and behold, a week after the school year began, HEW told them they were not going to get $142,000, but $51,000—a cut of over 60 percent. This is a county with a small population and all of a sudden it has a cut of over 60 percent in its title I funds. As a result, they will have to lay off schoolteachers, which will damage the educational process there. We cannot allow this kind of situation to occur.

Because of that situation, as one whose State would gain, I think it is only fair that the gain be postponed or reduced temporarily and try to make an accommodation so that the school districts would not be penalized to the extent that it would do irreparable harm to their educational system.

Mr. MAGNUSON. What has been suggested here on the continuing resolution—that we go with the House on the 85 percent?

Mr. BEALL. I hope we are going to suggest that we go with 85 percent.

Mr. MAGNUSON. We have recommended a 90-percent floor provision in the HEW appropriation bill.

Mr. BEALL. That is fine if it were extended to local districts. But I am concerned about getting something on the books as soon as possible, and the continuing resolution is going to get on the books very rapidly. With respect to the HEW appropriation, I am afraid, in spite of the fact that the House and the Senate may act favorably on a bill, that it may suffer the same fate as HEW bills of recent years. I fear at best its enactment will be delayed over an extended period of time.

Mr. MAGNUSON. We certainly hope it is not vetoed.

Mr. BEALL. I do not want to take that chance.

Mr. MAGNUSON. The Senator from New Hampshire and I can give the Senator from Maryland some guarantee that action will be taken within the next 2 weeks.

Mr. BEALL. I hope the Senator is right.

Mr. COTTON. The President's signature is necessary.

Mr. MAGNUSON. What I mean is that the bill will be sent to the White House by then.

Mr. BEALL. It is the White House that concerns me in the situation.

But it seems to me that some sort of action is absolutely mandatory on the continuing resolution to guarantee that these school districts will be able to continue operations in this school year. I agree with the Senator from New York.

Mr. BENTSEN. Mr. President, will the Senator yield?

Mr. JAVITS. I yield.

Mr. BENTSEN. Mr. President, reference has been made to the fact that we ought to put the money where the children are. That is a persuasive argument, but it is deceptive. What the Senator from New York is saying is that that is where the children are under a very complicated formula that really provides that States that have more affluence, with more money. In no way does that correlate to where the children of the disadvantaged are located. I think the Senate will change this very inequitable and unfair formula.

The problem is that many States in the South and many States in the North do not have much in the way of AFDC payments, that is, much over $2,000 per family, whereas there are States like New York, New Jersey, and California, where there is a great increase in children that qualify under that kind of complicated formula.

The other point made is that 28 States would benefit under the formula. That depends on the tables we are using and the expenditures being considered. If we are talking about current expenditures, which run about $1.6 billion, then under the Quie amendment, 32 States are disadvantaged in this regard. If we are talk-

ing about $1.8 billion, the authorization level, it is an entirely different story. But we should be talking about what is being spent, $1.6 billion. Under those conditions we find 32 States disadvantaged.

Mr. JAVITS. Mr. President, will the Senator yield to me briefly?

Mr. BENTSEN. I yield.

Mr. JAVITS. Mr. President, I ask for the yeas and nays.

The yeas and nays were ordered.

Mr. JAVITS. I yield to the Senator from Texas.

Mr. BENTSEN. I thank the distinguished Senator. I share the Senator's concern in trying to find an equitable resolution of a very difficult problem. I agree the committee labored long and hard on this matter to find an equitable answer.

However, I ask that we look at the census figures for 1960 and 1970 when we talk about putting the money where the children are. Those figures show that of the total population of this country from 1960 to 1970, the State of New York went from 9.4 percent of that population in 1960 to 9 percent in 1970. The State of Texas had a population of 5.3 percent in 1960 and that increased to 5.5 percent of the total population in 1970.

Let us put the money where the kids are, and not proceed under an archaic and complicated formula that does not do justice to the disadvantaged, but rather provides for the State which is most affluent, and with the higher welfare payments to make this kind of payment.

Mr. MATHIAS. Mr. President, will the Senator yield?

Mr. JAVITS. I yield.

Mr. MATHIAS. Mr. President, I appreciate the Senator yielding.

The Senator from Washington made a very interesting point. He said a continuing resolution is merely designed to continue what is being done, and that is exactly the problem we have. We cannot continue what is being done because HEW changed the rules the first of September. The Senator from New Hampshire very rightly stated, and he has been quoted this morning, that we should put the money where the children are. There is not a Member of the Senate who is going to disagree that we should put the money where the children are. Our problem is that as a result of the HEW action, 10 years of population shifts, 10 years of the gradual moving of people from one place to another, from one house to another, from one town to another, from one school district to another, from one State to another, 10 years of population shift were telescoped into one quick decision and that decision was announced in the same week when classes began this year.

So under the decision that HEW announced the week classes began, the school districts cannot continue as before. The only way the continuing resolution can continue what was done before is by placing a provision in it.

Mr. MAGNUSON. Tomorrow the Senator can present an amendment to take care of this matter in the regular appropriation bill.

Mr. MATHIAS. Ah, but the distinguished Senator from Washington has more confidence than many of us in the legislative process. We do not know when that will be completed and be on the President's desk and will actually take place. That is the difficulty with that.

Mr. MAGNUSON. If the bill is vetoed, then subsequently, in the next 20 days, there will be another continuing resolution. The Senator can then support what he is talking about. This continuing resolution is a temporary matter.

Mr. MATHIAS. But in the meantime there might be more months in which inequities would occur, and I am going to address myself to that.

Mr. MAGNUSON. If every Senator will vote to override a veto, we will not have any problem at all. On the other side of the aisle is where we do not get the votes to override a veto. But there will be no trouble at all—absolutely none—if the regular appropriation bill is enacted.

Mr. JAVITS. Mr. President, would the Senator from Maryland note that this proposal extends the whole situation to the sine die adjournment of the first session of the 93d Congress? And we do not know when that is going to be. It may be months.

Mr. MATHIAS. The Senator from New York is absolutely correct. This is one of the many problems which make our dilemma so very difficult.

The Senator from New Hampshire (Mr. COTTON) has again rightly pointed out the new situation in which we find ourselves. Some States get more; some States get less; shifting figures are ultimately coming to a balance. The Senator is right: the problem is really not one of equity. We are not addressing ourselves to equity as among the States or equity as among school districts. We are addressing ourselves, rather, to the question of stability. How are the school districts going to continue to operate in a prudent, businesslike way if, in the first week in which the analysis is being conducted, their budget is suddenly decreased by a substantial amount?

Mr. President, I ask unanimous consent to have printed in the RECORD a very simple table showing the amounts that will be lost by school districts under the simple continuing resolution.

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

Amounts which will be lost (by losing school districts) in each state under the original Continuing Resolution (P.L. 93-52)

[*In millions of dollars*]

Alabama	2.95
Alaska	.35
Arizona	.16
Arkansas	1.29
California	1.62
Colorado	.87
Connecticut	.20
Delaware	.15
Florida	2.11
Georgia	7.19
Hawaii	.45
Idaho	.34
Illinois	6.79
Indiana	2.82
Iowa	2.69
Kansas	1.46
Kentucky	3.47
Louisiana	3.04
Maine	.36
Maryland	1.82
Massachusetts	1.17
Michigan	4.11
Minnesota	4.28
Mississippi	1.77
Missouri	4.06
Montana	.34
Nebraska	1.18
Nevada	.14
New Hampshire	.17
New Jersey	.72
New Mexico	.24
New York	10.46
North Carolina	5.34
North Dakota	.525
Ohio	4.27
Oklahoma	1.68
Oregon	.16
Pennsylvania	6.02
Rhode Island	.04
South Carolina	2.01
South Dakota	.96
Tennessee	3.42
Texas	10.08
Utah	.35
Vermont	.18
Virginia	6.25
Washington	1.25
West Virginia	.61
Wisconsin	2.80
Wyoming	.13
District of Columbia	1.85

Mr. MATHIAS. Mr. President, I point out to the Senate, and caution the Senate, that the table does not reflect what, in effect, some school districts are going to gain and what some will lose. But it is a table which illustrates the fact that there are school districts that are going to lose, and it is those school districts we have to think about today. It is the stability of those school districts which is in jeopardy in the Senate this morning.

It is a very simple proposal. It has nothing to do with equity or with who wins or who loses. We are thinking about the difficulty in which such school districts find themselves.

Mr. COTTON. Mr. President, will the Senator yield me 1 minute?

Mr. JAVITS. I yield 1 minute to the Senator from New Hampshire.

Mr. COTTON. I think we should have, first, an understanding of the situation. The situation we are facing today is a continuing resolution which extends only to the end of this Congress—when we adjourn sine die. Immediately following the disposition of the continuing resolution, or very shortly thereafter, we are going to be threshing out what goes into the appropriation bill for fiscal year 1974 on this point.

There is in the bill something which may be changed and we will undoubtedly have to grapple with that problem, and it will be no small task. Whatever we write into that bill, if it is vetoed we do not get a bill, and then, before adjournment, we must have another continuing resolution, then it becomes very important whether we have an 85-percent hold on this provision or 100 percent.

I would support the Senator's amendment if this were going to last over until next wear, but we may have something entirely different put into the main bill, and we again will have to thresh the thing out before adjournment if a bill

does not go through with the President's signature.

For that reason, it seems to me we are not gaining much by writing that provision into this bill.

Mr. JAVITS. I thank my colleague.

Mr. President, I really have made my argument with respect to the HEW bill, including the question as to its passage, and the even more important question as to its veto, thus causing us to revert to the continuing resolution.

We have already had experience, in the first quarter, with a continuing resolution which operates very unfairly. The House saw fit to try to ameliorate that unfairness, and those pursuing my position wish to join in asking us to do the same.

I yield the floor.

Mr. ALLEN. Mr. President, first I want to commend the distinguished chairman of the Appropriations Committee (Mr. McCLELLAN) and the distinguished Senator from Washington (Mr. MAGNUSON) for their statements with respect to this measure, and I want to commend the Appropriations Committee for the action that it has taken wih respect to the continuing resolution, and also the promptness with which it has reported to the Senate the HEW appropriation bill, which will come up before the Senate starting in the morning, according to the distinguished majority leader.

Mr. President, up until Monday of this week our public schools throughout the country were operating under provisions of Public Law 93–52. That provided that aggregate amounts made available to each State under title 1–A of the Elementary Secondary Education Act to educational agencies within that State shall not be less than such amounts as were made available for that purpose for fiscal year 1972.

The school districts throughout the United States have been operating under the assumption that the amounts they received in 1972 would be continued under this continuing resolution.

Mr. President, you cannot budget a school system overnight. Most public school systems start in August or September. They had to make contracts many months before. They had to make obligations and commitments to carry out the school program. And they were looking to this continuing resolution, which expired on October 1, as the amount of money that they would receive under this program.

The Appropriations Committee, in studying the question of the continuing resolution, has reported to the Senate a clean resolution, a resolution which has eliminated any effort to legislate as to particular programs.

Mr. President, I assume we have literally dozens of Federal programs that are based upon formulas of population for distribution of money, based on the Federal census in some way, but the continuing resolution which came to us from the House, had the Quie amendment, which the Senator from New York would like to keep in the resolution, which is the only program that they have sought to limit in the continuing resolution.

Why should we try to legislate a change of the formulas in a continuing resolution, especially when the HEW appropriation bill is coming up in the morning and this whole matter can be threshed out at that time?

So the continuing resolution, as the distinguished Senator from Washington pointed out, and as the Appropriations Committee thought wise, and as the distinguished Senator from Arkansas pointed out, should merely continue the status quo until a new bill can be passed.

Under the continuing resolution, under which we were operating until Monday, and which will be put into effect again with the extension of the continuing resolution that we are now considering, House Joint Resolution 727, the original resolution, 93–52 provides that the appropriation as provided in the House bill shall control, but that as soon as the Senate acts, if it puts in a more restrictive provision or appropriation or a lesser figure, that would control.

So there is no need of adding an entirely new dimension to the problem of resolving the differences on this measure, because as soon as the Senate acts—and I assume it will close out the HEW bill probably Monday, as I gathered from the colloquy that took place on the floor yesterday between the distinguished Senator from New Hampshire and the distinguished majority leader—whatever the Senate does, if it is less than the House bid or if it is more restrictive than the House action, that would be the rate at which the appropriation would be made.

So the continuing resolution is not the vehicle where any differences should be ironed out. All we need to do is pass a clean continuing resolution. It is very simple. It should not be weighted down. It contains just five lines. That is all it takes as it came to us from the committee and as introduced in the House.

Mr. MONTOYA. Mr. President, will the Senator yield?

Mr. ALLEN. I yield.

Mr. MONTOYA. I would like to say that we considered this matter very thoroughly in the Appropriations Committee yesterday. And when we evaluated the impact of the amendment placed by the House in the continuing resolution with respect to the allocation of title I–A funds, we felt that many school districts throughout the United States would be penalized and their budgets would be brought into imbalance because they had relied on the previous continuing resolution in preparing their budgets for this fiscal year.

To meet this provision known as the Quie amendment, which the House put in the continuing resolution, would merely mean that it would prejudice many of the school districts throughout this country. In fact, there are approximately 22 States that would have their budgets put into imbalance by virtue of this particular provision.

So the Appropriations Committee wisely thought that it should not interfere with this strange situation and especially at this point in the fiscal year.

Naturally, and perhaps properly—although I do not agree with it—we have the HEW bill coming before the Senate tomorrow. And I am not in agreement with the Quie amendment. I am not in agreement with any amendment that would do away with the hold harmless provision we had in the bill last year and that we should have in the bill this year because it would prejudice the fiscal integrity of the school budgets for this particular year in 22 States.

I commend the Senator from Alabama for bringing this matter to the attention of the Senate. I do hope that the Senate will agree with the full Appropriations Committee which, in its wisdom, removed the so-called Quie amendment from the continuing resolution.

Mr. ALLEN. Mr. President, I thank the distinguished Senator from New Mexico for his very splendid comments. The distinguished Senator from New Mexico has mentioned the continuing resolution as it comes to us from the House with the Quie amendment.

If the Senate knocks out the Quie amendment—and that is not the final determination of this question—it goes back to the House. I assume that a conference committee will be set up to iron out the differences between the Senate and the House. The Quie amendment is not altogether lost. Some area of agreement might be found between the Senate and House position. Frankly, I would hope they would not legislate in the continuing resolution and change one formula. We have literally dozens of formulae in the Government for the distribution of funds. However, if the thought still exists that some limitation ought to be placed on the funds available to the district based on the 1972 year, that change could then be made by a conference committee.

I have been somewhat amused by the statements of some of the Senators from some of the larger States bragging—I assume—about the distinction their States have of having more poor people. They have argued that they have more poor people than we have and that they therefore need more money. They say, "Let us provide for the children where we find them."

If that were the case I would agree, and I do agree with that. However, as the distinguished Senator from Texas (Mr. BENTSEN) pointed out, the formula under which these funds are allocated is not based just on where the poor children are. It it based that on per capita income, I would say that the children of the South would certainly come from poorer families than those children who live in the affluent States.

As I understand this formula, it provides that the distribution is based on an allocation consisting of two factors. Under one factor, it is the children who come from families making $2,000 or less from any source. That is one factor.

The second factor consists of the children who come from families that are receiving assistance, the families with dependent children.

Some of those rich States are able to provide money to families that have a higher income than the families in some

of the other areas of the United States. So, in States like Arkansas, Alabama, or Mississippi, we find that those States are able to qualify only under one of those factors, under the factor providing for children who come from families who make $2,000 or less. We have practically no one in the other half of the formula that provides for an enumeration of those children who come from families that receive more than $2,000 from the States. So, we do not have the money in our area of the country to put people on aid to families that have dependent children, as they do in the more affluent States.

This formula does not actually single out where the poor children are. It singles them out, yes, on one-half of the formula, where the poor children are. However, in the other factor, it bases that on a basis of which States are rich enough to provide more than $2,000 per family in aid under this program.

So, far from merely being a case of allocating the money where the poor children are, it does not do that.

I think it is only fair that we continue the appropriations as provided in the House bill as it comes to us. Or, if we are dissatisfied with that, let the Senate work its will on that provision. However, let us not hold up the continuing resolution. This does not pertain just to HEW. This continuing resolution applies to every single one of the appropriations bills that have not been passed by the Congress and signed by the President.

So, while we are arguing about which formula is under which program, we will have an opportunity to work on it in the bill itself. The agencies covered by some 10 appropriations bills have their money cut off. How is the Government going to operate if it does not have a continuing resolution? It cannot spend the money unless it has been appropriated by the Congress. We have only passed about four appropriations bills—I think that three have been signed into law and one is awaiting signature—out of some 14 or 15 major bills.

Let us not hassle over this matter in the continuing resolution. Let us continue the status quo until, and if the Senate sees fit to do so, it changes it when we take up the HEW bill tomorrow.

We should not change the formula in the middle of the school year and create a tremendous hardship on our school system. It would result in a reduction of some $11 million to the State of Alabama if the Quie amendment is agreed to. In other words, if the committee amendment does not carry, it would cost the State of Alabama some $11 million. Our school districts cannot stand this loss in the middle of the school year.

So I am hopeful that the Senate will go along with the Appropriations Committee. I believe, if I am not mistaken, the action by the Appropriations Committee was unanimous. Senators coming from all sections of the country recognized the wisdom of this action and the merit of continuing the appropriation at the present level, and not injecting a brand new formula into the appropriations process.

Let us do that by the bill itself, if we are going to do it. Let us not seek to do it by the continuing resolution. I hope that the Senate will vote in favor of the committee amendment striking out the Quie amendment.

Mr. President, I yield the floor.

Mr. HOLLINGS. Mr. President, I am not playing a role like some of my distinguished friends. I expect the Senator from New York and the Senator from California to outvote me, and I do not mind that, but I hate, while they are doing it, to be called unfair.

Let us find out exactly what they are talking about, and see who really is unfair. I am referring to the population of the United States, according to the census changes, between 1960 and 1970.

Tht Northeast sector of the United States, including the great State of New York, increased some 9.7 percent. The Western part of the United States increased some 12.7 percent. But the Southland, Mr. President, increased 24.1 percent.

If Senators want to be fair and use the census, let us do just that. Let us take the money they are getting now, give New York 9.7 percent more, give California 12.7 percent more, and then give me 24.1 percent more. That would be the fair thing. But, of course, obviously that is not what the Senator from New York proposes. He proposes that he get his 9.7 percent, but that I be deducted, rather than increased, by this 24.1 percent, because that is what would result if we took the actual census figures.

They say, "Well, you know, more people." Now, what about that? More people moving in? Are we to assume the poor children all rushed to New York and California and left their parents behind? Anyone with any commonsense knows the parents rushed to New York and left the children behind. That is what we have got in South Carolina and Alabama. Anyone who knows anything about welfare knows it involves runaway parents.

What we are trying to do is help poor children.

In 1950, when we started under title I, we used the measurement of $2,000, but then these whiz kids—and they are smarter—started changing the regulations and the guidelines. You ought to see how it works. I have been to New York. They have a slogan in downtown New York City, "One billion for one million." That is a billion dollars for a million people on welfare.

They won. They succeeded in getting the formula to work for their 1,125,000 on welfare, and it costs over a billion dollars. And who is in this formula? The aid to dependent children families, with incomes up to $7,100 in New York. I ask the Senator from Alabama, "What about that? Your State balances off at $3,000, and we are slightly below $3,000."

We are low in the per capita income figures. We are not low on effort. The State of South Carolina, on a per capita basis, on money spent for education, is fourth in the United States. But we have the children left behind. We have a greater burden, and that is who we are trying to help.

How are we going to do it? By providing a formula that designates poor children in South Carolina the same way they do it in Rhode Island, New York, Alabama, or anywhere else. We are waiting for the distinguished Senator from New Hampshire to come in with a fair formula, the Oshansky formula or any other, so that we will have a reasonable measurement of need.

That is why we are knocking out the Quie amendment, because in 1965 they started using the AFDC, and now the tail is wagging the dog.

You do not measure reasonably by finding the rich States with rich formulas, and reward them for being richer. But that is what the Senator from New York proposes. That is why we are in favor of holding the line until the authorizing committee can come up with a formula which designates poor children as poor wherever they are in America, and does not let States like New York come in with a formula pretending that the poor do not exist where they are. Then they are leading demonstrations down in my backyard, saying, "How cruel you are, and how cold, with no heart for the poor."

Why do they not go have a demonstration in Brownsville or Harlem, and get fair in their own backyard, and quit berating us about who is fair and unfair?

Yet we have the implication that the action of the Appropriations Committee is an unfair one. Mr. President, it is a wholesome one, in the light of the bad formula which has developed over the last decade in favor of the rich States.

I got a call from my Governor one day about a year ago. He said, "Man, they really got something going. Rockefeller has found out how to take all of his deficits and put it on social services."

I said, "You don't say."

He said, "Yes, and he has given it to Reagan, and Reagan is getting to work on it in California."

Social services jumped from $750 million to $1.5 billion to $2 billion.

And in 18 months they topped it off at $2.5 billion; by the time we poor per-capita-incomers from the Southland found out what the gimmick was, they cut us off. We did not get on in time. We tried our best; we tried to duplicate Rockefeller, turning all his deficit financing to the Federal Government.

I can give you example after example about the unfair tactics of New York and the rest of those whiz-kids coming up here, when we are trying to hold the line for public education, and saying they are being denied what they deserve. We can prove accurately that they have far less of a burden in poor children in 1970 than what they had in 1960, but they are using a gimmick. I do not mind them trying that, but I say to them, "Don't call us unfair at the same time."

I hope the Senate will support the committee's amendment.

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

Mr. DOMINICK. 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. JAVITS. Mr. President, I ask

unanimous consent that the order for the quorum call be rescinded.

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

Mr. JAVITS. Mr. President, I gather that the Senate is ready to vote. I wanted to be sure, if there are additional Members in the Chamber, that we understood the situation clearly.

One, this is a vote up or down on the first amendment of the committee as reported in the continuing resolution. That amendment would strike out a provision inserted by the House which gives an 85 percent hold harmless at the 1973 level to individual school districts under title I of the Elementary and Secondary Education Act. That differs from existing law and from the continuing resolution provision which gives 100 percent hold harmless to the States at the 1972 level. Therefore, those who wish to vote with the House provision will be required to vote "nay" as that turns down the committee amendment and results in leaving the House provision.

The main argument for our side of the case is that there is an inequity. It continues. We are using the 1960 census instead of the 1970 census. Many school districts are not entitled to what they are getting under the State 100 percent hold harmless and the others who gain children are paying that price. So we are trying at least to moderate that inequity by reducing the State 100 percent to a local 85 percent. We are not waiting for the HEW appropriation bill because the HEW bill may take some time to go through and it may be vetoed.

In the meantime, the continuing resolution carries us until adjournment of this session, which might very well be the end of November or December—no one knows.

Finally, the school districts have had their first quarter allocations and now they are waiting for their second quarter allocations. We feel, in all justice, that the second quarter should give some greater element of equity to the school districts which are hurt by the hold harmless formula than they would otherwise get under the 100 percent State hold harmless formula.

I would simply like to close by stating what has been stated here time and time again that there is inequity, and there will be inequity in the 85 percent just as there is in the 100 percent. But we are trying to moderate the inequity—that is what the House did in the transition period—until we can get back again to using the most current census and compensating each school district according to where the children are.

In the meantime, people have made their budgets and plans, and so forth, so that I do not feel we can go whole hog on the substantive basis prescribed by the authorizing law. We who are being hurt are trying to come forward with a somewhat fairer compromise.

Mr. ALLEN. Mr. President, will the Senator from New York yield?

Mr. JAVITS. I yield.

Mr. ALLEN. Is it not correct that half of this formula for the allocation of these funds is based on the number of children who are members of families who receive from the State under the AFDC program more than $2,000; and it is not true that only the rich States that can make these payments, whereas the poorer States cannot?

Mr. JAVITS. I do not think that that is fair because there are many other Federal programs. This one does not live in a vacuum. This particular program is based on poor children, so it should be administered fairly to those poor children wherever they are. If the Senator was right, then every program would be lumped in one gob and do it by the original formula we dreamed up. I know of lots of agricultural funds and I know of lots of other funds—public works, and so forth—which go very different ways, but this particular pot of money, roughly somewhere between $1.6 billion and $1.8 billion, being destined for children who are considered disadvantaged, it should be divided according to where the children are.

Mr. ALLEN. That is quite true, but is it not also true, though, that the children in the State of New York who are in families receiving more than $2,000 from the State are counted, whereas in a poorer State, inasmuch as they cannot receive the $2,000 from the State, they are not counted in this formula?

Mr. JAVITS. As I understand it, the eligible population is half the formula.

Mr. ALLEN. That is correct.

Mr. JAVITS. So that is an ameliorating factor.

Mr. ALLEN. In other words, the Senator from New York can do more for his poor children than a poor State can. New York's children are counted in this formula, whereas those in the poorer States are counted for half the formula.

Mr. JAVITS. However, that formula also has a compensating factor to make up for what the Senator names, with respect to the average expenditure of the State for education. With respect to that factor, the kind of States the Senator mentions get an advantage. So we do not believe the total formula is unfair even to those States, because to the extent of one-half it emphasizes what the Senator has described; but to the extent of the other half, it does better by the individual States who are outside the first group, and one considers also the quotient per pupil expenditure.

Mr. ALLEN. Is that not based on the families receiving less than $2,000 from any source?

Mr. JAVITS. Let us just notice this. The State of Alabama, the Senator's own State, gets as a Federal contribution 88 percent of the State's per pupil expenditure. If we went with New York—and New York seems to be paraded around here—of course it is a mighty big State but entitled to the same consideration as every other State, even New York State—but if we want to point to New York, it gets only 50 percent Federal contributions of what it spends per pupil. So all I say is that one half the formula makes up and obviously is making up, because that is the net result, for the first half of the formula which the Senator has described.

Mr. ALLEN. Still, though, inasmuch as Alabama is not able to carry families getting more than $2,000 in many instances, they are not counted under the formula; is that not correct?

Mr. JAVITS. Yes, but they are counted with respect to the pupil expenditure. They are collecting infinitely more than we are, in those terms.

Mr. ALLEN. I thank the Senator. I understand.

Mr. JAVITS. I thank my colleague from Alabama.

Mr. BENTSEN. Mr. President, the statement is made time and time again that we want to send the money where the children are. I agree with that. But the distinguished Senator from New York is talking about AFDC children under a distorted, complicated formula that says, in effect, that in a more affluent State that can make these payments to these families and their children, where a substantial number are receiving more than $2,000 per family for AFDC payments, is where we are going to send the money.

Let me refer to the census figures between 1960 and 1970. The State of New York, as a percentage of the total population of this country, lost in its relative standing. The State of Texas, between 1960 and 1970, went up with respect to a percentage of the total population. Yet, under the Quie formula, New York is going to get more money and we are going to get less. The formula they have derived is one that needs revision, and I think most of us would say that, but in no way does it reflect where most of the people who are disadvantaged are located in this country.

The statement has been made that the Quie formula benefits 28 States. I am saying that it hurts 32 States. Where is the difference in these tables? We have various tables floating around. The reason is that they are presently spending at a level of approximately $1.6 billion a year. If one wishes to go with the authorization level, which is $1.8 billion, and no one knows that they are going to spend at those levels, then one can come up with figures such as this.

Considering the amount of money States have as compared with what they will receive if the Quie amendment goes into effect, 32 of those States will be receiving less money.

I hope very much that the committee's position will be sustained on this amendment.

Mr. COOK. Mr. President, I associate myself with the remarks of the Senator from Texas. To substantiate his statement, I should like to put in the RECORD several items that I think will make the situation clear not only now but also in the future, in the debate on the HEW bill.

For example, under the 1960 Census and up to 1973, the number of children under the $2,000 level stood at 4.9 million, and under the AFDC level it stood at 3.2 million. Under the 1970 Census, when we finally received the figures, the number of children under the $2,000 level dropped to 2.6 million, but the AFDC children, because of the payments from the respective States, went up to 3.6 million.

I ask unanimous consent to have this chart printed in the RECORD.

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

Children counted under title I

[In millions]

1960 CENSUS

1966:	
A[1]	4.9
B[2]	.6
Total	5.5
1967:	
A[1]	4.9
B[2]	.8
Total	5.7
1968:	
A[1]	4.9
B[2]	1.2
Total	6.1
1969:	
A[1]	4.9
B[2]	1.5
Total	6.4
1970:	
A[1]	4.9
B[2]	1.8
Total	6.7
1971:	
A[1]	4.9
B[2]	2.2
Total	7.1
1972:	
A[1]	4.9
B[2]	2.9
Total	7.8
1973:	
A[1]	4.9
B[2]	3.2
Total	8.1

1970 CENSUS

1974:	
A[1]	2.6
B[2]	3.6
Total	[3] 6.2

[1] Children from families with incomes less than $2,000 according to the Census.

[2] Children from families with income in excess of $2,000 from AFDC payments.

[3] Includes projected number of AFDC children, based on average yearly increase.

Mr. COOK. To make the point clear, relative to what the Senator from Texas said, I also should like to put into the RECORD the percentage distribution of total population by States in the 1970 Census as compared to the 1960 census. The Senator is correct. The State of New York went down from representing 9.4 percent of the Nation to 9 percent of the Nation.

But let us look at the chart and see what they have done from 1960 to 1970 with respect to the number of pupils under AFDC in the State of New York. The table shows that they went from 99,890 pupils to 565,968 pupils.

So we can see the difference, and we can see that the percentage of dollars allocated is not based on where the children are but on the children that are put under a particular program.

I ask unanimous consent to have these tables printed in the RECORD

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

INCREASE IN AFDC CHILDREN COUNTED UNDER TITLE I

States	AFDC children fiscal year 1966		AFDC children fiscal year 1973		Increase from fiscal year 1966 to fiscal 1973
	Actual number	Percentage of total[1]	Actual number	Percentage of total[1]	
Alabama	0	0	1,074	0.4	1,074
Alaska	795	14.9	4,723	46.6	3,928
Arizona	5,603	12.6	17,624	30.3	12,021
Arkansas	0	0	0	0	0
California	102,073	33.1	560,993	70.4	458,920
Colorado	7,303	17.9	37,295	51.0	29,992
Connecticut	7,595	26.8	47,116	65.9	39,521
Delaware	0	0	5,711	40.2	5,711
Florida	0	0	25,472	14.8	25,472
Georgia	0	0	45,995	15.9	45,995
Hawaii	2,413	21.5	13,902	60.2	11,489
Idaho	2,403	16.4	6,570	34.0	4,167
Illinois	82,499	35.9	270,392	62.9	187,893
Indiana	3,515	4.4	51,115	38.1	47,600
Iowa	9,265	11.4	29,074	28.1	19,809
Kansas	5,400	12.0	23,011	35.2	17,611
Kentucky	0	0	32,334	14.1	32,334
Louisiana	192	0.1	18,778	8.4	18,586
Maine	2,725	12.9	19,730	49.1	17,005
Maryland	9,420	14.9	59,407	49.2	49,987
Massachusetts	16,817	26.3	118,674	69.4	101,857
Michigan	21,029	14.4	194,106	59.4	173,077
Minnesota	11,678	13.1	45,154	35.4	33,476
Mississippi	0	0	0	0	0
Missouri	11,297	8.3	37,152	22.3	25,855
Montana	1,477	9.6	5,575	27.4	4,098
Nebraska	664	1.9	15,821	30.8	14,911
Nevada	675	17.0	2,427	38.4	1,752
New Hampshire	1,052	15.1	6,698	47.4	5,646
New Jersey	25,496	29.9	170,877	71.4	145,381
New Mexico	4,315	10.3	13,975	26.5	9,660
New York	99,890	33.3	565,968	69.7	466,078
North Carolina	3,515	1.1	39,056	10.6	35,541
North Dakota	1,775	7.1	5,150	17.6	3,375
Ohio	25,472	14.4	137,774	45.7	112,302
Oklahoma	11,168	11.6	30,372	25.6	19,204
Oregon	6,288	20.8	26,326	48.7	20,038
Pennsylvania	60,258	25.6	246,945	56.3	186,687
Rhode Island	4,007	24.9	18,308	58.3	14,301
South Carolina	0	0	4,561	2.2	4,561
South Dakota	1,528	4.8	6,537	16.8	5,009
Tennessee	0	0	0	0	0
Texas	0	0	79,326	16.4	79,326
Utah	2,088	15.3	15,058	54.2	12,970
Vermont	580	7.5	6,325	42.8	5,745
Virginia	3,088	1.8	50,142	22.3	47,054
Washington	9,842	23.0	53,427	57.9	43,585
West Virginia	82	.1	14,553	11.8	14,471
Wisconsin	10,444	15.2	46,691	41.7	36,247
Wyoming	661	10.9	2,213	28.0	1,552
District of Columbia	5,900	28.4	39,640	71.4	33,740
Total	582,288	10.5	3,269,192	38.6	2,686,904

[1] Percentage of total title I children within the State which are in families with an income above $2,000 from AFDC.

Percentage distribution of total population by State in the 1970 census as compared to the 1960 census

	1970	1960
New England:		
Maine	0.5	0.5
New Hampshire	0.4	0.3
Vermont	0.2	0.2
Massachusetts	2.8	2.9
Rhode Island	0.5	0.5
Connecticut	1.5	1.4
Middle Atlantic:		
New York	9.0	9.4
New Jersey	3.5	3.4
Pennsylvania	5.8	6.3
East North Central:		
Ohio	5.2	5.4
Indiana	2.6	2.6
Illinois	5.5	5.6
Michigan	4.4	4.4
Wisconsin	2.2	2.2
West North Central:		
Minnesota	1.9	1.9
Iowa	1.4	1.5
Missouri	2.3	2.4
North Dakota	0.3	0.4
South Dakota	0.3	0.4
Nebraska	0.7	0.8
Kansas	1.1	1.2
South Atlantic:		
Delaware	0.3	0.2
Maryland	1.9	1.7
District of Columbia	0.4	0.4
Virginia	2.3	2.2
West Virginia	0.9	1.0
North Carolina	2.5	2.5
South Carolina	1.3	1.3
Georgia	2.3	2.2
Florida	3.3	2.8
East South Central:		
Kentucky	1.6	1.7
Tennessee	1.9	2.0
Alabama	1.7	1.8
Mississippi	1.1	1.2
West South Central:		
Arkansas	0.9	1.0
Louisiana	1.8	1.8
Oklahoma	1.3	1.3
Texas	5.5	5.3
Mountain:		
Montana	0.3	0.4
Idaho	0.4	0.4
Wyoming	0.2	0.2
Colorado	1.1	1.0
New Mexico	0.5	0.5
Arizona	0.9	0.7
Utah	0.5	0.5
Nevada	0.2	0.2
Pacific:		
Washington	1.7	1.6
Oregon	1.0	1.0
California	9.8	8.8
Alaska	0.1	0.1
Hawaii	0.4	0.4

Source: Bureau of the Census.

Mr. COOK. Mr. President, if we are to say that my State lost one-tenth of 1 percent from 1960 to 1970 in its total population in relation to the population of the United States and that the State of Kentucky is going to lose almost $10 million of what it received previously,

and the State of New York, which lost four-tenths of 1 percent in relation to my one-tenth of 1 percent, is going to be increased by some $37 million—almost exactly the total amount of title I funds received by Kentucky in 1972—then I must say that the equity has to be cured.

By virtue of deficiencies inherent in the formula for distributing title I funds, these totals do not accurately reflect the number of "disadvantaged" students presently attending school in the various States, and I suggest that the Senate agree to at least a hold harmless provision for each State at the 1972 funding level, where funds for this school year have already been budgeted, until the Congress can come up with a formula which will insure that these funds go specifically to those areas most in need of funds for the education of disadvantaged children.

Mr. JAVITS. Mr. President, I shall not detain the Senate, but I do want to utter one word of rebuttal.

Deeds always speak louder than words. I offer right now, so far as I am concerned, to cast my vote for any proposition which eliminates the hold harmless. Let us actually go ahead and put the money where the children are—just literally. I promise to vote and fight for that to the limit of my power, and I have in hand an amendment to that effect, which I will gladly submit.

The fact is that we are trying to be understanding of the problems of school districts, including the school districts of States such as Texas and Kentucky. But I will take my chances. That is what the end is of the argument that Senator BENTSEN and Senator COOK make. They say we should put the money where the children are. Fine. Join me in this amendment—no hold harmless of any kind. But that takes the 1970 census instead of the 1960 census, and many other little gimmicks like that, because this money is going to school districts, according to what each is, not the States. The States are only a transmission belt, a passthrough. So even within their own States, there are many inequities, because this hold harmless is a State hold harmless, not a district hold harmless.

The virtue of the Quie amendment is that an educational district is held harmless to the extent of 85 percent instead of 100 percent State hold harmless.

Finally, not only have there been population shifts in this country but also enormous income shifts. I will talk about my State; I ought to know it pretty well. What has happened to my State is that New York City has lost roughly 2 to 3 million high-rate taxpayers and has gained 2 to 3 million, of whom a large proportion are welfare cases. That is not just in my State. Some people still have the 19th century idea that New York is a plush den of iniquity. What about Dallas and Chicago and Indianapolis and Wilmington and San Francisco and Los Angeles and Philadelphia and Boston, and every other large city in the country which has had exactly the same problem?

Sure, there are more poor, and this program is directed toward the poor. Many other programs are dipped into by these very States, and they should be, and we pay the most.

I attended a town meeting in my district, in Rochester, on Monday which, by the way, resulted in my missing 11 votes. I do not know how constituents figure that out. At the town meeting, a fellow got up and said:

> We pay $20 billion taxes, and I figure we only get back $1.9 billion. What are you doing about that, Mr. Big Senator?

That is a logical gripe. His figures do not have to be right, but they certainly are very high—4, 5, or 6 to 1.

So if a program is designed to help us deal with our problems, you are going to knock that one on the head. It is all a one-way street. I do not think that is fair. We will find some way to rebel with big taxpayers. One way to do it is the progressive income tax as contrasted with indirect taxation. Some say that we would be better off in that case with a national sales tax. Let everyone pay his tab, and then it will be much fairer. But I do not think that is good for our country.

We, as Senators—we are sent here to use our heads—have to find some way out of it. I think the fair way out of it is to say that where we have a particular problem and a particular Federal fund toward which that problem can be helped, we are not going to stand in the way. But that is what is attempted here—to stand in the way.

Mr. PASTORE. Mr. President, there seems to be considerable merit on all sides of this issue, depending upon just what the situation is in one's State. I think there is tremendous logic in the comments of the Senator from Texas, the Senator from South Carolina, the Senator from Kentucky, and the Senator from New York.

But I think there is one thing we forget when we talk about per capita income. It is usually found that where the per capita income is higher in one State as against another State, one must realize that the cost of education per pupil is also higher. This is so in my State of Rhode Island. We cannot accept a minimum of $2,000 for the simple reason that it costs a little more to live in Rhode Island and the education cost is more in Rhode Island than in another State. I guess that was the reason for this formula.

I think it is fair to argue that some States cannot afford to pay aid to dependent children in excess of $2,000 because they do not have that kind of money, and they are correct because their per capita income is not as large as Rhode Island. In my State we pay our teachers more than in some other States and more for classroom construction. That is why they adopted this formula.

It is true that depending on where one comes from inequities can be argued, and everyone has a sound argument for his position, but the only way to cure this situation is to appropriate more money.

The one mistake we made when we passed the continuing resolution last time is that we left it to the State to predicate their budget on what they had received. That money is already pledged. Now, we are saying, "You have to take a little less." That is a hard burden to sustain, but in the long run this has to be placed in proper perspective.

This year, in view of the fact that many of these school districts have been misled because of that continuing resolution, the only cure, if we have the courage to stand up and do equity, is to add additional funds and take the position that 28 States will get the money and the other 32 will be saved harmless.

Mr. BENTSEN. Mr. President, will the Senator yield?

Mr. PASTORE. I yield.

Mr. BENTSEN. Mr. President, the Senator from Rhode Island has made the argument for an amendment I am going to offer, and he has done so eloquently.

The amendment I propose would provide that school districts would be held harmless 100 percent; those who get the increase would be allowed to keep it. It will cost $117 million. That is the proposal I am going to offer.

I have a long list of school districts that were notified late in July, and some in August. They had locked in budgets, and it is tough to raise that money. They are going to have a difficult time and they are going to have to fire a substantial number of teachers in my State.

Mr. PASTORE. Is that not what the Quie amendment suggests, an increase of $117 million?

Mr. BENTSEN. I would hold them at 85 percent.

Mr. PASTORE. But the argument is that to place it on an equitable basis there $117 million is needed. That is the figure we heard in committee yesterday.

Mr. BENTSEN. My amendment would provide for $117 million to hold the school districts harmless and to let those who received it keep the increase.

Mr. PASTORE. That is the way the matter should be resolved. I realize we are fighting against ceilings on expenditures. The only way to take care of the inequity is to appropriate additional funds. In this case some people have been misled by the former continuing resolution that we passed. We told them they were going to get a certain amount of money and budgets have been formulated on that basis. The only way to cure it is to pay the additional money to them. The money will not be wasted because it is for education.

Mr. BENTSEN. Mr. President, the distinguished Senator from Rhode Island has convinced me. I am going to vote for my amendment.

Several Senators addressed the Chair.

Mr. JAVITS. Mr. President, I have the floor.

The PRESIDING OFFICER. The Senator from New York has the floor.

Mr. JAVITS. I yield to the Senator from New Hampshire.

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

Mr. COTTON. I agree with my dear friend, the Senator from Rhode Island, but there is going to be an inequitable distribution of these funds under the present formula unless we are prepared to pay the piper and give the full authori-

zation, and add nearly a half billion dollars to the bill that is coming in. It will be around $400 million. Then, we might get into a situation, if the bill is going up high enough, where the President's veto would probably be sustained and we would be in the position we were in last year.

I am not completely upset by the amendment of the distinguished Senator from New York but with or without his amendment there has to be some adjustment; some get more and some get less. Whatever the situation is until the basic and fundamental law is changed, and I am sure the situation will be corrected as soon as the committee of which the Senator from New York is an able member, we will not be able to take care of these inequities because on the one hand it will cost us all outdoors to do it because we have no money; and on the other hand we cannot change the formula. We cannot give to the State of Texas, the State of Rhode Island, and the State of Massachusetts and let them distribute more equitably where one school district has lost in child population and another has gained. It has to stick to the formula, so we will be up against that impossible situation.

I would hate to see us adopt the first expedient suggested by the Senator from Rhode Island that we pay the full bill of the authorization. That means over $400 million in the aggregate. Just this situation with the amendment of the Senator from New York is going to cost $170 million. I believe it is the Bentsen amendment that would cost $117 million.

I thank the Senator for yielding.

Mr. JAVITS. My amendment would cost nothing.

Mr. COTTON. That is correct.

Mr. JAVITS. Mr. President, I know the Senate wants to vote. I shall not delay but I do wish to point out that those who favor my position will vote no. I do not want any confusion.

Mr. HOLLINGS. Mr. President, the distinguished Senator from Rhode Island made a very persuasive argument in support of the formula for 50 percent of the State and national average per pupil expenditure.

Rhode Island spends more than South Carolina, and Rhode Island gets more through a higher amount in the multiplier. We have had hearings on this score and all the evidence shows that.

The fact is that South Carolina spends 46 percent of its budget for public education, yet that fact does not go into the formula.

What our distinguished friend from New York has not mentioned, and what others gloss over but what has been covered by the Senator from Kentucky and the Senator from Alabama is that the AFDC factor in the formula creates the inequity. Our distinguished friend from New York, as the ranking minority member of the Committee on Labor and Public Welfare knows that is what really put this out of kilter and caused the inequity, as used in New York, it means the formula finds more poor children than there are.

The fact of the matter is, if we take the census count of population one more time and we look, not just at New York, but at various areas, while the Northeast increased by 9.7 percent between 1960 and 1970, and the West, for example, increased by 12.7 percent, the South, our section, increased by 24.1 percent.

If we wanted to write in an equitable formula, we would take what we had and distribute it on the basis of these figures—9.7 percent increase for the North, and give me a 24.1 percent increase down South. But they do not want to do that. They want to put in this unnatural multiplier that does not even figure. And Arkansas, Alabama, and South Carolina, because we are way below in the per capita income, can not include the children of those making $7,000 a year in our AFDC. If a family in New York made $7,000 a year, they would come under this formula, because New York has designated it that way. But not in South Carolina. Anyone making $7,000 a year in South Carolina is not counted. In fact, those making $3500, half of that $7,000, are not counted. It affects only 2 percent of my population. I am talking about this particular AFDC multiplier.

The distinguished Senator from New York knows about this inequity and where it is to be cured. His is the authorizing committee, which is holding a meeting, to consider the Orshansky formula, and other approaches to a new formula, so the same measure will be applied in Texas, New York, South Carolina, and Washington. That is the equity about it. What is the inequity of the amendment of the Senator from Texas? He talks about $117 million or a hold-harmless argument of our distinguished friend from New York, which, as the Senator from New Hampshire says, is going to cost almost half a billion dollars.

What we are really writing into law is not finding poor children where they are really, but, on the contrary, solving a political problem here on the floor of the Senate, so one can call the superintendent of schools and say, "You know all that money I told you about we were going to get? I got it." It costs $117 million to do that. That is why we did not adopt it in the Appropriations Committee. That is why we adopted the hold-the-line situation until the authorizing committee, which the distinguished Senator from New York helps lead, is going to give us a formula we can all agree on and find a poor person in South Carolina and New York to be the same.

The truth of the matter is that if you supported the Senator from New York's argument, the population increase of poor children that he talks about, under his way of measurement on the census, came about because the children all left their parents and went up to New York. The fact is they did not do that, because the Census shows we got an increase of 24.1 percent and the North got only a 9.7-percent increase. It would be reasonable to assume that the Northeast would have a 9.7-percent increase in poor children as well as rich and middle, and the same down South; we would have a 24.1-percent increase in rich, poor, and middle.

But if we adopt his argument—and he uses the word "unfairness"—what has happened is that the children left their families and went to New York. You and I know the exact opposite is true. The parents leave their children in South Carolina, Alabama, and Mississippi and go to New York. Then the Senator from New York and the Senator from Minnesota come down in a demonstration in Alabama saying, "Look, you are not looking after your poor children down here. We want to demonstrate. You do not have a heart. You are cold." Then when we try to equalize it here and say here is where the poor children are, here is where the money ought to go, they give us the hocus-pocus of what it costs based on an agricultural formula. He knows formulas. He is an intelligent and articulate Senator. He knows. The aid for dependent children factor, that multiplier that the Senator has in New York and we cannot have down South, is not in the continuing resolution. The poor children are being penalized as a result. That is why we ought to vote for the committee amendment and not for a temporary formula with $117 million or half a billion, and go off thinking we have done something. Because we would not have sat down and analyzed and realized that this particular program is for poor children and not for poor politicians. That is exactly what we are trying to do.

Mr. President, I will be glad to yield for a question if anyone has a question. We have studied this thing, as we always do in committee, but we have not had hearings, and we know about the Orshansky formula and many others, that we have yet to get into here. But Senators from the Northeast should not tell us that they have more poor children. That is absolutely false.

Mr. JAVITS. Mr. President, I think we have made our argument very clear except for one fact. There is no increase whatever in the committee amendment. I do not want to have that proposition confused with the amendment, which does cost money. But this costs no money.

The only thing that the Senator from New Hampshire (Mr. COTTON) was saying was that we wanted to satisfy everybody and not have all these wrangles. He says that we would have to provide half a billion more, and we cannot afford it.

I have made our argument. The Senator from South Carolina (Mr. HOLLINGS) and other Senators have eloquently made theirs. I am ready to vote.

Mr. McCLELLAN. Mr. President, I have listened with great interest to the debate. I think there is still some confusion. I am convinced, as we frequently hear, that whatever we do here will not result in equity among poor children throughout the country. We are not going to achieve this until a formula is enacted that will give guidance and guidelines for the proper allocation of these funds.

I call attention to the consequence of the Quie amendment and also to what the results will be if the committee amendment and the regular appropriation bill should be adopted.

I am basing my statement upon and referring to the table of comparison which the distinguished Senator from North Dakota (Mr. YOUNG) earlier

placed in the RECORD, entitled "Estimated Comparative Distribution for Regular Educational Agency Grants, Part A of Title I, Elementary and Secondary Education Act." I am making these comparisons based upon that table, which is in the RECORD. I call attention to this: Under the present continuing resolution, if the Quie amendment should prevail, the 24 States that have operated for a third of the year on the premise of the continuing resolution that they would be held harmless, would get the same amount as last year. Twenty-four States will suffer losses.

Twenty-six States will make gains, as will the District of Columbia.

Under the formula in the amendment that was agreed to in the Appropriations Committee on the regular appropriations bill, using the same standard of what the States are getting now, there is a floor placed in that amendment of 90 percent as being the least that any State can receive and 110 percent as being the most that any State can receive of its 1972 allotments. Here is what the results will be. Forty-two States will make gains. Eight States will continue to lose. And, incidentally, that includes my State. However, realizing that we are in the situation where some are going to get hurt some and some are to be given a great advantage and trying to equalize the position to make it as fair and equitable as possible without increasing the funds in this bill, this formula seems to be as fair as we could make it.

I will name the States that still lose money under the 90-percent floor and the 110-percent ceiling. The States that will still lose money are Alabama, Arkansas, Kentucky, Mississippi, North Carolina, South Carolina, Tennessee, and West Virginia. Those States would still take some loss. All of the others would make some gains.

There is no way of equitably treating all the States unless there is a change in the authorizing legislation. However, in order to make some adjustment and be as equitable as we could, this is what the committee came out with in the bill that will be pending before the Senate tomorrow. If we adopt the Quie amendment today, I assume that we will want to adopt the same thing in the bill tomorrow.

If we do that, we must remember that we take away money from 24 States that have been assured to them under the continuing resolution—money upon which they have predicated their programs. Do we want to do that? There are eight States that will lose something even under the other formula. However, there are 24 States for which Congress will repudiate what it has already done and has authorized them to do. I do not think we want to do that.

Certainly we want to find equity and we want to find justice. However, we will not find that in the Quie amendment. We would be perpetuating an inequity.

The thing to do is to eliminate it as much as possible. Hopefully the proper legislative committees of this Congress will come in with legislation containing a formula that provides equity for the poor children of this land.

Let us not condemn and let us not penalize 24 States by this Quie amendment. These people have relied upon what has been promised them.

Some will say, "Well, they did not have any absolute assurance that it would go on all year." That may be true. However, one does not make contracts with teachers or set up a school program for 2 months out of a year or for 3 or 4 months out of the year. They have their contracts and the teachers are there.

If we want to drag the rug out from under them, we will have an opportunity to do it.

I hope that the Senate will sustain the committee and let this matter be worked out as equitably as possible.

Twenty-four States will suffer, and the others will gain. I do not say that it is a gain which they do not deserve. But on the overall basis, other States do not deserve to lose what we are taking away from them.

Mr. JAVITS. Mr. President, I am ready to vote. However, I might say that the figures which we have are different. It would be 29 States and 21 States. Twenty-nine States should vote no.

I might point out that no second quarter allocations have been made to these school districts. They are all waiting to see what we will do in this continuing resolution.

Mr. MCCLELLAN. Mr. President, I ask unanimous consent to have printed in the RECORD again the tabulation which the distinguished Senator from North Dakota (Mr. YOUNG) had previously put in the RECORD with the notations on it of the States that would gain and the States that would lose under the formulas to which I have referred. The plus signs indicate the States that would gain, and the minus signs indicate the States that would lose.

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

ESTIMATED COMPARATIVE DISTRIBUTIONS FOR LOCAL EDUCATIONAL AGENCY GRANTS, PT. A OF TITLE I OF THE ELEMENTARY AND SECONDARY EDUCATION ACT

			1974 continuing resolution		1974 regular bill	
	1972 actual	1973 actual	House 85 percent 1973 LEA floor	Senate 100 percent 1972 State floor	House 100 percent 1972 State floor	Senate Committee 1972 90/110 State
Total amount for all parts of title I	$1,597,000,000	$1,585,185,000	$1,810,000,000	$1,810,000,000	$1,810,000,000	$1,810,000,000
Total for States and District of Columbia part A, local grants	1,364,707,215	1,316,037,468	1,444,083,033	1,444,076,531	1,444,076,531	1,444,267,379
Alabama	−40,257,134	34,549,166	29,366,791	40,257,134	40,257,134	−36,231,421
Alaska	+2,054,974	2,415,064	3,112,266	2,655,487	2,655,487	+2,260,471
Arizona	+8,648,415	8,134,242	9,257,236	8,648,415	8,648,415	+9,513,256
Arkansas	−24,214,456	20,963,618	17,819,075	24,214,456	24,214,456	−21,793,010
California	+122,028,439	111,618,375	153,404,740	130,967,857	130,967,857	+134,231,283
Colorado	+10,100,532	10,237,378	12,368,915	10,556,709	10,556,709	+11,110,585
Connecticut	+11,813,005	11,747,931	16,324,230	13,935,021	13,935,021	+12,994,306
Delaware	+2,242,296	2,323,748	2,749,533	2,345,989	2,345,989	+2,466,526
Florida	−26,445,029	24,111,072	24,848,859	26,445,029	26,445,029	+29,089,532
Georgia	−39,947,788	40,573,812	34,487,740	39,947,788	39,947,788	+43,942,567
Hawaii	+3,250,669	3,715,263	4,704,115	4,016,317	4,016,317	+3,575,736
Idaho	+2,730,118	2,719,220	2,778,090	2,730,118	2,730,118	+3,003,130
Illinois	+63,243,090	69,554,901	85,026,804	72,593,588	72,593,588	+69,567,399
Indiana	+16,999,801	18,773,439	18,959,995	16,999,801	16,999,801	+18,699,781
Iowa	−15,464,659	14,601,661	12,411,412	15,464,659	15,464,659	+17,011,125
Kansas	−10,427,273	9,147,430	8,991,779	10,427,273	10,427,273	+11,470,000
Kentucky	−37,131,906	32,212,788	27,380,870	37,131,906	37,131,906	+35,180,193
Louisiana	−34,683,312	31,322,489	26,624,116	34,683,312	34,683,312	−38,151,643
Maine	+5,607,754	5,633,673	6,075,788	5,607,754	5,607,754	+6,168,529
Maryland	+19,423,141	19,380,669	24,059,507	20,539,171	20,539,171	+21,365,455
Massachusetts	+23,858,101	24,893,505	32,812,419	28,011,501	28,011,501	+26,243,911
Michigan	+47,708,517	51,768,916	61,617,453	52,597,354	52,597,354	+52,479,369
Minnesota	−21,120,043	20,897,155	18,307,236	21,120,043	21,120,043	+23,232,047
Mississippi	−42,074,152	35,922,629	30,534,235	42,074,152	42,074,152	−37,866,737
Missouri	−25,579,100	23,367,302	19,862,207	25,579,100	25,579,100	+28,137,010
Montana	−3,013,338	2,865,542	2,776,673	3,013,338	3,013,338	+3,314,672
Nebraska	−7,523,056	7,187,530	6,236,637	7,523,056	7,523,056	+8,275,362
Nevada	+883,771	923,899	1,390,428	1,186,804	1,186,804	+972,148
New Hampshire	+1,908,409	2,007,413	2,463,298	2,102,611	2,102,611	+2,099,250
New Jersey	+44,860,594	44,232,287	59,670,251	50,939,928	50,939,928	+49,346,653
New Mexico	−9,629,504	7,393,185	8,229,186	9,629,504	9,629,504	+10,592,454
New York	+193,459,929	196,835,764	266,054,680	227,155,522	227,155,522	+212,805,922
North Carolina	−56,260,988	51,556,663	43,823,164	56,260,988	56,260,988	−50,634,889
North Dakota	−4,271,181	4,101,267	3,386,077	4,271,181	4,271,181	+4,698,299
Ohio	+41,269,978	42,248,122	48,388,037	41,305,249	41,305,249	+45,396,976

ESTIMATED COMPARATIVE DISTRIBUTIONS FOR LOCAL EDUCATIONAL AGENCY GRANTS, PT. A OF TITLE I OF THE ELEMENTARY AND SECONDARY EDUCATION ACT—Continued

			1974 continuing resolution		1974 regular bill	
	1972 actual	1973 actual	House 85 percent 1973 LEA floor	Senate 100 percent 1972 State floor	House 100 percent 1972 State floor	Senate Committee 1972 90/110 State
Oklahoma	−$18,199,914	$16,649,246	$14,151,859	$18,199,914	$18,199,914	+$20,019,905
Oregon	+9,382,231	8,421,321	10,541,490	9,382,231	9,382,231	+10,320,454
Pennsylvania	+67,113,702	64,998,125	73,654,917	67,113,702	67,113,702	+73,825,072
Rhode Island	+5,189,238	4,873,849	5,940,772	5,189,238	5,189,238	+5,708,162
South Carolina	−34,313,120	29,853,231	25,375,246	34,313,120	34,313,120	−30,881,808
South Dakota	−6,266,048	5,470,551	4,649,968	6,266,048	6,266,048	+6,433,549
Tennessee	−36,288,395	31,273,191	26,582,212	36,288,395	36,288,395	−32,659,556
Texas	−69,566,731	67,675,754	57,524,391	69,566,732	69,566,732	+76,523,404
Utah	+3,593,198	3,894,921	4,909,818	4,191,122	4,191,122	+3,952,518
Vermont	+2,107,682	2,093,957	2,142,393	2,107,682	2,107,682	+2,318,450
Virginia	−33,803,541	31,522,692	26,794,288	33,803,541	33,803,541	+37,183,895
Washington	+12,255,022	13,445,639	17,638,391	15,054,763	15,054,763	+13,480,524
West Virginia	−20,524,496	17,319,813	14,721,841	20,524,496	20,524,496	−18,472,046
Wisconsin	+16,546,374	17,340,875	18,567,927	16,546,374	16,546,374	+18,201,011
Wyoming	−1,235,793	1,170,817	1,182,467	1,235,793	1,235,793	+1,359,372
District of Columbia	+8,187,278	10,096,368	13,301,211	11,355,265	11,355,265	+9,006,006

Mr. YOUNG. Mr. President, that tabulation has been prepared by the Office of Education for the Appropriations Committee.

Mr. McCLELLAN. The Senator is correct. It is a tabulation that has been prepared for the Appropriations Committee by the Office of Education. I assume that we can rely upon it as being accurate.

The PRESIDING OFFICER (Mr. McINTYRE). The question is on the first part of the amendment to strike sections 2 and 3. On this question the yeas and nays have been ordered, and the clerk will call the roll.

The legislative clerk called the roll.

Mr. ROBERT C. BYRD. I announce that the Senator from Maine (Mr. HATHAWAY), the Senator from South Dakota (Mr. McGOVERN), and the Senator from Mississippi (Mr. STENNIS), are necessarily absent.

I further announce that, if present and voting, the Senator from Maine (Mr. HATHAWAY), would vote "nay."

Mr. GRIFFIN. I announce that the Senator from Massachusetts (Mr. BROOKE) is necessarily absent.

I further announce that the Senator from South Carolina (Mr. THURMOND), is absent to attend the funeral of a friend.

I also announce that the Senator from Kansas (Mr. PEARSON), is absent because of illness.

I further announce that the Senator from Utah (Mr. BENNETT), is detained on official business.

I further announce that, if present and voting, the Senator from South Carolina (Mr. THURMOND), would vote "yea."

The result was announced—yeas 52, nays 41, as follows:

[No. 455 Leg.]

YEAS—52

Abourezk	Domenici	Long
Allen	Eagleton	Magnuson
Baker	Eastland	Mansfield
Bartlett	Ervin	McClellan
Bellmon	Fannin	McClure
Bentsen	Fong	McGee
Brock	Fulbright	Metcalf
Burdick	Gurney	Mondale
Byrd, Harry F., Jr.	Hansen	Montoya
	Helms	Nunn
Byrd, Robert C.	Hollings	Randolph
Chiles	Hruska	Scott, William L.
Church	Huddleston	
Clark	Hughes	Sparkman
Cook	Humphrey	Symington
Cotton	Inouye	Talmadge
Curtis	Jackson	Tower
Dole	Johnston	Young

NAYS—41

Aiken	Hartke	Proxmire
Bayh	Haskell	Ribicoff
Beall	Hatfield	Roth
Bible	Javits	Saxbe
Biden	Kennedy	Schweiker
Buckley	Mathias	Scott, Hugh
Cannon	McIntyre	Stafford
Case	Moss	Stevens
Cranston	Muskie	Stevenson
Dominick	Nelson	Taft
Goldwater	Packwood	Tunney
Gravel	Pastore	Weicker
Griffin	Pell	Williams
Hart	Percy	

NOT VOTING—7

Bennett	McGovern	Thurmond
Brooke	Pearson	
Hathaway	Stennis	

So part 1 of the committee amendment was agreed to.

Mr. McCLELLAN. Mr. President, I move that the vote by which the amendment was agreed to be reconsidered.

Mr. FULBRIGHT and Mr. MANSFIELD moved to lay the motion on the table.

The motion to lay on the table was agreed to.

The PRESIDING OFFICER (Mr. HELMS). The clerk will state the second part of the committee amendment.

The assistant legislative clerk read as follows:

SEC. 3. None of the funds made available by this Act shall be used by the Cost of Living Council to formulate or carry out a program which discriminates among petroleum marketers in the method of establishing prices for petroleum products.

Mr. CURTIS. Mr. President, I rise in opposition to the committee amendment. It would strike out certain language put in by the House of Representatives. The House of Representatives had an amendment to the continuing resolution that would guarantee nondiscriminatory treatment for independent petroleum marketers. The committee amendment would eliminate that.

This is a short amendment. Dollarwise, it does not add or detract from the continuing resolution.

Here is the language in question:

None of the funds made available by this Act shall be used by the Cost of Living Council to formulate or carry out a program which discriminates against petroleum marketers in the method establishing prices for petroleum products.

This amendment was necessary for two reasons: In establishing a date to freeze prices for the independents, the Cost of Living Council chose January 10, a time of depressed prices and close margins. They did not choose January 10 for those marketers that were also also refiners or, in other words, the majors. They chose May 15, a time which the record shows is one of high prices and higher profits.

Also in the regulation of the Cost of Living Council, it turned out that the independents could not pass through to the consumer their increased costs. No such provision existed for the retailer who was also the refiner.

The House passed this amendment on September 25. Last Friday, the Cost of Living Council moved to correct part of it. They did make the dates coincide.

But it still is true that someone engaged in both refining and marketing can pass through the costs and the independents cannot.

Let me read what the distingiushed Representative FINDLEY of Illinois had to say about this:

The announcement by COLC Friday which seems to respond thoroughly to the House demand that discrimination end. COLC issued new price regulations under phase IV which permit passthrough of costs to all but gasoline retailers, and bases pricing for independent retailers on the same May 15 date as earlier accorded the major oil companies, which are both retailers and refiners.

The principal complaints which led to the amendment were that the independent retailer was required to stick with a profitless January 10 price base and denied passthrough of cost increases, while the majors were given a more profitable May 15 base and permitted passthrough.

The failure of COLC to allow passthrough for gasoline dealers will still cause serious problems. After COLC announced its decision, several major oil refiners announced price increases which will now have to be eaten by the independent service stations. For example, this weekend, Shell increased its prices 0.2 cent, Union hiked its price 0.3 cent, and Arco raised its price a whopping 1.5 cents. None of these costs can be passed through even under the amended regulations.

Mr. President, I am not critical of the Senate committee. I was told by them that this was no longer needed. But it is needed. As a matter of fact, the Cost of Living Council argued to the Appropriations Committee against any amendment. They argued against fixing a ceiling date as the same date.

Yet, when the House adopted this amendment, they did administratively what they said could not be done before.

Whenever we place our trust in a bureau in Government, elected by no one,

we are placing our trust on a mighty weak reed. They have corrected part of it. The Cost of Living Council is opposing this amendment today on the theory that they have corrected in part. But they still have a regulation that denies a passthrough of increased costs to the independents and allows it for those marketers who are in refining.

I also am aware that no committee likes to have its handiwork interfered with, whether it is the Committee on Finance, on which I serve, or the Committee on Agriculture and Forestry, or any other committee. We work a long time and come out with a bill and say, "Don't put any amendments on it. We will do it some other time, some other way." Many times, I think that is true.

As to this amendment, I ask this question in all sincerity: How can this language hurt a continuing resolution:

> None of the funds made available by this Act shall be used by the Cost of Living Counsel to formulate or carry out a program which discriminates among petroleum marketers in the method of establishing prices for petroleum products.

How on earth can that interfere with any plan of the committee, any of the other features of the continuing resolution?

Mr. President, it is my hope that the Senate committee, if it can, will withdraw its amendment. I think that as it stands, it is a direct blow and a rebuff to the independent petroleum dealers. If the committte cannot do that, it will be the purpose of the Senator from Nebraska to insist on a rollcall vote.

Mr. YOUNG. Mr. President, it is very difficult for me to oppose almost anything offered on the Senate floor by the distinguished Senator from Nebraska. But if we are going to have wage and price controls at all, we have to keep something that is workable.

I, for one, doubt the wisdom of any wage and price controls, particularly as to their workability. But according to the economic stabilization program of the Cost of Living Council, if we adopt this amendment, there will be serious trouble. In a letter to the Appropriations Committee, dated September 26, they state the vast price increases that have been allowed in petroleum commodities this year, and since our committee took this action, they have permitted gasoline to go up ranging from 1 to 2½ cents a gallon.

Since the committee took its action the other day, I received a letter from Dr. Dunlop in which he said:

> We were very much gratified at the Appropriations Committee action of yesterday in removing from the appropriations bill the amendment which would have rendered ineffective the Phase IV petroleum regulations.

Mr. President, I think that says a great deal. If we are going to have an effective program, one that will work, why adopt an amendment offered on the floor of the House or on the floor of the Senate that, according to the Cost of Living Council will make price controls unworkable?

The Committee on Banking, Housing and Urban Affairs, I understand, is going to hold a hearing next Tuesday, at which Dr. Dunlop, the head of the economic stabilization program of the Cost of Living Council, will appear. I believe we should wait until then to take further action.

If the committee action is sustained, the entire matter will still be in conference. The conferees could well accept the House provision. We would have a chance to learn a little more about it. The conferees, of which I will be one, could well agree to keep the Findley amendment. This amendment, like many Findley amendments, was offered on the floor of the House, not before the committee. There have been no hearings on it, to my knowledge.

I have not heard of any oil companies being hurt. Some service stations have been hurt, but their problem has been largely corrected by the increase in the price of gasoline of 1 to 2½ cents a gallon. If they can justify a further increase, I think the situation will be corrected. There is no assurance that the problem of the retailers will be solved if this amendment is approved.

My main argument is that this proposal was submitted on the floor of the House, without any hearing, and it was struck out of our bill. If the position of the committee is retained, the whole matter will be in conference with the House. If they can justify this provision, it can be kept in then. That would be a better legislative procedure.

Mr. SPARKMAN. Mr. President, will the Senator yield?

Mr. YOUNG. I yield.

Mr. SPARKMAN. Mr. President, I am in sympathy with the oil dealers. I do not want any of them discriminated against or any of them hurt. But I believe that the orderly way to handle this matter is through hearings before a committee.

It happens that the committee of which I am chairman has jurisdiction in this field. Two bills have been introduced and are pending before our committee, and hearings have been scheduled for next Tuesday. Dr. Dunlop has been asked to appear before our committee, and notice of the hearing has been published in the RECORD.

Not only would the amendment interfere with what the Appropriations Committee has done, but also, it would completely block—if it were written into the bill—anything that the legislative committee which has jurisdiction over it can do about it.

Mr. YOUNG. The Senator's committee would have no further jurisdiction.

Mr. SPARKMAN. We have this subject before us, and hearings have been set, and notice has been published in the RECORD.

Mr. YOUNG. The Senator makes a good case.

Mr. HANSEN and Mr. JOHNSTON addressed the Chair.

The PRESIDING OFFICER. The Senator from Wyoming is recognized.

Mr. HANSEN. Mr. President, without losing my right to the floor, I am happy to yield to the distinguished Senator from Louisiana.

Mr. JOHNSTON. I thank the distinguished Senator from Wyoming.

Mr. President, it is with a great deal of reluctance that I differ with the distinguished chairman of the Committee on Banking, Housing and Urban Affairs, whose leadership I almost always follow and whose judgment is almost always correct.

I must say in this instance, however, that this is one of the rare cases in which he is wrong. Our distinguished chairman has stated that we are going to have hearings next week. He did not say—and of course no one can say—when any legislation would come out of the Senate or the House.

In the meantime, the service station owners, little people, whom we in the Senate always proclaim to protect, are perhaps going to be in dire peril of losing their businesses, their investments, their livelihoods.

The U.S. district court, which considered this matter prior to the action of September 28 by the COLC, ruled that petroleum retailers were being discriminated against—that they were the victims of legal discrimination. The court stated in its decision that the Cost of Living Council may make any price control regulations it wishes relative to price control, but there must be some reasonable relationship between those regulations and the end sought to be accomplished. As the district court pointed out the COLC regulations for petroleum retailers were so totally unrelated to the objective of even-handed price control as to be violative of the Constitution, lacking in due process, and contrary as well to the Economic Stabilization Act, which requires price controls to be "generally fair and equitable."

The District Court has already declared that, and the only reason why that is not now the law of the land is that an appeal has been effected. The only decision on the case says that the COLC's petroleum regulations are not only unfair but illegal as well.

What the committee is asking for, what the distinguished chairman is asking for, is that we continue a practice which has already been declared illegal, unfair, and unconstitutional, while we have hearings first in the Committee on Banking, Housing and Urban Affairs, while we try to get the bill through here on the floor of the Senate at a time when we are getting close, hopefully, to adjournment, and at a time when we have absolutely no idea whether the bill could get to the House and be passed.

In the meantime, the service station owners would be subject to the whim and caprice of the Cost of Living Council, and we have seen already that they are willing to act in a capricious way.

The matter was decided in the Committee on Appropriations; there was an overwhelming vote in the House for keeping this amendment. It seems to me it is very urgent for this Senate to vote at this time to restore the amendment adopted so overwhelmingly by the House.

The only justification I have heard for discrimination against petroleum retailers, is that hopefully they will put pressure on the large oil companies, in other words to use these smaller enter-

prises as a tool or a wedge against the large oil companies. In the first place, I think that is morally indefensible, and worse than that, it does not work. If it truly held down the cost of living and the cost of gas to them perhaps one could say, "Let us ignore the fairness and the equity of it." But it does not work.

Already we have seen that the cost pass throughs which were previously allowed by the COLC after a tremendous amount of complaint by many Members of the Senate, are not allowed for any increased costs after September 28, and yet already there have been increased prices since September 28.

It is an urgent matter for service station owners that we pass this legislation. If we pass this legislation and continue to examine the matter in hearings before the Committee on Banking, Housing and Urban Affairs, we can take whatever steps are necessary to reconcile the two pieces of legislation. But the burden of waiting should not be on the little man, on the service station retailers. Let us have the hearings and hear from Dr. Dunlop once again, but in the meantime let us not put the burden on the little man.

Mr. President, I have a parliamentary inquiry.

The PRESIDING OFFICER. The Senator will state it.

Mr. JOHNSTON. How should Senators vote if they wish to restore the House amendment?

The PRESIDING OFFICER. The Chair is advised that the question is simply on the second part of the amendment.

Mr. JOHNSTON. The question is on restoring the House language or deleting the House language?

Mr. McCLELLAN. Mr. President, if the Senator will yield, a vote at this time would be the same as before; if Senators favor the elimination of the amendment from the resolution, the vote would be "yea." If Senators oppose the elimination of it, they would vote "no." It is the committee amendment that is before the Senate, to be voted up or down.

Mr. JOHNSTON. I thank the distinguished chairman.

Mr. President, to put it in layman's language, if Senators wish to help the service station owners, they will vote "no."

Mr. McCLELLAN. That is the Senator's language, not mine.

Mr. JOHNSTON. I thank the chairman and I thank my good friend from Wyoming for yielding.

Mr. HANSEN. Mr. President, first, I wish to associate myself with the very lucid observations made by the distinguished Senator from Louisiana. In addition I wish to call attention to the fact that despite the best intentioned efforts of the Cost of Living Council neither it nor the Congress of the United States has been able to hold in abeyance or suspend the workings of the law of supply and demand. It is just that simple.

We are being asked to support a position that becomes increasingly untenable day by day. We are flying in the face of the fact that oil prices have risen not only in the United States, but also they have risen throughout the world; and whereas a year or two ago there were many people in this country saying, "Forget about domestic production; let us benefit from the economies that would result from cheap foreign oil," today they are turning around and passing an energy allocation plan that will guarantee each part of this country its fair share, according to that section, of those energy supplies that come from only a part of the country. That is quite a switch.

What was predicted a number of years ago by people in the oil companies, by economists, and by objective appraisers of the situation has come to pass: We are going to force out of business these independent operators who sell name brand gasoline because there is no way that they can keep where it is now that margin that is essential for their staying in business. They are frozen on the one hand by action taken by the Cost of Living Council, and they are squeezed on the other hand with these price increases announced by the major companies.

I am not arguing a bit for the major companies; I will let them state their proposition. But I think every American needs to know and understand this fact and that is no matter how thick or thin we slice it, there is not going to be enough fuel in this country today to take care of all the needs of the people as they might wish to express them.

Recognizing that fact, yesterday or the day before it was announced by Governor Love that there would be imposed on this country a mandatory fuel allocation program. In addition to that, we cannot afford to wait; we cannot afford to go through the expensive luxury of holding hearings on whether we should permit small independents to survive throughout the United States. I do not think it is right or moral, and I think it is morally indefensible to say, "Let them go down the drain" while hearings are in progress and while Congress takes its own good time in deciding whether or not to respond to the appeal for fairness that has been made by these companies.

But the issue goes even deeper than that. It gets down to something else. I call attention to that fact because here again the Cost of Living Council has arbitrarily made a determination that is not in the public interest. I can understand why the Cost of Living Council seemingly justifies what it does in support of the contention that we want to control inflation. Of course, we all want to control inflation. But as Secretary Butz pointed out several weeks ago, if there is one thing we should have learned from past experience it is this fact: We never get more of anything by paying less for it.

Because the Cost of Living Council has arbitrarily told the small independent oil operators in this country what they can get for the oil that comes from stripper wells, this country, this America, this Nation of ours will not have more oil tomorrow; it will have less oil. I would like to tell Senators why.

In America today there are about 350,000 stripper wells. By definition, a stripper well is any well that produces fewer than 10 barrels per day.

No matter how good a well may be when it is first brought in, the history of the oil business is that, sooner or later, production starts falling off, and finally it reaches a marginal point where the cost of operating that well, of lifting the oil above ground, and getting it into a pipeline, approaches the value of the oil. And when any oil well reaches that point or drops below, you can be certain of one thing, and that is that the owner of that well, despite his awareness of the fact that the United States is in a critical energy supply situation, is not going to continue to put his dollars into a well in an amount greater than that oil delivers dollars back to him.

That is exactly where we are today. We have about 350,000 stripper wells, and the average production for those wells is about 3.5 barrels per day. Roughly, we can say we have about a million and a quarter barrels of oil per day that comes from those stripper wells. But because the Cost of Living Council seems to be more concerned in preserving the image that it is trying to keep a handle on inflation than it is concerned in being realistic in deciding what is best for America, it made a very bad decision. That decision is that the price level of the oil is going to be so much.

It is a fine thing for oil or gasoline to sell at 15 cents a gallon, but if there is no oil or gasoline to sell at 15 cents a gallon, it does not do much good. It reminds me of a story that the distinguished chairman of the Finance Committee tells about the fellow who had a little grocery store and he was selling eggs for 45 cents a dozen—this was a few years ago—and one of his customers came in and looked at the stock on the shelves, but did not buy anything. He came back and said, "I want some eggs, but you are charging too much for them." He said, "They are selling them down the street for 30 cents a dozen." The owner of the store said, "Why didn't you buy them down there?" He said "They are out of eggs."

That is the way the oil business is going. It is all right to say what the price of oil is going to be, but if there is not any oil for sale, it is not going to keep people warm this winter. It is not going to run the factories. It is not going to keep people working. It is not going to keep the schools operating.

I say it is high time this amendment is adopted, to make certain, first, that we keep these small, independent filling station operators in business, that we deal with them in an even-handed manner, that we give them the same consideration that we have given other elements. Maybe they are not all that important. I do not know. I happen to think that anyone who works hard and is honest ought to be given an opportunity to stay in business.

That is all this amendment is going to do. But more important than that, I think it is of very great significance that we recognize now that if we want to have oil for this winter, we have got to take steps to encourage greater oil production.

First, we cannot afford to cap a single well, even though it will be producing

only 3.5 barrels per day, because I would rather have those 3.5 barrels a day available to me this winter, even at double the cost that the Cost of Living Council says it may sell for now, than I would to be cold this winter—to have the price down, but be out of oil.

So I appeal to Members of the Senate, Mr. President, to give serious consideration to the end result that surely will follow if we turn back this amendment and turn our backs on the economic facts of life; if we try, further, to invalidate the law of supply and demand and say "We are going to keep a handle on inflation, and if you get cold this winter, put more clothes on and thank God we have held a heavy hand on inflation. So wrap up in another blanket and pretend that it has not happened." Here is a Council that is possessed with the best of motives. It wants to do the right thing. It wants to portray an image of concern for all the people. But it just does not take a look at the facts.

Mr. STEVENSON. Mr. President, I am completely in sympathy with the purpose of this amendment, as has been eloquently expressed by the Senator from Nebraska, the Senator from Wyoming, and the Senator from Louisiana.

Mr. JOHNSTON. Mr. President, would the Senator yield so I could ask for the yeas and nays?

Mr. STEVENSON. I yield.

Mr. JOHNSTON. Mr. President, I ask for the yeas and nays.

The yeas and nays were ordered.

Mr. STEVENSON. In fact, Mr. President, I have introduced legislation that would accomplish this purpose. It would permit a dollar for dollar pass-through by the gasoline-petroleum retailers of their costs. That legislation will be heard in the Banking, Housing and Urban Affairs Committee in hearings on October 9, and could, very shortly afterward, be reported for action on the floor.

I just want to point out that this amendment as drawn does not accomplish its purpose. It prohibits discrimination among petroleum marketers, but the Senator from Nebraska has pointed out eloquently that the inoffensive discrimination in the cost-of-living guidelines is not among marketers; it is in favor of producers and refiners against marketers. I think it is discrimination that permits increased costs to be passed on by producers and refiners, while the marketers cannot pass their costs along. The cost-of-living guidelines do not discriminate among the class of marketers who are retailers.

Recognizing that this amendment would not accomplish its purpose, Representative FINDLEY in the other body attempted to substitute the effective language along the lines contained in my bill. He failed only as a result of parliamentary objections in that body.

So while this is an inoffensive amendment and its purpose is very sound, I want to point out that it will not accomplish anything and it would be unfortunate and destructive of this purpose if the Senate, in approving this amendment, thought that it was getting the job done.

I thank the Chair.

Mr. BAYH. Mr. President, I have asked that my name be added in opposition to the committee amendment which is presently before us, and I rise with some concern because of the position I find myself in as a member of the Appropriations Committee and sitting here at arm's length from our distinguished friend and colleague, the hard-working chairman of that committee.

I did vote against the committee position in committee, so I feel that I can, in good conscience now, proceed to follow a course of action that I have been committed to for quite some time.

I heartily favor the effort to retain the Findley language and to try to find some way to bring a modicum of relief to the gasoline retailers of our country.

I was out in my State in the early stages of concern over this matter, and on short notice at a meeting of some 600 service station operators from all over the State, meeting in Indianapolis, I had a chance to listen to them express their concerns over the hardships involved in the phase IV price rules. If one does not believe that this particular effort, the effort to retain the House language, is a panacea to the problem facing gasoline retailers, it is certainly a very important first step.

What this would do would be to remove the inequity of applying two standards or a multitude of standards to various elements of the petroleum industry. And although some would say that the effort we are making here today is anti-consumer and that we should let the small businessman who happens to be a service station operator rise or fall under the free enterprise system which has served so well in this country, I think it is important to point out that although I advocate the free enterprise system, there is a difference between the service station operators who are going to go bankrupt today and manufacturers or farmers. The true test is no longer one's ability to survive longer and get the most out of himself and those he employs, nor his ability to do more business. His ability to survive or go into the red is determined by an administrative ruling by an administrative agency. It seems to me that we have to intervene and say that the Cost of Living Council's phase IV ruling is discriminatory and thwarts the free enterprise system.

We are establishing here a more equitable base period to be applied in controlling the price of retail petroleum products. And we will require the Cost of Living Council to do something which is patently and obviously equitable, namely, to apply the same guidelines to everyone.

I listened with great concern, and with agreement, to the comments of the distinguished Senator from Wyoming. I particularly concur in his assessment as to the role to be played by fuel allocation.

None of us like to get involved in this kind of rationing, allocation, or whatever we may call it. However, here again is it not incumbent upon us if we do have a shortage of supply, which we obviously have, to do something about it? I might respectfully disagree at some length with my friend on some aspects of the supply shortage. However, the fact is that we have a shortage.

Mr. HANSEN. Mr. President, will the Senator yield?

Mr. BAYH. I yield.

Mr. HANSEN. Mr. President, let me say first of all that I am very delighted with what my distinguished friend from Indiana, who is generally right, has had to say. I want to make this one observation. The one thing that I would hope we might keep in mind today as we talk about fuel allocation is the position of some States in this country, the Eastern States and the States that have generally opposed the siting of new powerplants. That has been true in New York. They have not sited one new powerplant because they want to keep clean their consignment of power.

It is all right to ship it in on the wire. They do not want any coastal refineries because they might dirty their seashore. It is all right to produce oil in Louisiana, in Texas, and in Mississippi, and the rest of the coastal areas. It is all right to do it in Alaska and California; but do not mess up the eastern region. They say they want oil brought in; but they do not want any deep water ports because sometimes oil is spilled.

I mention these things because it seems a little unfair and a little unrealistic to me that even in the Northeastern part of the United States we find opposition to the steps we have to take to help to alleviate the oil shortage and bring in more adequate fuel supplies.

Dr. Pecora, formerly head of the U.S. Geological Survey and later Under Secretary of the Interior, has said there is yet to be discovered within the United States and within the Outer Continental Shelf more oil and gas than we can dream of. All I can say to my good friend from Indiana is that Dr. Pecora went on to point out that he believes there is probably 100 times as much oil and gas yet to be discovered in those areas of the United States as was used in 1971.

When the price of oil goes even higher than it is now—and I have no doubt that it will—and when the temperatures go lower than they are now, I would hope the Eastern States would recognize the wisdom and the broad national public purpose that would be served by getting on with the job of drilling on the Outer Continental Shelf, and not look to the rest of the country, not look to the coal fields of Montana and Wyoming for coal to be put on the wire, and not look to the Gulf States for all the oil they can produce.

I have taken a lot of time to say this, and I thank the distinguished Senator from Indiana for permitting me to say it.

Mr. BAYH. I am always glad to have the thoughts of the distinguished Senator from Wyoming. As I mentioned a moment ago, the whole business of solving the shortage of supply is a subject for a separate, prolonged debate.

I would hope that we would not lose sight of the great ingenuity in this country. Although there may be a requirement for some necessary give and take, in the long run I have full confidence in our ability to get on top of the situation. I do not want to see us let the horse

get out of the barn before we can lock the barn door. I think we are going to get on top of the situation.

In fact, the chairman of the Committee on Appropriations was very cooperative when we added $20 million to get more research into removing sulfur from soft coal. I would hope that we could get sulfur-free, clean coal which will give us enough power to put on the lines for hundreds of years. I think we can open up the supplies that will give us power well into the next century. But that is going to take a while. I think it can be done without spoiling the beauties of our country, and I think we should have that dual purpose in mind.

I think we should try to maintain the language of the House bill which would provide some degree of relief for the service station operators around the country by requiring equitable treatment by the Cost of Living Council.

Also, we are in a position to hold hearings and should have greater success in dealing with the problem of petroleum supplies.

S. 2420 is another piece of proposed legislation, in addition to that suggested by the distinguished Senator from Illinois, which I have introduced for myself and a number of cosponsors.

I would have expected the Cost of Living Council to have approached the problem more forcefully. But this bill would roll back wholesale oil price increases put into effect during phase 4 and require any subsequent increase in the wholesale price of oil products to be subject to prior review and approval by the Cost of Living Council.

I just think that if a part of our oil economy is going to have increased costs approved, then all of them should, and if the Cost of Living Council should determine that increased costs were justified at the wholesale level, then the retailers, in turn, should be able to charge their customers for their actual cost increase. Retailers would be held to the price in effect during the summer price freeze plus any additional actual increases in the cost of their product or increases in other expenses such as rent, labor, utilities, and so forth.

Mr. President, I know there are a number of different ways to handle this. I think this particular bill—I hope Senators will continue to study it—goes a long way toward doing both things, providing immediate equity to retailers and at the same time minimizing the increased costs which are passed on to the citizen who has to pull up out there at the gasoline pump.

I ask unanimous consent to have printed in the RECORD at this point the text of S. 2420, together with a letter which the Senator from Nebraska, the Senator from Louisiana, the Senator from Missouri, and I together with other Senators, sent to the Cost of Living Council and to our colleagues relative to our early concern on this matter.

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

S. 2420

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That section 203 of the Economic Stabilization Act of 1970 is amended by adding at the end thereof the following new subsection:

"(k) (1) Not later than 30 days following the date of enactment of this subsection, the President or his delegate shall issue an order—

"(A) stabilizing the wholesale prices of petroleum fuels at the September 7, 1973, levels;

"(B) requiring wholesalers of such fuels to notify the President or his delegate of any increase in the wholesale price for any such fuel at least 15 days prior to the date on which such increase is put into effect;

"(C) establishing base prices for retail sales of each such fuel at the freeze price levels; and

"(D) permitting a passthrough of any cost increase incurred by retailers of such fuels.

"(2) As used in paragraph (1)—

"(A) 'freeze price' means the highest lawful price charged by a retailer of a petroleum fuel for such fuel during the period June 1, 1973, to June 8, 1973, or in the case of a retailer who had no transactions during such period, during the nearest preceding 7-day period in which he had a transaction; and

"(B) 'petroleum fuel' means gasoline, diesel fuel grade number 2-D, and heating oil grade number 2."

SEPTEMBER 17, 1973.

Dr. JOHN T. DUNLOP,
Director, Cost of Living Council,
Washington, D.C.

DEAR DR. DUNLOP: We are persuaded that the Cost of Living Council's Phase Four regulations governing the oil industry have placed the nation's gasoline and home heating oil retailers in a totally unreasonable position. The combination of reduced mark-ups and curtailment in supplies will likely force many of these small businessmen out of business in a matter of weeks.

We did note that the Council has agreed to review these regulations. In this regard, we want to urge strongly that the Cost of Living Council immediately use its authority, granted by Congress in the Economic Stabilization Act, to revise those Phase Four regulations in a fashion that will ensure retailers of an adequate price mark-up. We recognize the desirability of holding down the price of fuel to consumers and will welcome anything that can be accomplished toward that goal within the framework of revised regulations protecting the legitimate interests of retailers.

Because of the urgency of this matter we request an immediate response.

Mr. BAYH. The letter was signed by Senators Birch Bayh, Thomas Eagleton, Carl Curtis, J. Bennett Johnston, Mike Mansfield, Hugh Scott, J. Glenn Beall, Henry Bellmon, Lloyd Bentsen, Quentin Burdick, Howard Cannon, Lawton Chiles, Dick Clark, Norris Cotton, Alan Cranston, Robert Dole, Pete Domenici, Peter Dominick, Mike Gravel, Edward Gurney, Clifford Hansen, Floyd Haskell, Ernest Hollings, Hubert Humphrey, Charles Mathias, Gale McGee, George McGovern, Thomas McIntyre, Walter Mondale, Frank Moss, Gaylord Nelson, Jennings Randolph, Abraham Ribicoff, Richard Schweiker, Ted Stevens, Adlai Stevenson, Stuart Symington, Robert Taft, Herman Talmadge, Strom Thurmond, John Tunney, and Lowell Weicker.

Several Senators addressed the Chair.

The PRESIDING OFFICER. The Senator from Louisiana is recognized.

Mr. JOHNSTON. Mr. President, the distinguished Senator from Illinois suggested that the language of this amendment is something less than perfect, and does not give adequate guidance and direction to the Cost of Living Council as to what to do.

I should like to reply very briefly to that statement, to make the RECORD quite clear on this language and what it is directed at.

First of all, the term "petroleum marketer" contained in the House language—and this is House language we are talking about—applies to wholesalers as well as retailers, and prohibits discrimination between the two.

And by discrimination, we mean either constitutional discrimination, or violation of the fair and equitable requirement of the Economic Stabilization Act—in short, regulation without reasonable basis.

Mr. President, there is an abundance of evidence in the House record and now in the Senate record about what we are intending, what the evil is that we are intending to get at by this amendment. I do not think there is any doubt in anyone's mind as to what this amendment means and what it is intended to accomplish. I believe everyone knows that, and if there is any lingering doubt, then I would invite the attention of all, particularly the Cost of Living Council, to the record in the U.S. district court where this very measure was considered.

The record makes it absolutely clear what we are talking about. There is simply no reasonable basis for allowing petroleum wholesalers to increase their prices to retailers while blocking dealers from increasing their prices in return. Moreover, there is no reasonable basis for allowing some retailers to mark-up prices at the level of one date when another class is fixed at a different level determined by a different date.

Mr. McCLELLAN. Mr. President, will the Senator yield?

Mr. JOHNSTON. I yield.

Mr. McCLELLAN. Would the Senator mind, in a concise statement, making the RECORD very clear at this point as to just what he is talking about?

Mr. JOHNSTON. Yes; first of all, I ask unanimous consent to have printed in the RECORD an opinion from the Congressional Research Service, as well as a letter from the Comptroller General of the United States, which further clarify this matter.

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

CONGRESSIONAL RESEARCH SERVICE,
Washington, D.C., September 27, 1973.

To: Hon. PAUL FINDLEY; Attention: Mr. Wixer.
From: American Law Division.
Subject: The Sponsor's Intent in Constructing the Meaning of a Statute.

This memorandum is submitted in response to your request for an analysis of the meaning of the following amendment to H.J. Res. 727 (Further Continuing Appropriations, 1974) which you offered and was agreed to by a yea-and-nay vote of the House of Representatives on September 25, 1973.

Sec. 3. None of the funds made available by this Act shall be used by the Cost of Living Council to formulate or carry out a program which discriminates among petroleum marketers in the method of establishing prices for petroleum products.

Aimed at preventing a future repetition of the type of double standard established by the Cost of Living Council in setting up

Phase IV retail prices for gasoline, one for the independent retailer and one for the refiner which also markets its own products at retail, you stated the amendment's purpose as: "It requires that the Cost of Living Council treat all retailers alike, whether they be independent merchants; whether they also own their own refining operation." (119 Cong. Rec., p. 31353, Sept 25, 1973). In response to Rep. Moss' assertion that the amendment is ambiguous since "marketer" is not defined therein, and therefore would affect all marketing levels within the industry thereby disallowing historic markup standards, you replied, in part:

"If there is any ambiguity in this language, the legislative history today will certainly help to clear it up. A marketer, of course, can cooperate at the refining level. He can operate at the jobbing level. He can operate at the retail level.

"This amendment says that in establishing prices for petroleum products, the Cost of Living Council cannot discriminate within whatever level of marketing is at issue at this particular point. If it does not say that clearly to the gentleman's satisfaction, let my words in the RECORD clarify it for purposes of legislative history."

(119 Cong. Rec., p. 31354, Sept. 25, 1973).

In construing a statute, a court of law "must consider the purpose of its enactment, the evil to be eradicated, the object to be obtained and recognize the construction that would best effectuate those standards." *Gartner* v. *Soloner,* 384 F. 2d 348, 355 (3rd Cir. 1976), cert. den. 390 U.S. 1040 (1968).

A court faced with this problem of interpretation, or another problem like it, can well begin with an inquiry into the purpose of the provision that requires interpretation. The language of the provision that is to be interpreted is, of course, highly relevant to this inquiry but it should never become a "verbal prison." [citation omitted] Other considerations, such as the court's sense of the conditions that existed when the language of the provision was adopted, its awareness of the mischief the provision was meant to remedy, and the legislative history available to it, are also relevant as the court attempts to discern and articulate the provision's purpose. *Eck* v. *United Arab Airlines, Inc.,* 360 F. 2d 804, 812 (2d Cir. 1966).

The Supreme Court has held that when the issue is simply the interpretation of legislation, it will look to the statements by legislators for guidance as to the purpose of the legislature. *United States* v. *O'Brien,* 391 U.S. 367 (1968).

But we have often cautioned against the danger, when interpreting a statute, of reliance upon the views of its legislative opponents. In their zeal to defeat a bill, they understandably tend to overstate its reach. "The fears and doubts of the opposition are no authoritative guide to the construction of legislation. It is the sponsors that we look to when the meaning of the statutory words is in doubt."

National Labor Relations Board v. *Fruit & Vegetable Packers & Warehousemen, Local 760,* 377 U.S. 58, 66 (1964).

In fact, in a recent case the Supreme Court stated that an interpretation placed by the sponsor of a bill on the very language subsequently enacted by Congress was appropriately part of the legislative history of the bill enacted, though the interpretation was given two years prior to the enactment with respect to a previous bill, the operative language of which was substantially carried forward into the Act. *United States* v. *Enmons,* 410 U.S. 396 (1973).

DANIEL HILL ZAFREN,
Legislative Attorney.

COMPTROLLER GENERAL OF THE U.S.,
Washington, D.C., September 27, 1973.

Hon. PAUL FINDLEY,
House of Representatives.

DEAR MR. FINDLEY: You informally requested our interpretation of the following amendment offered by you to the joint resolution (H.J. Res. 727) making continuing appropriations for the fiscal year 1974, which amendment was adopted by the House of Representatives on September 25:

"Sec. 3. None of the funds made available by this Act shall be used by the Cost of Living Council to formulate or carry out a program which discriminates among petroleum marketers in the method of establishing prices for petroleum products."

The amendment prohibits the Cost of Living Council from using funds made available by the joint resolution for the purpose of formulating or carrying out a program which discriminates among petroleum marketers in the method of establishing prices for petroleum products. The amendment is thus stated in fairly broad terms and it is difficult to state specifically what problems may arise which would be affected by the amendment or just how the amendment would be applied except on a case-by-case basis. It is clear, however, from your statements on the floor of the House (Congressional Record, September 25, 1973, 31353–31356) that the House of Representatives intended that the amendment would preclude the Cost of Living Council from basing prices for one segment of petroleum marketers on January 10 prices and basing prices for another segment of petroleum marketers on May 15 prices; and that the amendment would prevent discrimination at each level of marketing, that is, the producer, refiner, reseller, or retailer level and would not require the identical percentage of markup for all levels of marketing.

In the absence of anything to the contrary in the complete legislative history of the amendment as finally enacted by the Congress, we would construe the amendment in accordance with the foregoing intent of the House of Representatives.

Sincerely yours,

PAUL G. DEMBLING,
Acting Comptroller General of the United States.

Mr. JOHNSTON. Mr. President, what this amendment is aimed at is discrimination between the petroleum retailer and the petroleum wholesaler or producer.

In other words, the petroleum wholesaler can pass on all of his cost increases. He can increase his price without any restriction whatsoever. On the other hand, the petroleum retailer can pass on none of his increased cost, or he can pass it on only if it occurred prior to September 28. So, in effect, his profit can be squeezed when everyone else, either in the petroleum industry or in any other segment of the economy, is entitled to pass on his cost increases.

This does not challenge the COLC's right to establish different markup levels for different levels of the petroleum market. It does mean that cost pass-throughs may not be granted or withheld at different market levels if the result is to aggravate historic markup differences at those levels, or if the different treatment of different petroleum marketers lacks reasonable basis.

Mr. McCLELLAN. I am trying to make a record here, and want to make it clear that we are trying to make a record. I might say that when this resolution first came over from the House of Representatives, my office was contacted by a number of retailers in my State, a number of service station operators, and they were very strongly in favor of this provision which the amendment contains.

Then after the order was entered, on September 28, I believe, by the Cost of Living Council, the information I received from the people in my State was that they were satisfied, that this action took care of the problem.

If the Senator will indulge me for a moment while I am on this point, I would like to say that when we acted in the full Appropriations Committee on this matter yesterday I was under the impression that generally—not everyone, necessarily, had been satisfied about it, but generally the order was satisfactory, at least among the retailers in my State. I thought that if it was, there was no need for the amendment. I was, of course, trying to get a clean bill.

I would point out one other thing, and I suggest that all Senators who are interested in this matter be thinking about this: If this amendment is defeated, then we keep in the bill exactly the same language that is in the House bill, and if that is true and nothing else is added to it, no other change made in it, then there will be nothing in conference, and any imperfection that may be discovered in this House provision we would not be able to correct in conference.

I point out, however, that if the resolution is passed as it is now, with the Senate amendment in it striking that out, then all of the resolution will be in conference and, therefore, would be subject to any agreement that might be reached with respect to modifications of it, or anything necessary to perfect it.

The PRESIDING OFFICER. The Senator will suspend while we receive a message from the President of the United States.

Mr. McCLELLAN. Mr. President, if the Senator will indulge me just one moment further——

Mr. JOHNSTON. Certainly.

Mr. McCLELLAN. I have no personal interest or feeling in this matter, other than that I share with every Senator on this floor the desire, and would want to support whatever amendment or legislation or action is necessary, to do equity among the parties who are involved. We all regret, of course, the necessity for any ceilings or any controls, but obviously there is some need for them, and we have them, and it is our desire and our responsibility to try to see that they are applied and administered impartially.

I was called today by representatives of the Cost of Living Council, and they assured me again that if their order was properly understood, as I understood it, and properly interpreted, it would be realized that the problem had been substantially taken care of.

I ask unanimous consent—and I do not do this to take up an unnecessary

amount of time—to have printed in the RECORD at this point a letter from Chairman Dunlop to me as chairman of the Appropriations Committee, dated September 26—I believe the distinguished Senator from North Dakota has already referred to this letter—together with the order or the release that was made at 5 p.m., September 28 by the Cost of Living Council.

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

[Cost of Living Council News]

PETROLEUM CEILING PRICE ADJUSTMENTS

The Cost of Living Council announced today that gasoline, diesel fuel and home heating oil retailers may make an upward adjustment in their ceiling prices, effective immediately for most retailers. This increase comes as a direct result of higher costs of imported and domestic petroleum products.

Council Director John T. Dunlop stated: "This action carries out the Council's previously announced policy of making periodic reviews and appropriate adjustments in ceiling prices that may be charged by petroleum retailers for these products. The policy of periodic revision of ceiling prices is designed to allow a pass-through of increased product costs due to higher world prices for crude petroleum and petroleum products. At the same time the policy seeks to restrain price increases so that Americans will not have to pay unnecessarily high prices for petroleum products.

"In addition, the procedure being implemented at this time considerably simplifies ceiling price calculations to be made by all retailers by basing these adjustments on May 15 selling prices.

"The use of the May 15 selling price as the base to which increased product costs may be added should permit the nation's independent gasoline station operators, the small businessmen of the petroleum industry, larger markups than allowed under the earlier formula. This larger markup should provide a 'cushion' against the impact of future product cost increases that may be incurred between October 1 and the Council's next periodic review of petroleum ceiling prices. The Council will continue to monitor the situation carefully."

The relief provided by this amendment, coupled with the existing small business exemption on non-petroleum product sales that normally account for up to fifty percent of the dealers' profits, minimizes the anti-inflationary burden placed on these retailers.

The Council also announced that future monthly adjustments in heating oil ceilings may reflect increased costs of both imported and domestic petroleum. The automatic monthly heating oil adjustment should encourage the shipment of as much heating oil as available from domestic and foreign sources to those areas of the nation most in need.

The Council recognizes that today's action will result in higher petroleum retail prices to the consumer. However, this periodic adjustment is designed to minimize the increase while permitting a fair return to small petroleum retailers.

It is anticipated that the range of gasoline retail price increases could be between 1 and 2.5¢ per gallon, depending on individual retailer situations. Ceiling price/octane stickers must continue to be posted and must show the previous ceiling price plus the amount of the increase permitted by today's action. Similarly, heating oil prices could increase 1 to 2¢ per gallon at the retail level. However, the Council expects that competitive pressures in many gasoline markets will continue to keep some retailers selling below the ceiling price levels.

The amendment to the Council's petroleum regulations is effective immediately for all retailers, except those owned and operated by refiners. Refiner-retailers may not raise the ceiling price until October 1.

Attached is a fact sheet with specifics on the new price determining procedures for retailers in the petroleum industry.

PETROLEUM FACT SHEET

GASOLINE AND NO. 2-D DIESEL FUEL

Retail sales of gasoline and No. 2-diesel fuel sold by a retailer or reseller-retailer will have revised ceiling prices effective at 5:00 p.m., EST, September 28, 1973. Revised ceiling prices of refiner-retailers for the same products are effective 11:59 p.m., local time, September 30, 1973.

Refiner-retailer

When a refiner is acting as a retailer, the revised ceiling prices for retail sales of gasoline and No. 2-D diesel fuel are the prices charged to each class of purchasers concerned on May 15, 1973, plus the increased cost of imports, domestic crude and purchased products between May 1973 and September 1973.

Actual May 15 selling price plus increased costs of imports, domestic crude, and purchased product from May 1973 to September 1973, equals new ceiling price.

Retailer and reseller-retailer

For retailer and reseller-retailers, the revised ceiling prices for retail sales of gasoline and No. 2-D diesel fuel are the prices charged to each class of customer on May 15, 1973, plus the increased costs of products incurred between May 15, 1973, and September 28, 1973.

Actual May 15 selling price plus increased costs of products purchased from May 15, 1974 to September 28, 1973 equals new ceiling price.

Future adjustments in gasoline and 2-D diesel fuel

The CLC will continue its policy of monitoring the petroleum situation, making periodic reviews and making adjustments in retail ceiling prices of gasoline and 2-D diesel fuel.

Posted ceiling price/octane stickers

Ceiling price/octane stickers currently posted on gasoline and diesel fuel pumps will remain on the pumps. Dealers will calculate the amount of increase in their ceiling prices permitted by today's action and will write a plus (+) and the amount of the adjustment next to their currently posted ceiling prices, e.g., 38.9¢ + 1.3¢. The ceiling price adjustment must be posted no later than October 5, 1973.

NO. 2 HEATING OIL

Retail sales of No. 2 heating oil sold by a retailer or reseller-retailer will have revised ceiling prices effective 5:00 p.m., EST, September 28, 1973. Revised ceiling prices of refiner-retailers for No. 2 heating oil are effective 11:59 p.m. local time, September 30, 1973.

Refiner-retailer

When a refiner is acting as a retailer, the ceiling prices for retail sales of No. 2 heating oil are the prices charged to each class of purchasers concerned on May 15, 1973, plus the increased cost of imports, domestic crude and purchased products between May 1973 and September 1973.

Actual May 15 selling price plus increased costs of imports, domestic crude and purchased product from May 1973 to September 1973 equals new ceiling price.

Retailer and reseller-retailer

For retailer and reseller-retailer, the revised ceiling prices for retail sales of No. 2 heating oil are the prices charged to each class of customer on May 15, 1973, plus the increased costs of product incurred between May 15, 1973 and September 28, 1973.

Actual May 15 selling price plus increased costs of products purchased from May 15, 1973 to September 28, 1973 equals new ceiling price.

Future adjustment in heating oil ceiling price

On November 1, 1973 and on the first day of each month thereafter, the monthly retail ceiling price for sales of No. 2 heating oil may be adjusted to reflect the increases in the cost of imported and domestic No. 2 heating oil incurred by the retailer during the previous month. The adjustment in ceiling price must be reported to CLC by the fifth day of the month in which the adjustment is made.

Sales by resellers

The price resellers will be allowed to charge for covered products will be limited to the May 15, 1973 selling price to each class of purchasers plus the increased product costs incurred since that date.

COST OF LIVING COUNCIL NEWS

Attached is a letter written to Senator JOHN L. MCCLELLAN, Chairman, Senate Committee on Appropriations, from John T. Dunlop, Cost of Living Director. It addresses the amendment to H.J. Res. 727, which would, in effect, dismantle the Council's ceiling price system for gasoline, home heating oil and diesel fuel.

COST OF LIVING COUNCIL,
Washington, D.C., September 26, 1973.

HON. JOHN L. MCCLELLAN,
Chairman, Senate Committee on Appropriations, Washington, D.C.

DEAR MR. CHAIRMAN: I am writing to express serious concern over the amendment to H.J. Res. 727, adopted by the House September 25, 1973, and now before your Committee, which would have the effect of dismantling the ceiling price system for gasoline, home heating oil and diesel fuel established by the Cost of Living Council. The amendment reflects a serious lack of understanding of the Council's petroleum regulations, ignores fundamental differences between the pricing structures of refiner-retailers and other retailers, and fails to recognize the need to protect American consumers from inflationary increases in the prices they must pay for petroleum products.

The amendment is ill-advised and I want to express in this letter my reasons for opposing it.

First, the Committee should be aware of the magnitude of the increases which have been experienced in petroleum prices this year. From January through August 1973, the fuel oil component of the wholesale price index increased at an annualized rate of 72.5%. For gasoline, the annualized rate of increase has been 63.6%. For all refined petroleum products, it has been 56.6%. These figures contrast sharply with the figure for all industrial commodities, which increased at a rate of 10.8%, and are significantly higher than the figures for the processed foods and feed component—about which there has been so much public concern—which has increased at a rate of 47.7% over the same period.

The same picture appears in the consumer price index. Gasoline at retail has increased at an annualized rate of 12.7%, fuel oil has increased at a rate of 22%, while the overall CPI has increased at an annualized rate of 9.3%. So the first point to be made is that

petroleum products have contributed disproportionately to inflation. It is for this reason that the Cost of Living Council designed specialized regulations for the petroleum industry in Phase IV.

The Council gathered extensive dealer markup data as the basis for its decision to establish ceiling prices at retail for the sale of gasoline. It is important to emphasize, in this connection, that while the markups themselves deal in pennies per gallon, their aggregate impact upon the economy is substantial. Approximately 100 billion gallons of gasoline will be sold at retail in 1973. Thus, an increase in markup which is reflected in a price increase of a penny per gallon represents, in the aggregate, a price increase of $1 billion per year which must be paid by American motorists.

Information derived from industry and other sources collected by the Council in planning Phase IV showed that during the period of the feared gasoline shortage this Spring, retail gasoline dealers substantially hiked their prices and obtained significantly increased markups. These markups were, on the average, far above what dealers had previously obtained and were, in the Council's view, inflationary. Dealer markups on retail sales of gasoline during 1972 averaged 6.74 cents per gallon. However, by July 1973, the average markup increased to 7.60 cents per gallon, an increase of 13%. The Council determined to reduce these markups to the levels which they occupied on January 10, 1973, the last day of Phase II, and which are more consistent with historic markup levels. At the same time, the Council took note of the fact that in some areas price wars were being waged in January, with the result that dealer markups were depressed on January 10. Consequently, it established a minimum markup of 7 cents per gallon which is above the average markup retailers were able to apply in all of 1972.

Under the Council's rules, dealers may add this markup (the January 10, 1973 markup or 7 cents, whichever is higher) to the actual cost of their products on August 1, 1973. Thus, the ceiling price is not the January 10, 1973, price. It is the actual cost of the product on August 1 plus the January 10 or 7 cents markup. This rule applies to the approximately 90% of the Nation's retail gasoline outlets which are not directly owned and operated by refiners.

Different ceiling price rules apply to retail sales made directly by refiners because products sold through these outlets reach the retail market through a series of intra-corporate transfers, rather than arms-length transactions establishing costs and markups. The structure of these refiner-retailers and their pricing mechanisms simply do not lend themselves to price control on the same basis as other retailers and artificial symmetry cannot produce an effective or equitable price control mechanism.

Most refiners are vertically integrated firms which engage in the production, manufacture and distribution of an array of petroleum products. Phase IV rules respond to this reality by establishing a comprehensive system of different rules applicable to the particular characteristics of the petroleum industry at all levels—from the oil that is pumped out of the ground to the gasoline sold to motorists and the heating oil sold to home owners. The benchmark date for control of refiners prices is May 15, 1973. That is the date for establishing ceiling prices on domestic crude oil; it is the date for establishing base prices of the array of petroleum products manufactured and sold by refiners; and it is the date for establishing ceiling prices for retail sales of gasoline, home heating oil and diesel fuel by refiners.

Specifically, the ceiling price for retail sales of these three products by refiner-retailers is the May 15, 1973, selling price plus the increased costs of imports incurred between May 15 and August 1, 1973. It is important to note that this ceiling price is based upon the refiner-retailers May 15 selling price adjusted for increased costs of imports incurred before August 1, as distinct from the rule for other retailers which establishes a ceiling price based upon the August 1 cost of the product plus its January 10 markup or 7 cents whichever is higher.

Moreover, the May 15 selling price for refiner-retailers is generally no higher than the prices they were charging in August 1971 which were frozen in the first freeze of the Economic Stabilization Program and remained unchanged during all of Phase II, unlike the prices of other retailers, which in most cases, were not controlled during most of Phase II because of the small business exemption. In both cases, however, the ceiling prices for refiner-retailers as well as other retailers are fixed and may not be increased until authorized by the Council.

It should also be pointed out that the Council regulates only the sale of petroleum products by most independent retail dealers. The remainder, and more profitable part of their sales (tires, batteries, accessories and repairs), are exempt from controls under the small business exemption. Such sales by refiner-retailers, however, are controlled by the Phase IV rules since they do not qualify for the small firm exemption. Sales of non-petroleum items generally account for larger profits to independent dealers than the sale of gasoline. Markups on non-petroleum products range from 33% to 50%.

The point I would make, therefore, is that while there are differences in the ceiling price rules that apply to refiner-retailers on the one hand and to other retailers on the other hand, these differences are premised upon vital differences in the particular economic characteristics of the firms being regulated and fairly reflect the different price behavior which the firms have experienced under the stabilization program. The charge that the differences in treatment were motivated by a desire to favor refiner-retailers or to discriminate against other retailers—or that the differences have this effect—is wholly without foundation and does not consider the practical economic need to treat different customary operating practices differently in a comprehensive price controls system.

The thrust of the House amendment is to require the Cost of Living Council to ignore economic conditions as they exist in the marketplace and to tie the Council's hands in implementing a system to control rapidly escalating prices in the petroleum sector. As the Committee knows, the Council is now conducting its first periodic review of the ceiling prices established under the regulations, and I am committed publicly to increasing those ceilings in the next few days to reflect the increased costs which the rules permit to be passed through the distribution system on a dollar-for-dollar basis. This is in fulfillment of a commitment which the Council made in August when the regulations were originally issued.

To require the Council now, in addition, to perform major surgery on the regulatory framework is to invite serious inflationary consequences. It would also add greatly to public confusion. That is particularly true in the case of gasoline where the Council has required the posting of ceiling prices and minimum octane ratings by all gasoline retailers, to enable members of the public to assist in the enforcement and administration of these price ceilings.

It may well be that changes are warranted in the Council's regulations. The petroleum industry is complex and requires complicated regulations if it is to be effectively controlled. My colleagues and I are, of course, prepared to meet with appropriate Committees of the Congress to discuss the desirability of suggested changes and to do so in an orderly and responsible manner. But I am unalterably opposed to hasty and ill-conceived action which has not been thoughtfully examined, which is clearly premised upon misconceptions and which threatens to unravel the existing controls program in a highly inflationary sector of the economy.

I, therefore, strongly urge the Committee to eliminate the House amendment from the Bill which it reports to the floor.

Sincerely,

JOHN T. DUNLOP
Director.

Mr. McCLELLAN. Mr. President, if this resolution goes to conference with the amendment in it, if the provision is restored, then there is nothing for the conferees to be concerned about. It will remain as is. If it does not, if it goes to conference with it in the House resolution and not in the Senate resolution, the conferees would try to come out with a provision which is adequate to protect all interests. That would be my purpose and desire, but if the Senate feels it would be better to go ahead and put it in as it is now, and have no conference with even the suggestion of some imperfections in it, and that is what the Senate wills, of course, the committee will be glad to comply.

Mr. JOHNSTON. I thank the distinguished chairman of the committee. He has put his finger on the real problem and has highlighted what the problem is and that is what we are complaining about. Frankly, I thought that when the September 28 action of the Cost of Living Council was taken, indeed we had cured the plight of the retail service stations. However, they soon found and I soon found, when we read the small print of the Cost of Living Council's order, that it did not include any price relief or any cost passthroughs for any increased prices after September 28.

Yet we found almost immediately, after the September 28 order, that prices had in fact been increased. What we are concerned about are two things: First, what happens in the meantime before the conference committee can meet, or if we are unable to agree on what is happening, or if we are unable to agree in the Banking Committees of both House and Senate.

What the bill does is simply to prohibit discrimination. If the language is less than perfect, it can be cleared up later on. But while we deliberate we cannot afford to take the risk with the lives, the fortunes, and the businesses of an important, large segment of the American community.

Mr. CURTIS. Mr. President, will the Senator from Louisiana yield?

Mr. JOHNSTON. I yield.

Mr. CURTIS. I thank my distinguished friend. There is no Senator on this floor for whom I have a higher regard than the distinguished chairman of the Appropriations Committee, the Senator

from Arkansas (Mr. McCLELLAN). I do disagree with him, however, on one point he just stressed. It is very true that if we are dealing with complicated language, intricate formulas, tax legislation, technical language, and many other things, sometimes it is the better part of wisdom to refrain from doing what the House has done so that the matter can be further looked at in conference. Surely no such situation prevails at the present time.

Mr. McCLELLAN. If the Senator from Nebraska will yield at that point, I only referred to what the distinguished Senator from Illinois said about its being imperfect. I was not making that contention myself. I simply said that it was contended by the Senator from Illinois this language was not adequate to cover the problems as it should be.

Mr. CURTIS. It will not cure it, no.

Mr. McCLELLAN. So I made the point that if we do take it this way, we cannot change it in conference any way at all. I just thought we should consider that.

Mr. CURTIS. Yes. All this does is to come out flatly for a nondiscriminatory program. This is not injecting language in here that if it goes to the conference they are locked in and there is nothing to do about an unwise course taken.

Does anyone question the principle that there should not be a prohibition against nondiscrimination?

Another thing, the Cost of Living Council's letter of July 26 was placed in the RECORD several days ago. In that letter, they defended their previous action of fixing the January 10 date for retailers and May 15 for retailers who were also refiners as the date in which the price was frozen. Yet what did they do last Friday? They reversed themselves, so that we cannot rely on them.

Mr. EAGLETON. Mr. President, will the Senator from Nebraska yield?

Mr. CURTIS. I yield.

Mr. EAGLETON. I have a couple of questions on that very point with respect to the conference. Would this not be the case: Suppose the committee position is sustained and the House language is stricken from our version of the bill and we go into conference and sit down, and Chairman MAHON announces as the first order of business that the House recedes from its language. What, then, is in conference insofar as the Senate is concerned?

Mr. McCLELLAN. Mr. President, if I may answer that, I have never known that to happen where the chairman of a committee walked right in and repudiated the chamber that he represents. I doubt that that would happen.

Mr. EAGLETON. Could I not refresh the memory of the Senator from Arkansas on the Cambodian bombing amendment. It was the first order of business of Chairman MAHON when he wanted to recede on the House language to cut off the bombing.

Mr. McCLELLAN. It is immaterial to me, but I know what the general procedure is and I could not anticipate such a thing happening. But the Senator may be right.

Mr. EAGLETON. My second question to the Senator from Nebraska (Mr. CURTIS) concerns the September 28 order: Was the Senator aware that within a few hours, not more than several hours after the announcement of the Cost of Living Council order on September 28, five of the largest oil companies in the United States announced a new round of price increases?

Mr. CURTIS. I am well aware of that. I read into the RECORD three oil companies which had done that, even in light of the recent corrective order of the Cost of Living Council.

Mr. EAGLETON. Let me say, if I may, that even with this marvelous order of September 28 from the Cost of Living Council, which took months and months to extract—almost like pulling teeth—retailers were not permitted to pass on any increases subsequent to the September 28 date; is that not correct?

Mr. CURTIS. That is correct.

Mr. EAGLETON. I fully and completely support the position of the Senator from Nebraska and I salute him on his leadership in bringing this before the Senate.

Mr. President, I am opposed to the committee amendment which strikes the House-passed language requiring the Cost of Living Council to end its discrimination against gasoline retailers.

Discrimination is perhaps the kindest word to describe the Council's existing program. On the one hand, its regulations permit major oil companies to increase the price of their products at wholesale with few restrictions other than prenotification of the Council.

On the other hand, the Council has ruled that petroleum marketers cannot pass along those increased costs to their customers except with specific approval of the Council and, as experience has shown, that approval is only grudgingly given.

No policy could be better designed to assure the elimination of the small, independent retailer from the petroleum market. He cannot be asked to absorb the full brunt of the Council's effort to hold down prices in the petroleum field and be expected to survive.

Last Friday, the Council took note of the protests of the retailers and the demands of Congress and the White House to permit a pass-through of increased costs incurred between August and September 28. Only a few hours later, however, a second round of increases was announced by major oil companies putting the retailers right back where they were before the Council's action.

Mr. President, I believe the Council should take forceful steps to hold down the price of petroleum products, but I believe the action must be applied evenhandedly and across-the-board. That is all the House language requires and I urge the Senate to vote to restore that principle.

Mr. CURTIS. I thank the Senator from Missouri very much.

Mr. President, I hope that we can wind up this colloquy before long, but we should keep in mind that a vote of "No" is a vote in support of what the independent petroleum marketers want and that, regardless of any niceties as to whether we want to amend the bill in conference or anything else, a vote of "yes" will be disappointing to all the independent petroleum marketers.

Mr. DOLE. Mr. President, economic control policy is always difficult to administer with equal fairness to all interests in our complex national system. This difficulty is one of the major arguments against imposing any restrictions on the functioning of our free market system and the laws of supply and demand. Someone is always bound to be unfairly penalized or subjected to discrimination—no matter how hard the controllers attempt to be fair and impartial.

But perhaps one of the most glaring examples of unfairness inflicted by artificial controls has grown out of the efforts to regulate the price level on gasoline.

Briefly stated, the Cost of Living Council has chosen to make the retail gasoline dealer the last—and only—line of defense against consumer cost increases for automobile fuels. On the one hand the service station operator has had his prices frozen, but at the same time the major gasoline companies have been allowed to raise the wholesale cost he must pay for the products he sells.

The result has been a completely untenable and unbearable situation for these thousands of independent businessmen, for they are helpless in the face of uncontrolled cost increases and frozen price ceilings. In many cases these dealers—also squeezed by rising costs for wages, utilities and rents—are losing money on every gallon of gas they pump. These are small operators. They cannot absorb these losses, and I fail to understand the reasoning of the Cost of Living Council in forcing them to do business under such conditions.

It would seem obvious to even a noneconomist that continuation of such a shortsighted policy will drive thousands of these individuals out of business. It will cost thousands of jobs and affect still more thousands of families in every part of the country.

Therefore, I am pleased to support the amendment of the Senator from Nebraska (Mr. CURTIS) in seeking to retain the provision which prohibits the Cost of Living Council from carrying out such a discriminatory and unsound policy. There is no reason that any discrimination should exist between the different types of petroleum marketers. In my view the major companies should be called upon to an equal—if not a greater—extent if the Cost of Living Council wishes to control petroleum prices. It makes no sense to me that the smallest, least financially able sector of the petroleum marketing system—that is the retail dealers—should be required to bear the whole burden of this effort and to suffer irreparable harm in the process.

We will not solve any problems by bringing about the ruin of thousands of

small businesses. The Cost of Living Council should know this, and the action proposed by Senator CURTIS will certainly be a major step in assuring that such a result does not come to pass.

I join the statement of the Senator from Nebraska and I should like to be listed as a cosponsor of his amendment.

Mr. CURTIS. Mr. President, I ask unanimous consent that the name of the Senator from Kansas (Mr. DOLE) be added as a cosponsor of the amendment.

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

Mr. DOLE. Mr. President, economic control policy is always difficult to administer with equal fairness to all interests in our complex national system. This difficulty is one of the major arguments against imposing any restrictions on the functioning of our free market system and the laws of supply and demand. Someone is always bound to be unfairly penalized or subjected to discrimination—no matter how hard the controllers attempt to be fair and impartial.

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Mr. CURTIS. May I say to the Senator from Kansas that I thank him for his support very much. However, the way the issue has developed now, it is a vote for or against the committee amendment, and a vote of "no" supports the position we have espoused.

Mr. DOLE. That is correct, and I understand the parliamentary situation. This is one time I can support the Senator from Nebraska by voting "no."

Mr. CURTIS. That is right.

Mr. DOMENICI. Mr. President, will the Senator from Nebraska yield?

Mr. CURTIS. I yield.

Mr. DOMENICI. As the Senator knows, from the very outset of the problem that has arisen, by virtue of the fact that the Cost of Living Council has expected the independent gasoline dealer to bear the burden of keeping the price of petroleum products in line, I have been one of those saying that the burden is put on the phase of the petroleum economy that can least afford it.

These are small, independent businessmen who cannot afford to have their price go up without passing on the increase. Yet, we are permitting Gulf and Exxon and the others to raise the price to the little independents and say, "Until we find a better way, we are going to let you assume this."

I understand that it is the Senator's intention to say clearly to the Cost of Living Council, "You cannot spend any American tax dollars to enforce that kind of rule." Is that correct?

Mr. CURTIS. That there must be no discrimination.

Mr. DOMENICI. No discrimination would mean that Exxon cannot raise the price of gasoline at the refinery without the independent gas dealer also being permitted to raise his price.

Mr. CURTIS. In other words, it must be nondiscriminatory at every level of the operation. If one can have a pass-through, the others must have it.

Mr. DOMENICI. At the same level of distribution?

Mr. CURTIS. That is correct.

Mr. DOMENICI. So that if Exxon owns a filling station and they pass on an increase, the independent who owns his gas station must be permitted to pass it through, if they are selling it, say, across the street, in the same city.

Mr. CURTIS. Yes.

Mr. DOMENICI. That is not the situation today. The Cost of Living Council discriminates there. The Senator is saying that they shall not do so with our tax dollars.

Mr. CURTIS. That is correct.

Mr. THURMOND. Mr. President, will the Senator yield?

Mr. CURTIS. I yield.

Mr. THURMOND. Mr. President, I commend the able Senator from Nebraska for his leadership in this important matter. The filling station operators in our State are terribly upset. I feel that something must be done, and I hope that the procedure here which the Senator is following will bring results.

H.R. 8877, LABOR-HEW APPROPRIATIONS — UNANIMOUS-CONSENT AGREEMENT

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent to proceed for 2 minutes.

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

Mr. ROBERT C. BYRD. Mr. President, by direction of the distinguished majority leader, and after consultation with the distinguished Republican leader, Mr. HUGH SCOTT; the distinguished ranking member of the Committee on Appropriations, Mr. YOUNG; the distinguished manager of the Labor-HEW appropriation bill, Mr. MAGNUSON; the distinguished ranking member of that subcommittee, Mr. COTTON; and other Senators, I pose the following unanimous-consent request:

I ask unanimous consent that on H.R. 8877, the Labor-HEW appropriation bill, the time be limited to 10 hours, to be equally divided between and controlled by the distinguished Senator from Washington (Mr. MAGNUSON) and the distinguished Senator from New Hampshire (Mr. COTTON); that time on any amendment thereto be limited to 1 hour, with time on any amendment to an amendment limited to 30 minutes; that time on any debatable motion or appeal be limited to 20 minutes, with the division and control of all time to be in accordance with the usual form.

It is the understanding reached between the aforementioned Senators and the distinguished majority leader and the distinguished minority leader that if this agreement is secured, there will be work on the HEW appropriation bill tomorrow, the Senate will not be in session on Friday, and work will resume on the appropriation bill on Monday.

The PRESIDING OFFICER. Is there objection? The Chair hears none, and it is so ordered.

Mr. ROBERT C. BYRD. I thank all Senators.

The text of the unanimous-consent agreement is as follows:

Ordered, That, during the consideration of H.R. 8877, the Labor-HEW Appropriation Bill, 1974, debate on any amendment in the first degree shall be limited to 1 hour, to be equally divided and controlled by the mover of such and the manager of the bill, debate on any amendment in the second degree shall be limited to 30 minutes, to be equally divided and controlled by the mover of such and the author of the amendment in the first degree, and that debate on any debatable motions or appeals shall be limited to 20 minutes, to be equally divided and controlled by the mover of such and the manager of the bill: *Provided,* That in the event the manager of the bill is in favor of any such amendment or motion, the time in opposition thereto shall be controlled by the minority leader or his designee.

Ordered further, That on the question of the final passage of the said bill debate shall be limited to 10 hours, to be equally divided and controlled, respectively, by the Senator from Washington (Mr. Magnuson) and the Senator from New Hampshire (Mr. Cotton): *Provided,* That the said Senators, or either of them, may, from the time under their control on the passage of the said bill, allot additional time to any Senator during the consideration of any amendment, debatable motion or appeal.

MESSAGES FROM THE PRESIDENT—APPROVAL OF BILLS

Messages in writing from the President of the United States were communicated to the Senate by Mr. Heiting, one of his secretaries, and he announced that on October 1, 1973, the President had approved and signed the following acts:

S. 155. An act for the relief of Rosita E. Hodas;

S. 666. An act for the relief of Slobodan Babic;

S. 776. An act to authorize the striking of medals in commemoration of the 100th anniversary of the cable car in San Francisco;

S. 902. An act to amend section 607(k)(8) of the Merchant Marine Act, 1936, as amended;

S. 1148. An act to provide for the operation of programs by the ACTION Agency, to establish certain new such programs, and for other purposes; and

S. 1352. An act to require loadlines on U.S. vessels engaged in foreign voyages and foreign vessels within the jurisdiction of the United States, and for other purposes.

FISCAL YEAR 1974 ADJUSTMENT IN FEDERAL PAY—MESSAGE FROM THE PRESIDENT

The ACTING PRESIDENT pro tempore (Mr. CHILES) laid before the Senate

the following message from the President, which, with the accompanying reports, was referred to the Committee on Post Office and Civil Service. The message reads as follows:

To the Congress of the United States:

In accordance with the provisions of section 5305 of title 5, United States Code, I hereby report on the comparability adjustment I am ordering for the Federal statutory pay systems in October 1973.

The Director of the Office of Management and Budget and the Chairman of the United States Civil Service Commission, who serve jointly as my agent for Federal pay, have recommended a 4.77 percent average increase in Federal statutory pay rates—a figure arrived at by computing comparability using a new computation method which will be phased in over the next three years. The new method compares actual average salaries in the private and Federal sectors instead of assuming, as the former system did, that the 4th rate of each grade represented the Federal average. This change follows recommendations made last year by the Advisory Committee on Federal Pay.

Since the effect of the new method is to reduce somewhat the size of the pay adjustment from the 5.47 percent that would have taken effect under the old computation method, the Federal Employee Pay Council and other Federal employee organizations are understandably opposed to its introduction at this time. The Advisory Committee on Federal Pay, however, agrees with my agent that a change is necessary and has endorsed the new method, although the committee did recommend that it be introduced next year.

In reaching a final decision on the appropriate comparability adjustment, I have given careful consideration to all of these views. My agent and the Advisory Committee are not in disagreement on *whether* to adopt the more precise way of determining comparability, only on *when*. The Advisory Committee's recommendation to begin the change in 1974 was based on the assumption that the current increase would not occur until the final month of 1973. This assumption no longer holds, and I have decided that we should move now in the direction of the more accurate method, making the transition gradually over a three-year period to avoid undue hardship to employees by an abrupt change in the system. Based on that decision, I have concluded that an average increase of 4.77 percent in the pay rates of the statutory pay systems is the appropriate comparability adjustment.

I am transmitting herewith the reports of my agent and the Advisory Committee, as well as a copy of the Executive Order I have promulgated to put this pay increase into effect. Also enclosed is an Executive order adjusting basic pay for members of the uniformed services, as required by section 8 of Public Law 90–207 (81 Stat. 654).

RICHARD NIXON.

THE WHITE HOUSE, *October 3, 1973.*

EXECUTIVE MESSAGES REFERRED

As in executive session, the Presiding Officer (Mr. MCINTYRE) laid before the Senate messages from the President of the United States submitting sundry nominations, which were referred to the Committee on Commerce.

(For nominations received today, see the end of Senate proceedings.)

FURTHER CONTINUING APPROPRIATIONS, 1974

The Senate continued with the consideration of the joint resolution (H.J. Res. 727) making continuing appropriations for the fiscal year 1974, and for other purposes.

Mr. CHURCH. Mr. President, on June 14 of this year I furnished the Senate statistics showing that the Nation's large oil companies were enjoying record first-quarter profits in the midst of the gasoline shortage. Now, 3½ months later, we have had some time to judge the effects of not only the gasoline shortage, but also the administration's phase IV regulations governing the sale of petroleum products.

On June 14, I said that it was incredible to me that in the face of the gigantic profits the major oil companies were enjoying, the administration would want to put the burden of higher taxes on ordinary motorists—at that time the proposal was to raise the gasoline tax. Now, the administration has selected yet a smaller segment of the economy for discrimination—the independent gasoline retailer.

Mr. President, 90 percent of the Nation's gasoline stations are independently operated by small businessmen who rent or lease their stations and buy their products from major oil companies. They must market their products, perform maintenance and other services, and oversee all of the aspects of their business in order to—they hope—make a profit.

The Cost of Living Council has, however, made it virtually impossible for many small dealers to make a profit—no matter how long and how hard they work. Under phase IV regulations, the price of petroleum products is frozen at the retail level, using a system which is supposed to apply equitably to all dealers, large and small, nationwide. Unfortunately, these regulations cannot possibly fit all dealers in all situations.

The average service station owner in Idaho sells 17,000 gallons of gasoline a month. Even before the Cost of Living Council imposed its regulations, his average monthly profit, after expenses, was just a little over $500. Hardly what one could call exorbitant.

Yet, in formulating the phase IV regulations, the Cost of Living Council decided to put the burden of holding the gasoline price line on the retailer, who is at the end of the marketing of a very large and complex industry. Under the regulations, major oil companies are allowed to raise their prices without need for prior justification, or even notification, but the retailer cannot raise his price. He must absorb the cost increases until, when and if, the Cost of Living Council decides to grant him relief.

It is true that, last Friday, the Cost of Living Council made an upward adjustment in the ceiling price of retail gasoline. But now, right on the heels of that announcement, the major oil companies are again raising their prices and the small retailer is again caught in the squeeze.

Using the example of that average service station owner in Idaho, a 1-cent raise from his supplier, which he cannot pass on, would reduce his $500 of profit to $330 per month. The Cost of Living Council may be holding the line on the cost of petroleum products, but they are taking it out of the hides of small businessmen.

There are other problems with the Cost of Living Council's petroleum regulations. They tell us that there are exception procedures for dealers who are put into "undue hardship" by their regulations. Yet, by the Council's own admission, the forms used to apply for this exception are beyond comprehension, and the Council is still debating how to revise them. Many dealers are refusing to comply with the regulations, causing those that do comply more hardship. Local Internal Revenue Service offices, charged with enforcement of the regulations, lack the capacity to carry out their assignment.

The Cost of Living Council maintains that major oil companies have to be allowed to raise their prices to reflect the growing costs of both domestic and foreign crude petroleum. If this is so, and if prices are destined to rise, then why squeeze the retailer until the administration decides the public is in the mood to accept another increase?

Meanwhile, the major oil companies are still increasing their profits. During the second quarter of this year, their profits were even larger than during the first quarter. I ask unanimous consent that statistics taken from a recent issue of Business Week magazine, showing the profits of the Nation's 10 largest oil companies during the second quarter be entered into the RECORD.

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

2D QUARTER PROFITS OF THE NATION'S 10 LARGEST OIL COMPANIES

[Dollar amounts in millions]

Company	Sales	Profits	Percent change from 1972
Exxon [1]	$5,830.0	$510.0	+54
Mobil [2]	2,880.0	184.2	+41
Texaco [3]	2,727.0	267.5	+44
Gulf [3]	2,397.0	195.0	+82
Standard (California)	1,817.2	181.7	+42
Standard (Indiana) [2]	1,527.2	121.3	+37
Shell [3]	1,211.9	89.5	+54
Atlantic Richfield [4]	1,069.8	68.4	+50
Continental [2]	1,029.9	51.7	+24
Occidental	810.3	26.9	+566

[1] Ranking based on 2d quarter sales in dollars.
[2] Sales include excise taxes and other income.
[3] Sales include other income.
[4] Sales include excise taxes.

Source: Business Week; Aug. 11, 1973, p. 79.

Mr. CHURCH. Mr. President, for these reasons I shall vote against striking from this bill the provision which seeks to prevent the Cost of Living Council from imposing controls which discriminate against the gasoline retail dealers.

The PRESIDING OFFICER. The question is on agreeing to the second part of the committee amendment, which would strike section 3 of the joint resolution.

On this question the yeas and nays have been ordered, and the clerk will call the roll.

The legislative clerk called the roll.

Mr. ROBERT C. BYRD. I announce that the Senator from Mississippi (Mr. STENNIS) and the Senator from Maine (Mr. HATHAWAY) are necessarily absent.

I further announce that, if present and voting, the Senator from Maine (Mr. HATHAWAY) would vote "nay."

Mr. GRIFFIN. I announce that the Senator from Massachusetts (Mr. BROOKE) is necessarily absent.

I also announce that the Senator from Kansas (Mr. PEARSON) is absent because of illness.

The result was announced—yeas 6, nays 90, as follows:

[No. 456 Leg.]

YEAS—6

Fong	McClellan	Proxmire
Fulbright	Moss	Young

NAYS—90

Abourezk	Eastland	Metcalf
Aiken	Ervin	Mondale
Allen	Fannin	Montoya
Baker	Goldwater	Muskie
Bartlett	Gravel	Nelson
Bayh	Griffin	Nunn
Beall	Gurney	Packwood
Bellmon	Hansen	Pastore
Bennett	Hart	Pell
Bentsen	Hartke	Percy
Bible	Haskell	Randolph
Biden	Hatfield	Ribicoff
Brock	Helms	Roth
Buckley	Hollings	Saxbe
Burdick	Hruska	Schweiker
Byrd, Harry F., Jr.	Huddleston	Scott, Hugh
Byrd, Robert C.	Hughes	Scott, William L.
Cannon	Humphrey	Sparkman
Case	Inouye	Stafford
Chiles	Jackson	Stevens
Church	Javits	Stevenson
Clark	Johnston	Symington
Cook	Kennedy	Taft
Cotton	Long	Talmadge
Cranston	Magnuson	Thurmond
Curtis	Mansfield	Tower
Dole	Mathias	Tunney
Domenici	McClure	Weicker
Dominick	McGee	Williams
Eagleton	McGovern	
	McIntyre	

NOT VOTING—4

Brooke	Pearson	Stennis
Hathaway		

So part 2 of the committee amendment was rejected.

Mr. CURTIS. Mr. President, I move to reconsider the vote by which the amendment was rejected.

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

The motion to lay on the table was agreed to.

AMENDMENT NO. 568

Mr. BENTSEN. Mr. President, I have an amendment at the desk, and I ask for its immediate consideration.

The PRESIDING OFFICER. The amendment will be stated.

The legislative clerk read as follows:

At the appropriate place in the bill, insert the following: *"Provided further,* That the aggregate amount made available under title I–A of the Elementary and Secondary Education Act to any local educational agency which has been allocated amounts prior to September 30, 1973, pursuant to this Act in excess of the rate for operations in fiscal year 1973 shall not be less than the amount necessary to maintain the rate for which allocations were made pursuant to this Act, prior to September 30, 1973: *And provided further,* That each local educational agency which has been allocated funds under title I–A of the Elementary and Secondary Education Act, prior to September 30, 1973, pursuant to this Act at a rate for operations less than the rate for operations in fiscal year 1973, shall be allocated, consistent with the amounts previously provided by the Act, no less than the amount necessary to maintain the rate for operation for which allocations were made to each such agency in fiscal year 1973.".

Mr. BENTSEN. Mr. President, I ask unanimous consent that the following Senators be shown as cosponsors of the amendment: Senators COOK, SAXBE, TOWER, MONDALE, HUMPHREY, CHILES, BIDEN, and RANDOLPH.

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

Mr. DOLE. Mr. President, will the Senator yield?

Mr. BENTSEN. I yield.

Mr. DOLE. Will the Senator add my name as a cosponsor?

Mr. BENTSEN. Mr. President, I ask unanimous consent that the name of the Senator from Kansas (Mr. DOLE) be added as a cosponsor.

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

Mr. BENTSEN. Mr. President, I yield myself such time as I may use.

The essence of my amendment is that it would assure that no local school district receives less money under title I–A of the Elementary and Secondary Education Act than it received in fiscal 1973. In addition, it assures that any school district which has been given allocated funds at increased levels as a result of the previous continuing resolution would be able to maintain its rate of operation at those levels.

Mr. President, I have to offer this amendment on the continuing resolution, and I do not take pleasure in it. I have not offered such an amendment before on a continuing resolution. I know the tough job the committee had in trying to resolve the problems. It made much progress. I think there has been an improvement over the Quie amendment. But the fact is that the House-passed HEW bill is $1.5 billion over the President's budget. The bill that will be reported out of the Senate committee is $1.9 billion over the budget. Somewhere between those two figures there is going to be a compromise, but whatever that compromise is, it is going to be substantially over the President's budget, and the odds are that it is going to be vetoed, and that means we are going to have this continuing resolution for some time. That is the situation we are going to have to live under. That is why we have to act on this resolution.

My amendment is a serious effort to bring equity to rural, urban, and suburban school districts throughout the country. One thing I want to stress is that this is not a southern solution, and it is not a northern solution.

It has been said that it is going to cost $117 million more. That is correct. Those are the figures we received from the Office of Education. But the facts are that the Office of Education was supposed to have given reports to these school districts over a year ago as to what levels of funding to expect; and, as late as August, the school districts across the country were getting notices that they were going to have substantial curtailments in the amounts of money they were going to get.

The resolution before us will not take care of those school districts, most of them rural districts.

I have a letter, for example, from the Palacios school district in which they state:

I have several serious concerns about the above situation.

1. The extremely short notice of such a decrease in funding makes it extremely difficult to develop a comprehensive, long-range effective program. It is not as if this example were an exception; rather, it has been the rule since the inception of this type of federal assistance to public schools.

2. We were given no advance notice of a potential reapportionment and a possible reduction in funds. This seems incredible since the agencies at HEW apparently have known for some time that the 1970 census information would be the basis for apportionment as soon as it was compiled. They, not we, had some idea when such compilation would be completed.

3. Such hasty decision-making will benefit no one and will be harmful to everyone. Our teachers report for duty August 20, 1973, twenty-one days after the receipt of this notice of decrease in funds. To staff any federal program, school districts have consistently had to make the decision whether to take a chance by offering a contract that might have to be absorbed at the local level, or waiting to staff such programs until notice of approved funding is received, in which case the best teachers must already be assigned. Such late notice is harmful to even those districts which receive an increase. Prior planning is disrupted and sometimes even negated. Programs must be hastily devised and submitted, quite often at the expense of quality. Because of the myriad restrictions by which such money can be utilized, planning quite often takes a disproportionate share of time, effort, and energy of regular staff personnel, to the neglect and disruption of regular programs.

Many of these schools have made their contracts with their teachers. They set up their budgets in May and June. As the distinguished Senator from Rhode Island said earlier in the day, it is time we give equity. It is time we show that we do not renege on commitments we made in the continuing resolution; that we bite the bullet. I would rather spend this $117 million we are talking about for schoolchildren across the country, for school districts to which we owe equity, than to spend money on foreign aid such as in the bill we passed recently.

I heard it said by my friend the Senator from South Carolina that, as poli-

ticians, we are trying to call up these politicians and say we got the funds for them. That is absolutely right. I do not apologize for that at all. I will call up a school board, if I know the members of it, and I will be delighted—and that includes the Harper Valley PTA—to tell them about it. I was hired out to represent these people and to try to see that they get equity. I would call them and say the U.S. Government was living up to its commitment, was fulfilling its obligations, and when we gave them a continuing resolution earlier in the year and told them what they would have, that we did not come up here and renege on that promise in July, August, and again in October.

That is what I am asking for. This proposal does not carry on into the next fiscal year. We will resolve the problem before then. We will take care of this complex and complicated formula they have faced that is an inequitable one, and we will see that disadvantaged children, wherever they may be, will have proper consideration, rather than just give the principal consideration to the more affluent States which are in a better position to take care of this situation.

Mr. HOLLINGS. Mr. President, will the Senator yield?

Mr. BENTSEN. I am delighted to yield to the Senator from South Carolina, who has done a magnificent job on the bill and the continuing resolution. I have sympathy for the complexities of the problem that he faced.

Mr. HOLLINGS. What proportion of the $117 million the Senator is about to add on is going to the cities and what proportion is going to the rural areas?

Mr. BENTSEN. We do not have those numbers.

Mr. HOLLINGS. Oh, yes, the Senator can look it up.

Mr. BENTSEN. I do not have those numbers with me, I will say to my distinguished friend, but I will give to the Senator some examples to show him what happens to some of the rural school districts in my State. Let me show the Senator how deep these cuts are:

In Swisher County, the 1973 allocation was $14,536. The 1974 tentative allocation is $245.

Wolfe City School District received $24,900. This year it will receive one-fourth of that.

Schulenberg School District went from $56,000 to $15,000.

I have other cases that are as severe. Those are specific cases.

Mr. HOLLINGS. Those are specific cases written into the new formula, conveyed by the Senator from New York relative to the census. We tried to bring them back on a save-harmless basis, realizing that really the census was not the only factor that put it out of kilter. The multiplier we do not have, and that has really been taken from the rural areas, as written by the amendment to the tune of $117 million, is money for Houston and the big cities. Is that not a fact?

Mr. BENTSEN. My formula would do this, or my amendment, as it is stated, would see that those who have received increases would be able to keep them.

Let me say to the distinguished Senator that we run into the same kind of planning problems in the very large school districts that we run into in the very small, rural districts. So what I might say is, let us keep our commitment to the small and large and rural school districts.

Absolutely, the Houston School District would get a substantial increase. The Dallas School District would get a substantial increase. I would assume there are those in the Senator's State which would also get substantial increases. What I am saying is, do not cut those back.

Mr. HOLLINGS. The Senator's first statement was that they would get the increases promised them. The AFDC districts promised it to themselves. That is what the Appropriations Committee tried to avoid writing into law until we got an equitable formula.

What the Senator's amendment does is write into law the inequity that we are talking about. That is why we agreed to an approach, which in effect cut my own districts somewhat. We agreed on 90 percent and 10 percent until the Committee on Labor and Public Welfare could come up with an equitable formula. However, the Senator says that the increases they promised themselves were for aid to the children, and that is why the Senator gets over 95 percent of what he is talking about.

Mr. BENTSEN. Mr. President, we are both in agreement on the inequity of the formula. I totally concur. However, the problem we run into is that that is the rule of the game. That is the way it is played. That is why they budgeted it this year. Let us not cut it this year. They have contracted to get able teachers so that they can make their plans for the coming year.

Mr. HOLLINGS. The Senator asks for $117 million to write in this inequity, the very thing that we have been talking about this year.

Mr. BENTSEN. Mr. President, I am talking about writing this into law this year so that they can get able teachers and do the proper planning and $117 million is a lot of money. However, when I look at some of the things written into law for foreign aid to people across the seas, I am compelled to say that when it comes to our own schoolchildren, we ought to write into law a provision so that they can hire their teachers and make their plans.

We are not talking about going over the authorization. The authorization is $1.8 billion. The current spending is $1.6 billion. We are talking about $117 million which is still within the authorization level.

Mr. HOLLINGS. The distinguished Senator mentions the problem of school districts counting on money to take care of their financing, with which I agree. The distinguished Senator also mentioned foreign aid, with which I totally agree. I voted against the foreign aid bill. However, the commitment made was so that they could plan on their financing for the education of poor children in the rich districts. People move from the rural areas into the city. It was shown here that through the multiplier factor they have jumped from 90 percent to a higher figure. It is a multiplier that Alabama and South Carolina do not have.

The Senator is speaking to the Senate on the basis of being for the rural areas. However, he is really giving 90 percent of that money to fix in that inequity. And that is where the objection comes in.

Mr. BENTSEN. Mr. President, one of the problems we will have——

The PRESIDING OFFICER. The Senator will please suspend. The Chair asks the staff members to take their conversations to the cloakroom so that we can have order. The Senator may proceed.

Mr. BENTSEN. Mr. President, I would say to the distinguished Senator from South Carolina, as I have said repeatedly, that we both agree on the inequities in the formula. However, these are figures school districts have been counting on. They have to have some guidelines in this matter so that they can plan their budgets and hire teachers.

I agree that I would like to see some changes in the formula. However, let us not disrupt the budgets and the plans of the districts at this late hour.

Mr. HUMPHREY. Mr. President, will the Senator yield?

Mr. BENTSEN. Mr. President, I yield to the distinguished Senator from Minnesota.

Mr. HUMPHREY. Mr. President, I thank the distinguished Senator from Texas. I want to confess to the distinguished Senator from South Carolina and the distinguished Senator from Texas that I do not understand the multiplier factors and the bases used which require the meticulous consideration of the people on the committees.

However, I understand that had the Quie amendment been adopted, the State of Minnesota would have lost $4 million. I understand that. I did not like it. So I voted with the commitee. I know that the committee would have provided for the State of Minnesota $21,120,043. And I know that the Bentsen amendment, which I support, will provide for the State of Minnesota $25,401,570.

I know that we have had inflation and that we have to pay our teachers more. I know that fuel oil has gone up in the State of Minnesota. I know that everything that we have to have to run those schools with has gone up.

I know that what the Senator from Texas is proposing is that each school district will receive the same amount they received in 1973, and if a school district received increased funding under the previous State hold harmless provision, it would be allowed to keep that increased funding. We are coming up to date with 1973 and will do what we did last year and when we put this with the multiplying factor or whatever factor it may be, it means that my State would get over $3 million more than under the committee bill and $8 million more than it would under the Quie amendment, which I consider to be an abomination.

I want to say furthermore that wherever the child is, rural or urban, it is still a child.

I am concerned about the rural areas. It has been one of my concerns all of my life. Many of our rural areas today have these fine consolidated schools.

I am interested in my State and in our schools. I want to say to the Senator from Texas that we are not being ex-

travagant. We are not running wild. It is within reason. It represents pretty much what we did in the continuing resolution a year ago, with the exception that if we have the hold harmless provision under the continuing resolution of a year ago carried up to date, we get an additional factor.

That means that the State of Alabama would receive $43 million under the Bentsen amendment as compared with $40 million under the committee amendment, as compared with $29 million under the Quie amendment.

The State of Arkansas is very similar to the State of Minnesota. The State of Arkansas would receive $24 million under the committee amendment, $17 million under the Quie amendment, and $25 million under the Bentsen amendment.

The State of South Carolina would receive $25 million under the Quie amendment, $34 million under the committee amendment, and $36 million under the Bentsen amendment.

So, we agree on one thing, that the Quie amendment on which the committee expressed its opinion was something that we did not need in this body.

The committee has a basic proposition. It just so happens that there is a better one. I, like the Senator from Texas, have some constituents who expect me to fight for what is good for our State and for our people. And this is good for our State and for our schools. We have to put good, hard money, and lots of it, into running our schools. We need the money.

Mr. President, I do not think this will break the budget.

When the Senate passed the foreign aid bill, it took $300 million from the budget request. So, we can just take this $117 million, and it will still leave us with about $200 million.

Mr. BENTSEN. Mr. President, I thank my friend, the Senator from Minnesota, and my good friend, the Senator from South Carolina whom I very much admire and who has spent a great deal of time on this matter.

Mr. HOLLINGS. Mr. President, does the Senator propose to submit the same amendment to the HEW bill that will be debated tomorrow and Friday?

Mr. BENTSEN. I would assume so.

Mr. HOLLINGS. Does the Senator recommend it?

Mr. BENTSEN. I assume that I would. And the problem we run into there is, as I have said previously, that because of the budgetary considerations, we may assume that the bill is going to be vetoed. We will probably have to approach it on both sides, in the continuing resolution and in the bill itself.

Mr. HOLLINGS. Mr. President, on that basis I would like to make a statement. I do not have a question. However, I would be delighted to answer any question.

Mr. BENTSEN. Mr. President, I am happy to yield to the distinguished Senator from South Carolina.

Mr. HOLLINGS. What our distinguished friend is proposing is $117 million this afternoon and then he says that he thinks it would be proper under the Labor and HEW bill to appropriate more money, which could mean an additional $360 million.

So, what we are really considering is half a billion dollars to be applicable to education.

We went over the amendment of the Senator from Texas within the committee; we went over it at length, and that is exactly what I tried to do. The wording sounded grand. It says "save everybody harmless." But the cost of it could go up half a billion dollars, and we are copper-fastening in an inequity. The people that we would be hurting are not exactly in the State of Texas or the State of South Carolina, but poor people wherever they are.

How do we define poor people? I thought we were through with this when we voted last. But I can give you the exact date. We started on title I in the early 1950's, and it went along with a $2,000 level, Mr. President, and that is where the poor people were, whether it was below $2,000 in South Carolina, North Carolina, New York, or Texas.

However, in the late 1950's, the smart educators coming along with the smart administrators in the metropolitan areas started saying, "Let us adjust this. We have aid to dependent children; why do we not just take those as poor people?"

Ah; that jumped the poor people into an income level of $7,000 in New York City, but in Greensboro, N.C., it stayed still at $2,000. Then when we get to the multiplier, North Carolina and South Carolina do not have that multiplier, but it is the city of Houston, the city of New York, and all those cities that have those big multipliers. Then we come to take care of these big cities, because we are told that rurally they have moved out.

I hate to see the thing sold on the basis of helping rural America, when it is going to penalize rural America. They picked them up in those big cities, where they were up to $7,000 a year, and they jumped from 90,000 to 135,000, as the Senator pointed out.

Now, coming in under the innocent language of saving everybody harmless, nobody going to lose anything, and after all, we cut off foreign aid and eliminated some military programs we have adopted half a billion dollars of fiscal irresponsibility; that is what we on the Appropriations Committee have today to bring before our colleagues this afternoon, and that is the way to break down the budget on the floor of Congress.

But that is what it says, that this money is going to the cities because they have that formula gimmick.

Mr. President, what is the solution to the problem? The Appropriations Commitee, after going into this thoroughly, said their recommendation is the only way we could really do it and try to stay in line without breaking the budget, without having the bill vetoed. No one knows, whether the bill will be vetoed but if we jump it up another half-billion dollars, the President is bound to veto it, and he is bound to get the support of the distinguished ranking minority leader and the Republican side of the committee.

We tried to say, "Let us save them harmless and keep them as stable as we possibly can; we are just temporarily going to have to penalize them, but no school district would receive less than 90 percent or over 110 percent of what they previously received," and with that particular formula in the Labor and HEW Committee fiscally we have a line, and we will cut South Carolina about $3 million, about what the Senator from Minnesota says he is going to pick up for rich Minnesota. When you look at the per capita income of Minnesota and the per capita income of South Carolina, and see the two together, who can stand to lose $3 million?

But we said yes, we talked to our superintendent, and if we could get the 90 percent, they could hold on. We are putting on taxes down there; we have every tax in the world you can think of, and we are trying to pay our way, but we will momentarily lose money in South Carolina to make certain we are not gobbled up by this false multiplier they put in under AFDC.

Everybody connected with the Labor and Public Welfare Committee says, to a man, that it is an unfair and inequitable formula. This amendment is very appealing and will save everybody harmless, but what we will have is another total of almost half a billion. That is what you would be paying.

We took the West, and we took the Northeast, and we took the South. The Northeastern section of the United States, on a census basis, had an increase in population, from 1960 to 1970, of 9.7 percent. The South had an increase of 24.1 percent.

I said to the Senator from New York, "You give me my 24.1 percent increase, and you take your 9.7 increase," and his answer was, "No, I want my 9.7."

I wish that population figure was inaccurate. The truth of the matter is that if we take these figures in their concept, we have an increase in population down South. Under the Senator from New York's concept, we have more people, but the children left us and left their parents behind. We got an increase of 24 percent, with all the children, all of a sudden, carried out the backdoor, slamming the screen, running up to New York. The truth is that we all know that is exactly the opposite of what happened. They say the children left the parents down South. But that is where the children are.

So they are flying around with formulas. The superintendents are fighting it. We could keep on calling the superintendents and saying that that money is for them. We did not get it for them; it is allocated to the poor children.

I would rather deny the States part of what, may be their due in order to keep the budget in balance and knowing that we will have a new, and fair, formula next year. I would rather see an equitable formula come in here next year and then do all we can to fund it as generously as we can afford.

I will yield for a question.

Mr. BENTSEN. I thought I had the floor and had yielded to the Senator from South Carolina for a comment. It was quite a comment.

Let me answer him, because my great friend from South Carolian usually has a better comprehension of the facts, and I know he would not intentionally mislead this great body. When he states that the other bill reported by the Appropriations Committee is one that holds

a school district to 90 percent or 110 percent, that is not a correct statement, as I understand the bill.

When the Senator talks about paying 90 or 110 percent, he is talking about a State-based formula. That is not the same as a local school disrict formula. The multiplier effect still occurs among the school districts, and Houston and Dallas are going to get the big increase, and the rural districts are going to be hurt. That is the way this came out of committee. That is what I am trying to correct.

Now, Mr. President, I am delighted to yield to the Senator from New Hampshire.

Mr. COTTON. I thank the Senator from Texas. On the points raised by my good friend from South Carolina (Mr. HOLLINGS), let me make one or two comments. One is, even though I do not find myself able to support the amendment of the Senator from Texas, it is not my understanding that he intends for his amendment to carry over into the HEW bill or that it doubles and goes up to the half a billion dollars. It would be the same amount involved.

The other point is that I understood my good friend from South Carolina to say that if this amendment was agreed to, the Senator from New Hampshire would be obliged to support the President in sustaining the veto.

I do not think that I am stealing away the theme of the Senator from Texas if he will let me make this brief statement, that as a member of the Appropriations Committee who has worked long and hard, as has to an even greater extent the chairman, the Senator from Washington, in walking a tight line in trying our best to be liberal in the fields of health, education, and welfare. In trying to do so, however, we have avoided crossing the line that would cause a veto that would be sustained.

Let me say that I am interested because I happen to be the ranking Republican member on the HEW Committee, but I do not consider myself under any obligation to vote to sustain a Presidential veto if I think that a bill is reasonable and should not be vetoed. I am not afraid of a Presidential veto. I am afraid of a presidential veto that would be sustained so that we end up with nothing.

It has been my position that early in this session, the distinguished chairman of the Appropriations Committee, the Senator from Arkansas, conferred with the chairmen of his subcommittees, in this case the Senator from Washington, and they set a goal or a ceiling, rather, beyond which those two gentlemen, both Democrats, belonging to the majority party in Congress, the chairman of the full committee and the chairman of the subcommittee — the Republicans had nothing to do with this—set a ceiling on HEW of $2.2 billion over the budget. They stated they would not go beyond that and that they would try to hold that amount and not go further than that above the budget.

In my opinion, that is a fair goal and I said so to the Secretary of HEW. If we could hold this whole bill within the goal set by the chairman of the full committee and the chairman of the subcommittee, I would not consider it necessary to vote to sustain the President's veto. The House went over by $1.2 billion, and we are up so that now we are nearly $2 billion—$1.8 billion—over the budget.

What worries me about the amendment of the Senator from Texas is that here we are, before we even take up HEW, facing the first amendment to blow up this bill on the floor of the Senate. Once we have breached that, then the bars are down and the cows are out. There are some 150 amendments which have been filed that would add between $4.5 billion to $5 billion on top of the House bill, which was more than $1 billion over the budget.

So once we break that, what I fear is, there will be no end to it. That is why I am apprehensive of a vote to support the proposal of the Senator from Texas because if it carries this afternoon and if it is written into the continuing resolution, then sure as shooting, it would go into the bill that we will take up tomorrow. There we are, taking up the slack, and on we go.

If that happens—with all due respect to the Senator from Texas whom I admire very much and who has made a very fair presentation here—those children in Texas will not get the benefits. If that happens, we will send out a bill that will be vetoed, and that veto will be sustained either in the House or here, once we have broken the ceiling and run wild.

So that the $117 million will not go to Texas. It will not go to any State. Every Senator in this Chamber is deeply interested in health causes and other causes. We are all deeply interested in the problems of education. We are all deeply interested in trying to find a breakthrough on cancer, heart disease, and other afflictions.

I would hate to see this bill, the most important appropriation bill of the entire bunch, thrown out the window because this afternoon we will be voting on the first raise in that appropriation.

A few minutes ago, I voted against the proposal of the Senator from New York on the 85 percent. My State would have gotten a little more if that amendment had been agreed to. My State might get a little more if the proposal of the Senator from Texas is agreed to. But if this bill goes out the window and we go back to what happened last year, my State will lose. The people of this country will lose. That is why I am constrained and compelled to oppose the amendment of the Senator from Texas.

Mr. BENTSEN. Mr. President, I thank the Senator from New Hampshire for his comments. I have great admiration for him because he always brings great knowledge to any debate before this body in which he engages.

I appreciate the fact that we are talking about only one $117 million and not two times that amount in the continuing resolution. That remains in effect until the bill itself is passed. So it is one item. It is not a half a billion dollars.

I must say that I share the distinguished Senator's concern about the budget and the fact that we would be adding $117 million to it. I also share concern for the entire budget. When I was bringing in the highway bill to the floor, we brought it in at a figure of approximately $6 billion less than the House bill. We went to conference with the bill and we cut the House bill by over $5 billion, because I was concerned about the budget and because I was concerned about the administration's opinion of the budget. So I share that concern.

This is a matter of priorities where we put our money.

I have been handed a chart that indicates that in this particular amendment, every bit of this money will go to the losing rural school districts and not for increasing the money for urban areas. That is where the $117 million comes from, from adding up what it would take to bring the losing rural areas up to last year's level.

I yield to the distinguished Senator from Maryland.

Mr. MATHIAS. I thank the Senator from Texas for yielding to me.

First, I should like to associate myself with that part of the remarks of the Senator from South Carolina in which he said that the issue before us is one of fiscal responsibility. I agree wholeheartedly with him that it is an issue of fiscal responsibility—fiscal responsibility in the sense that we have to behave responsibly toward school districts which were allowed to recruit their faculty, to enroll their pupils, to start school under the preconception, in which the Federal Government was responsible, that title I funds would be available in roughly the proportion they had been available. The week classes began in most States, HEW announced that there was going to be a radical change and that this change would affect the budget process in practically every one of these school districts.

I submit—and I believe the Senator from South Carolina would agree—that this is not a responsible way for HEW or the Federal Government or Congress to act.

What the Senator from Texas is proposing to do in this school cycle is merely to allow these school districts to make the necessary adjustments over the period from now until the end of this academic year.

I should like to address myself further to the part of the remarks of the Senator from South Carolina with which I do not agree, and that is the question of whether or not this is going to balloon the HEW account beyond the point that the authorizing committee and the Appropriations Committees of both houses consider to be the proper level.

H.R. 8877, as reported, contains an appropriation for title I in the amount of $1.8 billion. I submit that the amendment of the Senator from Texas does not increase that by 1 cent. The cost of title I, as proposed to be administered under the Bentsen amendment, would, I am advised, cost somewhere in the neighborhood of $1.746 billion, which is well below the appropriated amount. So this is not a budget-busting amendment. This does not have anything to do with budget busting. The amendment contemplates operation well within the limits that are prescribed by the Appropriations Committee.

The Senator from New Hampshire was exactly right when he said we had set our own ceiling and we had proposed

that we should live within that ceiling. As always, he is accurate in his recounting of his conversation with the distinguished Secretary of HEW, at which time I was privileged to be present. The Senator from New Hampshire did tell him that he thought if we lived within our ceiling, the appropriations bill ought to be approved by the President, or, if not approved by the President, I believe he said that he would help to override a veto.

This amendment does not carry it beyond that ceiling. This is still within the appropriation limit of $1.8 billion which the Appropriations Committee provided. In view of the fact that this amendment would not add 1 cent to the budget crunch of the Labor-HEW appropriation, I think we have to look at what it would do otherwise.

Again I say, as I said this morning when we were debating the committee amendment, that the crux of it has to be what we do to the stability of school districts which will suffer if they do not get the money on which they counted.

I submitted for the record this morning a detailed list of the aggregate losses in each of those school districts. This amendment adds an elements which was not before the Senate at the time we were discussing the committee amendment this morning, and that is the question of saving the States harmless, which is a matter of great interest to those States, such as Texas, where there would have been a substantial loss under the Quie amendment—admittedly, a substantial loss. This amendment would save Texas harmless from that type of loss.

I intend to support the Bentsen amendment. I think its purpose is desirable. I believe it can be defended as being responsible. I do not think it increases the outlays to a degree that was not contemplated by the Appropriations Committee. Therefore, I think it should be supported by the full Senate.

However, I say to the Senate—I have already said to the Senator from Texas—that if this amendment is rejected, this is a matter of such importance to individual school districts, to poor school districts, to rural school districts, that it is one we simply cannot dismiss. It would be my intention, if the Bentsen amendment should not prevail, to try once more to bring some equity and stability into this situation by proposing an 85–100 amendment—that is, to hold the States harmless 100 percent, as proposed in the Bentsen amendment, and to hold individual districts harmless to the extent of 85 percent, as considered in the Quie language that was adopted in the other body. The merit of that proposal would be that we would save approximately $35 million under the terms of the Bentsen amendment. As I say, I will support the Bentsen amendment, although I am prepared to go the other route if it does not prevail.

Mr. President, I yield to the distinguished Senator from Delaware.

Mr. ROTH. Mr. President, I ask unanimous consent that a member of my staff, Gary Peterson, have the privilege of the floor during the vote on this matter.

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

Mr. MATHIAS. Mr. President, I think the Senate should be on notice that this issue is not necessarily going to be resolved by the decision on the Bentsen proposal. I ask unanimous consent to have printed in the RECORD the text of the amendment that I will offer if necessary, together with certain supporting tables.

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

At the appropriate place in the bill, insert the following:

"*Provided further*, That the aggregate amount made available under Title I–A of the Elementary and Secondary Education Act to any local educational agency which has been allocated amounts prior to September 30, 1973, pursuant to this Act in excess of the rate for operations in fiscal year 1973, shall not be less than the amount necessary to maintain the rate for which allocations were made pursuant to this Act, prior to September 30, 1973, and

Provided further, That each local educational agency which has been allocated funds under Title I–A of the Elementary and Secondary Education Act, prior to September 30, 1973, pursuant to this Act at a rate for operations less than the rate for operations in fiscal year 1973, shall be allocated, consistent with the amounts previously provided by the Act, no less than 85% of the amount necessary to maintain the rate for operation for which allocations were made to each such agency in fiscal year 1973."

MATHIAS AMENDMENT—STATE TITLE I–A DISTRIBUTIONS TO LOCAL EDUCATION AGENCIES UNDER ESEA

State	Funds actually received under previous continuing resolution	Minimum level of funds States would receive under Mathias amendment
Alabama	$40,257,134	$42,324,822
Alaska	2,054,974	2,291,128
Arizona	8,648,415	8,763,790
Arkansas	24,214,456	25,120,379
California	122,028,439	123,165,560
Colorado	10,100,532	10,707,187
Connecticut	11,813,005	11,950,011
Delaware	2,242,296	2,346,224
Florida	26,445,029	27,926,502
Georgia	39,947,788	44,983,114
Hawaii	3,250,669	3,562,240
Idaho	3,730,118	2,971,155
Illinois	63,243,090	67,997,247
Indiana	16,999,801	18,972,679
Iowa	15,464,659	17,345,841
Kansas	10,427,273	11,453,180
Kentucky	37,131,906	39,561,570
Louisiana	34,683,512	36,807,474
Maine	5,607,754	5,861,477
Maryland	19,423,141	20,534,521
Massachusetts	23,858,101	24,678,153
Michigan	47,708,517	50,589,133
Minnesota	21,120,043	24,117,111
Mississippi	42,074,152	43,312,854
Missouri	25,579,100	28,421,836
Montana	3,013,338	3,253,307
Nebraska	7,523,056	8,350,868
Nevada	883,771	979,539
New Hampshire	1,908,409	2,030,791
New Jersey	44,860,594	45,362,925
New Mexico	9,629,504	9,800,412
New York	193,459,929	200,785,550
North Carolina	56,260,988	59,999,846
North Dakota	4,271,181	4,639,366
Ohio	41,269,978	44,260,952
Oklahoma	18,199,914	19,374,660
Oregon	9,382,231	9,495,647
Pennsylvania	67,113,702	71,324,972
Rhode Island	5,189,238	5,214,364
South Carolina	34,313,120	35,721,180
South Dakota	6,266,048	6,898,022
Tennessee	36,288,395	38,681,564
Texas	69,566,731	76,625,152
Utah	3,593,198	3,834,135
Vermont	2,107,682	2,233,296
Virginia	33,803,541	38,175,274
Washington	12,255,022	13,135,362
West Virginia	20,524,496	20,948,047
Wisconsin	16,546,374	18,505,773
Wyoming	1,235,793	1,328,337
District of Columbia	8,187,278	9,486,056

Mr. HOLLINGS. Mr. President, I will cite the figures involved. As I said earlier, I did not have the figures before me.

I made the motion for this amendment within the Appropriations Committee yesterday. I am fully aware that the language says "State educational agency," and I was talking about the State of South Carolina losing $3 million. If I referred to "district," then, as they say on Capitol Hill, I misspoke, and that statement is inoperative. I would be delighted to say that the half-billion-dollar figure was inoperative, but let us look at the figures.

At present, as the Senator from Maryland just said, it is at $1.8 billion. The confusion lies in the fact that they are spending at the rate of $1.6 billion.

This year, the actual expenditure is $1,364,707,215. If the expenditure was at the level as reported by the Appropriations Committee, it would be $1,444,076,531.

Tomorrow or the next day the distinguished Senator from Washington will bring in the bill relating to HEW. As I understood the proposal of the Senator from Texas I thought it would be a good idea.

I shall tell Senators how much it would cost. If the figure went from $1.4 billion to save harmless, according to the exact wording of the amendment of the Senator from Texas, the amount would jump to $1.6 billion. There is $200 million there and $117 million now, which is $317 million. However, if the administration, under the bill, spends at the level of $1.810 billion, then we would go from $1.4 billion to $1.8 billion, and that would be an additional $400 million, and that $400 million is added to the present $117 million under consideration and the figure is a half billion dollars, or namely $517 million. That is where that figure came from.

I started out as a supporter of the Bentsen amendment. I wanted to get there and to do exactly as he did, to save harmless. Then, I found the choice was between dilemmas. If I saved harmless my rural districts with a little tiny bit of this budget, then 85 to 95 percent would go into downtown Houston and downtown New York City, and I do not have a downtown Houston or a downtown New York City in my State, and I do not believe there are many poor children there. We know where the poor children are.

How do we rectify that? We can do it with an appropriate formula written by the Committee on Labor and Public Welfare which is meeting next Tuesday to try to get us out of this chaotic situation. That is the place to work on the formula, not here. For now, trying to get equity back into the formula we have, I want to put the money where the poor children are, but I do not want these rich, metropolitan areas using this unnatural AFDC figure, a figure I cannot use. In the name of helping poor children, it is said, "We have to keep it up; you know, everybody back home is for schools." We have heaped one inequity on top of another. Why do we have the poor? It is because of this kind of poor treatment. We really do not get to the heart of the matter.

With respect to the plea that poor children are involved, we know where they are. We do not want to finance an inequitable formula. We are trying to respond to the concerns of the distinguished Senator from Texas, of having to run school districts.

Therefore, Mr. President, I oppose the amendment.

Mr. BENTSEN. Mr. President, we are still talking about $117 million. The difference between $1.8 billion and $1.6 billion involves the amounts going to States for administration.

When the distinguished Senator says he does not want to lock an inequity to the multiplier factor, by law, we are both in total agreement on that. It is inequitable, but it gets locked in.

In the bill they are going to report to the floor this week or next week on the 90–110 there is still the multiplying factor. That means that some school districts in his State and in my State, and in the State of Minnesota and many other States are the ones that are going to pay the price. The multiplier effect will take effect within the boundaries of that State. I agree it should not be there, but under this resolution, as it stands now, that factor is still there.

Mr. President, we are talking about doing it for a year and that is going to give us time to correct this factor. I agree it should be done.

I say to the distinguished chairman of the committee that I am ready to vote on this matter and I think most Senators are.

Mr. TOWER. Mr. President, I am pleased to cosponsor the amendment offered by my colleague from Texas (Mr. BENTSEN) concerning title I funding under the Elementary and Secondary Education Act.

The language suggested by the amendment seems to me to be the only manner to bring equitable relief to all local educational agencies. This whole problem has been caused by major changes in title I entitlements allocated to local school districts by the Office of Education. The changes were caused by the Government's application of 1970 census data for the first time. School district officials, primarily in rural parts of Texas, have contacted both Senator BENTSEN and myself, complaining about the arbitrary method by which these allocations were made. These complaints are justified, particularly when one considers the late date which school districts were notified of their entitlements.

When the Congress passed the first continuing resolution, it adopted a State "hold harmless" provision. Unfortunately, due to the use of the 1970 census data, many counties in Texas were not protected, and their reductions became effective.

The amendment proposed by Senator BENTSEN, myself, and others will protect the school districts who received more funds due to increases in eligible students caused by utilization of the 1970 census data. In Texas, these school districts are primarily urban.

These school districts made plans to receive these funds after passage of the first continuing resolution. Additionally, by providing a local "hold harmless" in relation to 1973 allocations, the amendment is intended to provide some equity to those school districts, primary rural, who face an unreasonable burden because of the arbitrary method by which the Office of Education handled the title I allocations.

I would like to insert in the RECORD at this time a table provided me by the Texas Education Agency listing the title I allocations to a representative number of these counties. As can be seen from this chart, some of these school districts' entitlements have been reduced by 80 to 90 percent. Being notified of this decrease in August just prior to the beginning of the school year is certainly unreasonable. Unless this amendment is approved, these reductions will remain in effect. The timing of HEW's action is, in my mind, contrary to the intent of title I which is to provide Federal assistance to school districts with low-income students.

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

County	District	1973 allocation	1974 tentative allocation
Swisher	Happy	$14,548	$245
Hunt	Wolfe City	24,059	6,370
Fayette	Schulenburg	56,651	15,680
Wise	Bridgeport	31,193	9,800
Harrison	Hallsville	58,750	20,090
Travis	Manor	37,208	12,985
Tyler	Warren	38,047	14,455
Falls	Rosebud-Lott	110,505	42,875
Hopkins	Sulphur Springs	101,133	41,895
Castro	Dimmitt	58,470	24,255
Delta	Cooper	52,175	23,275
Van Zandt	Wills Point	34,830	16,170
Hays	San Marcos	195,272	98,000
Bowie	De Kalb	98,056	50,225
Zavalla	Crystal City	200,308	107,065
McLennan	McGregor	38,887	21,805
Bee	Beeville	229,263	137,200
Dallas	Sunnyvale	4,057	2,450
Hale	Hale Center	43,782	26,460
McLennan	Mart	53,294	32,585
Bowie	Texarkana	234,439	150,920
Harris	Cypress-Fairbanks	73,997	48,020
Do	Humble	20,702	13,475
Do	Channelview	30,354	20,335
Hale	Plainview	128,550	86,485
Brazoria	Angleton	89,383	61,005
Nueces	Robstown	383,271	262,150
Lubbock	Frenship	33,571	23,275
Starr	Rio Grande City	313,331	242,060
Hidalgo	Edinburg	545,532	421,645

Mr. TOWER. Furthermore, Mr. President, it seems only reasonable to maintain a "hold harmless" for all local educational agencies for this year, while the Congress works to reform what is admittedly an outmoded and unrealistic title I formula. Hopefully, at this time next year either a revenue sharing formula will resolve this problem, or at least if the categorical method is retained, it will emphasize educational attainment rather than AFDC-welfare dependency. It seems both appropriate and fair, therefore, to provide the kind of "hold harmless" provided by the pending amendment and allow the 1970 census data to have a full effect next year when a more rational formula is adopted as part of the Elementary and Secondary Education Act extension bill which is now being considered in committee.

Mr. President, I urge the Senate to approve the amendment.

FUNDING FOR TITLE I–A OF THE ELEMENTARY AND SECONDARY EDUCATION ACT

Mr. McGOVERN. Mr. President, today, as we discuss House Joint Resolution 727, the continuing resolution which contains funding for title I–A of the Elementary and Secondary Education Act, I want to urge careful consideration of the opportunities that adequate support will mean to those students who are educationally disadvantaged.

This Nation is dedicated to equality of opportunity and this funding as modified by an amendment introduced by Senator BENTSEN, can provide it in this very important area.

I stress the necessity for amendment, because the resolution states that each State will receive, or be held harmless, to the total number of dollars it received in fiscal 1972. Since then, we have learned the effects of the 1970 census and have discovered great shifts in children entitled to title I funds. There has been as much as a doubling in numbers in some areas. Others have had a decrease. But we have had to wait until 1974 to apply these new census statistics, and changes which took place over 10 years are being imposed all at once.

Congressman QUIE of Minnesota introduced an amendment in the House which would have required that no school district receive less than 85 percent of the amount made available to it in 1973.

That amendment, while giving some districts a gain in funds, did so at the expense of others. In fact, under it, in my own State of South Dakota, 39 projects currently programed for 9 months would be shortened to 7 or 8, involving 4,000 children, 275 staff positions would have to be eliminated entirely, of which 180 are teachers aides. Fifteen summer programs would be eliminated, involving 2,000 students and 200 summer staff.

I ask careful consideration instead of Senator BENTSEN'S amendment, No. 568. It assures that no school district which had counted on more title I–A funds as a result of the previous continuing resolution will have its fund expectation cut back in midyear. It affects primarily rural school districts which suffered severe cuts as the result of the 1970 census because it showed so many children moving to the city. It makes sense, of course, for money to follow the poor children, but the late use of the 1970 census, almost a year beyond the deadline set by Congress for a study of this problem, caused rural districts to have sharp cuts on very short notice. Senator BENTSEN'S amendment would tide them over at least this year.

There will soon be changes considered in the authorizing legislation for the ESEA. Let us provide the time needed to establish an equitable formula for the distribution of title I–A funds, and let us also give assurances of support in the meantime. The Senator's amendment assures that all States would receive increases under title I–A, and its projected cost of $117 million can be absorbed without increasing the authorization levels. Approximately $200 million of the amounts already authorized for this program have been withheld from allocation.

I urge careful consideration of this beneficial legislation. It is mandatory if we are to provide to the disadvantaged the equality of opportunity we hold as a basic tenet of our society.

Mr. COTTON. Mr. President, I send to the desk an amendment in the nature of a substitute for the amendment offered by the Senator from Texas. The substitute is offered by me and by the Senator from North Dakota (Mr. YOUNG).

The PRESIDING OFFICER. The amendment will be stated.

The amendment in the nature of a substitute was read as follows:

In lieu of the language proposed by the Senator from Texas (Mr. BENTSEN), insert the following:

Provided further, That the amounts made available to each State under title I–A for grants to local education agencies within that State shall not be less than 90 per centum nor more than 110 per centum of such amounts as were made available for that purpose for fiscal year 1972.

Mr. COTTON. Mr. President, this is simply offering as a substitute the exact language and provision that is in the bill we take up tomorrow, as recommended by the Committee on Appropriations.

The amendment of the distinguished Senator from Texas would restore to all districts fully what they had in 1973 and at the same time give to all districts getting more now, their raise. If this substitute is adopted, it will mean that the district about which the Senator from Texas is concerned and to which his amendment is directed could not suffer a loss of more than 10 percent. They are assured of 90 percent of what they had in 1972, and districts that gain by the change of census figures could not be more. The limit is near 110 percent.

This was adopted as a compromise to hold our appropriations within reason and at the same time soften the blow of this transition. In addition, it would pave the way in another year to bring to focus the new formula that would carefully put the money where the kids are.

Mr. President, if this is adopted, we, of course, will take it to conference. It will be taken to conference with the House. The House has 85 percent. It might well be rejected by the House, but it does give Senators the opportunity to vote tonight, unless everything goes apart, on exactly the same arrangement formula that was adopted—and I want to be honest, adopted not unanimously, but adopted by a strong vote in the full Appropriations Committee. It will not do what I fear so much the amendment of the Senator from Texas might do—open the floodgates. This would remove the logjam and get the bill going.

Mr. YOUNG. Mr. President, this question was considered by the Appropriations Committee, for many hours. Every possible compromise was discussed. The committee was unanimous that this was the best possible resolution.

If we adopt the Senator from Texas amendment in the continuing resolution, we will have this to do it all over again tomorrow when we consider the HEW bill. I think it might as well be settled now as later. That is why the distinguished Senator from New Hampshire and I have now introduced this substitute to the Bentsen amendment.

As the bill now stands, there is a void. We struck out the Quie amendment. Something should be put in the bill, and I believe this represents the best possible compromise. I believe if everyone understood it, it would receive a sizable majority vote in the Senate.

Mr. BENTSEN. Mr. President, the amendment in the nature of a substitute which is offered by the distinguished Senator from New Hampshire is one that, in effect, we have been debating this afternoon because we knew it would be forthcoming tomorrow, but what it does is prevail at the State level, and that means that the multiplier effect that has been discussed all afternoon still affects the individual school districts in the State. Let me say that a city like Houston and a city like Dallas are probably going to be helped, with that multiplier effect, even under the resolution as we have it here.

Mr. COTTON. Mr. President, will the Senator yield 1 second?

Mr. BENTSEN. I yield.

Mr. COTTON. I want to say it was an oversight on the part of the Senator from North Dakota (Mr. YOUNG) and myself. We had to hastily draw this proposal. We intended to make that change tomorrow and certainly would want to change it and offer it that way now.

No rollcall having been requested on our amendment, and with the permission of the Senator from North Dakota (Mr. YOUNG), I ask unanimous consent to be allowed to change it so it would apply to the local education agencies.

Mr. McCLELLAN. State and local?

Mr. COTTON. State and local agencies.

Mr. McCLELLAN. Mr. President, will the Senator yield me a moment?

Mr. BENTSEN. I yield.

Mr. McCLELLAN. I was going to suggest some modification.

Mr. COTTON. We intended to put that in. It was an oversight. The Senator from Texas was absolutely right.

I hope that it makes it a little more palatable. I do not think it is going to make it sweet.

Mr. McCLELLAN. Mr. President, will the Senator yield?

Mr. BENTSEN. I yield.

Mr. McCLELLAN. I was going to suggest that possibly the solution to this situation, to substantially take care of all interest, was to modify the substitute amendment as offered by the distinguished Senator from New Hampshire, to provide that not less than 90 percent, nor more than 110 percent, also go to the school district. Make it State and school districts; then we protect both.

Mr. BENTSEN. No. Let me tell the Senator what happens—

Mr. McCLELLAN. We are attempting to find a solution. That is what we were trying to do with the present amendment.

Mr. BENTSEN. Let me tell the Senator what happens if we go to 110 percent. The Senate has increased it 175 percent.

Mr. McCLELLAN. Who receives that?

Mr. BENTSEN. The city of Houston.

Mr. McCLELLAN. Under what?

Mr. BENTSEN. Under the multiplier, under the AFDC formula.

Mr. McCLELLAN. How could it get that?

Mr. BENTSEN. They were getting 175 percent, and they already budgeted on that basis.

Mr. McCLELLAN. On the basis of 175 percent?

Mr. BENTSEN. Yes, because that is what they were facing here.

Mr. MAGNUSON. We cut it down to 110.

Mr. BENTSEN. I am telling the Senator what they got. If it is cut down, it is going to cause a very chaotic condition. They based it on that percentage under the guidelines they faced. Can they trust the Government or not? They set up the budget and hired the teachers. If we put them under that limitation, we will cut the ground out from under them. I ask that we do hold these people harmless, that we carry on with this amendment, and that we give this distinguished committee time to work it out for next year, so that they have time to set up their budgets.

Mr. MAGNUSON. Mr. President, if the Senator will yield, the fault is with HEW, but part of the fault is with the Senator's State.

Mr. BENTSEN. No, not under this.

Mr. MAGNUSON. Whether they distribute it equitably to the districts.

Mr. BENTSEN. That is the national formula, not the State formula.

Mr. MAGNUSON. That is not HEW. They are not going to spend any money we put in a continuing resolution until they get the regular appropriation bill. They will have that in 2 weeks, so we will know what they are going to do. They are not going to spend any additional money because of this resolution. They are going to spend at the same rate they have been spending at since the beginning of the fiscal year. There is not much we can do about it.

I do not quite understand the Texas situation. In 1972 the allocation to Texas was $69 million. In 1973, under the formula, it was $67 million.

Mr. BENTSEN. The Senator is absolutely correct.

Mr. MAGNUSON. Just a minute. The Department's proposal would have cut it down to $57 million, and we voted against that. Under the continuing resolution, there is provided $69,566,000. It holds Texas harmless. It gets the same amount it received in 1972 and 1973. Texas is not down and it is not up.

Under the regular House bill, they hold Texas down to $69 million, but under the Senate bill, the regular bill that we are going to take up tomorrow, Texas will get $76 million. Texas is one of the "up" States. I happen to be from one of the "down" States.

I do not know how we can do this. We have to have some formula to work this out. If anybody thinks that if we add some money to a continuing resolution that will go on for about 30 days they are going to spend it any differently than they have been spending it under the present continuing resolution, he is mistaken. HEW is not going to change its spending rate. I hope they are going to pay attention to the regular bill. Under it, Texas will go up to $76 million. If

Houston has 175 percent, we have cut it down. That is the way the Senator from South Carolina said it could easily work, without a formula. The Senator says he would have only 110 percent, but it has been increased to $76 million, and in 1972 and 1973 Texas had only $69 million. The present resolution keeps it there for that month. The House gave Texas only $69 million.

It seems to me the Senator would want the regular Senate bill. If he wants to make it 85 to 115 and have a vote on the floor, we will have to meet on that and talk about it. The House sent over a flat 85 percent with no ceiling. Then I would guess Houston would get 175 percent and New York would get 300 percent. There is no ceiling at all.

We were trying to be a little more sensible about it. Looking at it, we made it 90 and 110. The House has 85 percent, with no ceiling.

We talk about a veto. There is no ceiling in this bill. I suppose that we would have to go up to $500 million with no ceiling. I do not think that we will accept that or that the House would accept that. Those are the Texas figures. These are the figures I got this morning.

Mr. BENTSEN. Mr. President, I would not quarrel with those figures. I am sure that if the Senator says that, they are right. But the question is not the total amount the State receives. It is the national formula put on the individual school districts. This is true in Minnesota.

Mr. MAGNUSON. It may be true in my State.

Mr. BENTSEN. I think it is. So, we get a disparity within a State from one school district to another.

The problem is that the Senate itself by its continuing resolution has said to the cities and to the school districts that these are the figures. They are now looking at their budgets. If we now put on the 110 percent for cities like Dallas, Houston—I do not have the figures on the other cities that have grown all across the country—we would change the rules of the game. We would be saying that it does not make any difference how many schoolteachers they have hired, that we do not care. We will cut them back.

Mr. MAGNUSON. That is under the HEW bill.

Mr. BENTSEN. It is under the continuing resolution passed by the Congress.

Mr. MAGNUSON. This is only the continuing resolution. If the President vetoes the regular bill and we do not override, we will have another continuing resolution.

I might agree with the Senator from Texas that this is our last chance. I do not think that a temporary continuing resolution is a proper vehicle for all this, with the committee bill coming up tomorrow and with the House having passed their bill. This is not quite the place to have it. And I think that most States would be satisfied with the 90 percent and 110 percent.

Mr. BENTSEN. Mr. President, I agree. This normally is not the place in which to add it.

Mr. MAGNUSON. Mr. President, I ask unanimous consent to have this tabulation printed at this point in the RECORD, since this is where we are discussing it.

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

ESTIMATED COMPARATIVE DISTRIBUTIONS FOR LOCAL EDUCATIONAL AGENCY GRANTS, PART A OF TITLE I OF THE ELEMENTARY AND SECONDARY EDUCATION ACT

			1974 continuing resolution		1974 regular bill	
	1972 actual	1973 actual	House bill (Quie)/ Javits proposal	Senate committee	House	Senate committee
Total amount for all parts of title I	$1,597,000,000	$1,585,185,000	$1,810,000,000	$1,810,000,000	$1,810,000,000	$1,810,000,
Total for States and District of Columbia part A, local grants	1,364,707,215	1,316,037,468	1,444,083,033	1,444,076,531	1,444,076,531	1,444,267,379
Alabama	40,257,134	34,549,166	29,366,791	40,257,134	40,257,134	36,231,421
Alaska	2,054,974	2,415,064	3,112,266	2,655,487	2,655,487	2,260,471
Arizona	8,648,415	8,134,242	9,257,236	8,648,415	8,648,415	9,513,256
Arkansas	24,214,456	20,963,618	17,819,075	24,214,456	24,214,456	21,793,010
California	122,028,439	111,618,375	153,404,740	130,967,857	130,967,857	134,231,283
Colorado	10,100,532	10,237,378	12,368,915	10,556,709	10,556,709	11,110,585
Connecticut	11,813,005	11,747,931	16,324,230	13,935,021	13,935,021	12,994,306
Delaware	2,242,296	2,323,748	2,749,533	2,345,989	2,345,989	2,466,526
Florida	26,445,029	24,111,072	24,848,859	26,445,029	26,445,029	29,089,532
Georgia	39,947,788	40,573,812	34,487,740	39,947,788	39,947,788	43,942,567
Hawaii	3,250,669	3,715,263	4,704,115	4,016,317	4,016,317	3,575,736
Idaho	2,730,118	2,719,220	2,778,090	2,730,118	2,730,118	3,003,130
Illinois	63,243,090	69,554,901	85,026,804	72,593,588	72,593,588	69,567,399
Indiana	16,999,801	18,773,439	18,959,995	16,999,801	16,999,801	18,699,781
Iowa	15,464,659	14,601,661	12,411,412	15,464,659	15,464,659	17,011,125
Kansas	10,427,273	9,147,430	8,991,779	10,427,273	10,427,273	11,470,000
Kentucky	37,131,906	32,212,788	27,380,870	37,131,906	37,131,906	35,180,193
Louisiana	34,683,312	31,322,489	26,624,116	34,683,312	34,683,312	38,151,643
Maine	5,607,754	5,633,673	6,075,788	5,607,754	5,607,754	6,168,529
Maryland	19,423,141	19,380,669	24,059,507	20,539,171	20,539,171	21,365,455
Massachusetts	23,858,101	24,893,505	32,812,419	28,011,501	28,011,501	26,243,911
Michigan	47,708,517	51,768,916	61,617,453	52,597,354	52,597,354	52,479,369
Minnesota	21,120,043	20,897,155	18,307,236	21,120,043	21,120,043	23,232,047
Mississippi	42,074,152	35,922,629	30,534,235	42,074,152	42,074,152	37,866,737
Missouri	25,579,100	23,367,302	19,862,207	25,579,100	25,579,100	28,137,010
Montana	3,013,338	2,865,542	2,776,673	3,013,338	3,013,338	3,314,672
Nebraska	7,523,056	7,187,530	6,236,637	7,523,056	7,523,056	8,275,362
Nevada	883,771	923,899	1,390,428	1,186,804	1,186,804	972,148
New Hampshire	1,908,409	2,007,413	2,463,298	2,102,611	2,102,611	2,099,250
New Jersey	44,860,594	44,232,287	59,670,251	50,939,928	50,939,928	49,346,653
New Mexico	9,629,504	7,393,185	8,229,186	9,629,504	9,629,504	10,592,454
New York	193,459,929	196,835,764	266,054,680	227,155,522	227,155,522	212,805,922
North Carolina	56,260,988	51,556,663	43,823,164	56,260,988	56,260,988	50,634,889
North Dakota	4,271,181	4,101,267	3,486,077	4,271,181	4,271,181	4,698,299
Ohio	41,269,978	42,248,122	48,388,037	41,305,249	41,305,249	45,396,976
Oklahoma	18,199,914	16,649,246	14,151,859	18,199,914	18,199,914	20,019,905
Oregon	9,382,231	8,421,321	10,541,490	9,382,231	9,382,231	10,320,454
Pennsylvania	67,113,702	64,998,125	73,654,917	67,113,702	67,113,702	73,825,072
Rhode Island	5,189,238	4,873,849	5,940,772	5,189,238	5,189,238	5,708,162
South Carolina	34,313,120	29,853,231	25,375,246	34,313,120	34,313,120	30,881,808
South Dakota	6,266,048	5,470,551	4,649,968	6,266,048	6,266,048	6,433,549
Tennessee	36,288,395	31,273,191	26,582,212	36,288,395	36,288,395	32,659,556
Texas	69,566,731	67,675,754	57,524,391	69,566,732	69,566,732	76,523,404
Utah	3,593,198	3,894,921	4,909,818	4,191,122	4,191,122	3,952,518
Vermont	2,107,682	2,093,957	2,142,393	2,107,682	2,107,682	2,318,450
Virginia	33,803,541	31,522,692	26,794,288	33,803,541	33,803,541	37,183,895
Washington	12,255,022	13,445,639	17,638,391	15,054,763	15,054,763	13,480,524
West Virginia	20,524,496	17,319,813	14,721,841	20,524,496	20,524,496	18,472,046
Wisconsin	16,546,374	17,340,875	18,567,927	16,546,374	16,546,374	18,201,011
Wyoming	1,235,793	1,170,817	1,182,467	1,235,793	1,235,793	1,359,372
District of Columbia	8,187,278	10,096,368	13,301,211	11,355,265	11,355,265	9,006,006

Mr. BENTSEN. Mr. President, I would not normally put this in a continuing resolution. I have never done it before. However, I am totally convinced from what we have heard here that we will get the bill vetoed on the bill itself. Most Members have already pretty well made up their minds.

Mr. MAGNUSON. Mr. President, if he vetoes it, we will have another one.

Mr. BENTSEN. Mr. President, I am ready to proceed to vote.

Mr. HOLLINGS. Mr. President, is not the quickest way to get it vetoed to appropriate this money to Houston, Tex.?

Mr. BENTSEN. Mr. President, I do not see how that figure enters into the total picture at all. The Senator referred to the figure for the city of Houston out of the total amount of money to be appropriated. I am telling the Senator how the national formula is allocated within his State, within my State, and within every State in the Union.

We are not responsible for that. I do not like the national formula. However, we are stuck with it and will have to stick with it for this year.

When the authorizing committee comes up with another formula that is better, I would be delighted to go along with it.

Mr. COTTON. Mr. President, I ask for the yeas and nays on my amendment.

The yeas and nays were ordered.

Mr. McCLELLAN. Mr. President, has the amendment been modified?

The PRESIDING OFFICER. The amendment has been modified.

Mr. McCLELLAN. Mr. President, how does the amendment read now?

The PRESIDING OFFICER. The clerk will state the amendment as modified.

The assistant legislative clerk read as follows:

Provided further, That the amounts made available to each State and local education agency, under title I–A for grants to local education agencies within that State shall not be less than 90 per centum nor more than 110 per centum of such amounts as were made available for that purpose for fiscal year 1972.

The PRESIDING OFFICER. The question is on agreeing to the modified amendment of the Senator from New Hampshire in the nature of a substitute for the amendment of the Senator from Texas. On this question the yeas and nays have been ordered, and the clerk will call the roll.

The assistant legislative clerk called the roll.

Mr. ROBERT C. BYRD. I announce that the Senator from Indiana (Mr. BAYH), and the Senator from Mississippi (Mr. STENNIS) are necessarily absent.

I further announce that the Senator from Montana (Mr. MANSFIELD) is absent on official business.

Mr. GRIFFIN. I announce that the Senator from Massachusetts (Mr. BROOKE) is necessarily absent.

I also announce that the Senator from Kansas (Mr. PEARSON) is absent because of illness.

The result was announced—yeas 52, nays 43, as follows:

[No. 457 Leg.]

YEAS—52

Aiken	Fulbright	McIntyre
Bartlett	Goldwater	Muskie
Beall	Gravel	Nelson
Bellmon	Griffin	Packwood
Bennett	Gurney	Pastore
Bible	Hansen	Pell
Buckley	Hart	Proxmire
Burdick	Haskell	Ribicoff
Byrd, Harry F., Jr.	Hatfield	Roth
Byrd, Robert C.	Hathaway	Scott, Hugh
Cotton	Helms	Scott, William L.
Curtis	Hollings	Stafford
Dominick	Hruska	Stevens
Eagleton	Inouye	Symington
Eastland	Jackson	Thurmond
Fannin	Long	Weicker
Fong	Magnuson	Young
	McClellan	

NAYS—43

Abourezk	Ervin	Moss
Allen	Hartke	Nunn
Baker	Huddleston	Percy
Bentsen	Hughes	Randolph
Biden	Humphrey	Saxbe
Brock	Javits	Schweiker
Cannon	Johnston	Sparkman
Case	Kennedy	Stevenson
Chiles	Mathias	Taft
Church	McClure	Talmadge
Clark	McGee	Tower
Cook	McGovern	Tunney
Cranston	Metcalf	Williams
Dole	Mondale	
Domenici	Montoya	

NOT VOTING—5

Bayh	Mansfield	Stennis
Brooke	Pearson	

So Mr. COTTON's substitute amendment was agreed to.

Mr. MAGNUSON. Mr. President, I move that the vote by which the amendment was agreed to be reconsidered.

Mr. YOUNG and Mr. MOSS moved to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. COTTON. Mr. President, I ask unanimous consent that these words be put in ahead of the substitute just voted on:

The third proviso of section 101(a)(4) of such joint resolution is amended to read as follows:

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

The question now recurs on agreeing to the amendment of the Senator from Texas (Mr. BENTSEN) as amended.

Mr. JAVITS. Mr. President, on that, I demand the yeas and nays.

The yeas and nays were ordered.

The PRESIDING OFFICER. The question is on agreeing to the amendment of the Senator from Texas (Mr. BENTSEN) as amended.

On this question the yeas and nays have been ordered, and the clerk will call the roll.

The legislative clerk called the roll.

Mr. ROBERT C. BYRD. I announce that the Senator from Indiana (Mr. BAYH), and the Senator from Mississippi (Mr. STENNIS), are necessarily absent.

I further announce that the Senator from Montana (Mr. MANSFIELD) is absent on official business.

Mr. GRIFFIN. I announce that the Senator from Massachusetts (Mr. BROOKE) is necessarily absent.

I also announce that the Senator from Kansas (Mr. PEARSON) is absent because of illness.

The result was announced—yeas 84, nays 11, as follows:

[No. 458 Leg.]

YEAS—84

Abourezk	Fulbright	Mondale
Aiken	Goldwater	Montoya
Baker	Gravel	Moss
Bartlett	Griffin	Muskie
Beall	Gurney	Nelson
Bellmon	Hansen	Nunn
Bennett	Hart	Packwood
Bentsen	Hartke	Pastore
Bible	Haskell	Pell
Biden	Hatfield	Percy
Brock	Hathaway	Proxmire
Buckley	Helms	Randolph
Burdick	Hollings	Ribicoff
Byrd, Harry F., Jr.	Hruska	Saxbe
Byrd, Robert C.	Huddleston	Schweiker
Cannon	Hughes	Scott, Hugh
Case	Humphrey	Scott, William L.
Chiles	Inouye	Stafford
Clark	Jackson	Stevens
Cotton	Johnston	Symington
Curtis	Long	Taft
Dole	Magnuson	Talmadge
Domenici	Mathias	Thurmond
Dominick	McClellan	Tower
Eagleton	McClure	Weicker
Eastland	McGee	Williams
Fannin	McGovern	Young
Fong	McIntyre	
	Metcalf	

NAYS—11

Allen	Ervin	Sparkman
Church	Javits	Stevenson
Cook	Kennedy	Tunney
Cranston	Roth	

NOT VOTING—5

Bayh	Mansfield	Stennis
Brooke	Pearson	

So Mr. BENTSEN's amendment, as amended, was agreed to.

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

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

The motion to lay on the table was agreed to.

The PRESIDING OFFICER. The bill is open to further amendment.

Mr. INOUYE. Mr. President, I send an amendment to the desk.

The PRESIDING OFFICER. The amendment will be stated.

The legislative clerk read as follows:

Insert at the appropriate place the following:

SEC. . The fourth unnumbered clause of Section 101(b) of such joint resolution is amended by inserting immediately before the semicolon at the end thereof a comma and the following:

"except for the Export-Import Bank of the United States"

Mr. INOUYE. Mr. President, the provision in the continuing resolution under which the Export-Import Bank operated during the first quarter of this fiscal year, and which is continued for the second quarter of fiscal year 1974 under the pending resolution as reported, restricts Eximbank's operations to a level equal to one quarter of the Bank's levels for fiscal year 1973. This quarterly pro rata restriction has limited severely the authorizations which the Bank has been able to make in support of U.S. export sales during the first quarter and if continued would have an even more serious effect during the second quarter.

I do not believe that it was the intent of Congress to so cripple the Exim-

bank, particularly at a time when this Nation's trade balance is looking favorable for the first time in many months. In fact, U.S. exports are almost one-third higher than a year ago, requiring proportionately additional financing.

The problem of applying a quarterly restriction to Eximbank operations results from the fact that the Bank does not have a constant level of operations throughout the year. Requests for financing assistance in support of U.S. exports are not received by the Bank in equal amounts for any given time period, whether monthly, quarterly, or whatever period; there are peaks and valleys in the Bank's authorizations pattern.

Moreover, during July and August of this year, the Bank received an unusually large number of requests for support of U.S. export sales as compared with the volume generally received during the first quarter of prior fiscal years. The result was that because the Bank was limited to authorization levels of only one-quarter of its fiscal year 1973 levels, it had to defer action until October 1—or the start of the next quarter—on almost $350 million in applications otherwise ready for approval.

Congress places an overall limitation on the Bank's program authorizations for each fiscal year, and within that overall program authority a sublimitation on so-called equipment and services loans. Under the quarterly restriction, the Bank had available only $668,750,000 for equipment and services authorizations from July through September. They were able to stay within that limit only by deferring approval of the $350 million in pending applications until October 1. However, by authorizing close to that amount on the first day of the next quarter, they have already utilized almost one-half of the level for equipment and services loans which would be available under the pending resolution in its present form for the entire quarter. As a result of this carryover, the Bank will be even more restricted in the second quarter than it was during the first. It already knows of one loan application alone amounting to about $255 million which it expects to receive within the next few weeks which when approved, and added to the carryover, would leave only about $64 million for equipment and services loans during the remainder of the second quarter. I am advised that at the Bank's current loan approval rate, this would last about 2 weeks.

Similarly, the Bank is also squeezed by the pro rata formula applying to its limitation on administrative expenses. Over 85 percent of the Bank's administrative expenses are fixed over the short run—such as personnel costs and rent.

Mr. President, I do not believe we should continue to restrict the support for U.S. export sales which would result if Eximbank is forced to operate during the second quarter of this fiscal year—or until such time as Congress approves the Bank's regular fiscal year 1974 program—at one-quarter of their fiscal year 1973 levels. In adding this restriction to the original fiscal year 1974 continuing resolution, I do not believe it was realized how it would affect the operations of this Bank. My amendment, therefore, simply would remove the Bank from the pro rata quarterly restriction and would permit it to operate under the limitations approved by Congress for its operations during fiscal year 1973.

Mr. McCLELLAN. Mr. President, I think this is a good amendment, one which serves and benefits the country as a whole, because it aids and stimulates the exportation of products that America has for sale. It is my disposition, as chairman of the Committee on Appropriations, unless there is objection on the part of another member of the committee, to accept the amendment. I think the entire country will be served by it. This relief is essential, and it would be a mistake not to adopt it.

Mr. HARRY F. BYRD, JR. Mr. President, will the Senator from Hawaii yield for a question?

Mr. INOUYE. I am happy to yield.

Mr. HARRY F. BYRD, JR. In the current budget are new requests for authorization and/or appropriations concerning the Export-Import Bank totaling almost $8 billion. I am doing this roughly in my head.

What sums would be involved in the amendment offered by the Senator?

Mr. INOUYE. The amendment does not affect the annual rate for operations which is established by the fiscal year 1973 rate. It removes only the quarterly limitation.

Mr. McCLELLAN. Just the rate of spending.

Mr. HARRY F. BYRD, JR. I am not clear whether the amendment deals with long-term credits or regular operations or short-term credits.

Mr. INOUYE. This continuing resolution will still bind overall Export-Import Bank operations to the 1973 level.

Mr. HARRY F. BYRD, JR. But it will confine it to the fiscal year 1973 level?

Mr. INOUYE. Yes.

Mr. McCLELLAN. This deals only with the rate at which they can expend it.

Mr. HARRY F. BYRD, JR. The rate of expenditures.

Mr. McCLELLAN. Yes. It adds to this provision in the present continuing resolution. The present provision states:

Provided further, That none of the activities contained in this paragraph should be funded at a rate exceeding one-fourth of the annual rate as provided by this joint resolution.

This language simply adds to that the words:

Except for the Export-Import Bank of the United States.

This excepts it from the quarterly rate.

Mr. HARRY F. BYRD, JR. It can spend at a greater quarterly rate.

Mr. McCLELLAN. That is right.

Mr. President, I hope the amendment is accepted.

The PRESIDING OFFICER. The question is on agreeing to the amendment of the Senator from Hawaii.

The amendment was agreed to.

The PRESIDING OFFICER. The joint resolution is open to further amendment. If there be no further amendment to be proposed the question is on the engrossment of the amendments and the third reading of the joint resolution.

The amendments were ordered to be engrossed and the joint resolution to be read a third time.

The joint resolution was read the third time.

Mr. PASTORE. Mr. President, I ask for the yeas and nays on final passage.

The yeas and nays were ordered.

The PRESIDING OFFICER. The question is, Shall the joint resolution pass? On this question the yeas and nays have been ordered, and the clerk will call the roll.

The legislative clerk called the roll.

Mr. ROBERT C. BYRD. I announce that the Senator from Indiana (Mr. BAYH), and the Senator from Mississippi (Mr. STENNIS) are necessarily absent.

I further announce that the Senator from Montana (Mr. MANSFIELD) is absent on official business.

Mr. GRIFFIN. I announce that the Senator from Massachusetts (Mr. BROOKE) is necessarily absent.

I also announce that the Senator from Kansas (Mr. PEARSON) is absent because of illness.

The result was announced—yeas 95, nays 0, as follows:

[No. 459 Leg.]

YEAS—95

Abourezk	Fong	Montoya
Aiken	Fulbright	Moss
Allen	Goldwater	Muskie
Baker	Gravel	Nelson
Bartlett	Griffin	Nunn
Beall	Gurney	Packwood
Bellmon	Hansen	Pastore
Bennett	Hart	Pell
Bentsen	Hartke	Percy
Bible	Haskell	Proxmire
Biden	Hatfield	Randolph
Brock	Hathaway	Ribicoff
Buckley	Helms	Roth
Burdick	Hollings	Saxbe
Byrd, Harry F., Jr.	Hruska	Schweiker
Byrd, Robert C.	Huddleston	Scott, Hugh
Cannon	Hughes	Scott, William L.
Case	Humphrey	Sparkman
Chiles	Inouye	Stafford
Church	Jackson	Stevens
Clark	Javits	Stevenson
Cook	Johnston	Symington
Cotton	Kennedy	Taft
Cranston	Long	Talmadge
Curtis	Magnuson	Thurmond
Dole	Mathias	Tower
Domenici	McClellan	Tunney
Dominick	McClure	Weicker
Eagleton	McGee	Williams
Eastland	McGovern	Young
Ervin	McIntyre	
Fannin	Metcalf	
	Mondale	

NAYS—0

NOT VOTING—5

Bayh	Mansfield	Stennis
Brooke	Pearson	

So the joint resolution (H.J. Res. 727) was passed.

Mr. McCLELLAN. Mr. President, I move to reconsider the vote by which the joint resolution was passed.

Mr. ROBERT C. BYRD. Mr. President, I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. McCLELLAN. Mr. President, I move that the Senate insist upon its amendments and request a conference with the House of Representatives, and that the Chair be authorized to appoint conferees on the part of the Senate.

The motion was agreed to; and the Presiding Officer appointed Mr. McCLELLAN, Mr. MAGNUSON, Mr. STENNIS, Mr. PASTORE, Mr. BIBLE, Mr. INOUYE, Mr. YOUNG, Mr. HRUSKA, Mr. COTTON, and Mr. CASE conferees on the part of the Senate.

APPOINTMENT BY THE VICE PRESIDENT—NORTH ATLANTIC ASSEMBLY

The PRESIDING OFFICER (Mr. BIDEN). The Chair, on behalf of the Vice President, and in accordance with Public Law 84–689, appoints the Senator from Georgia (Mr. NUNN) to be a delegate to the North Atlantic Assembly to be held at Ankara, Turkey, October 21–27, 1973.

AMATEUR ATHLETIC ACT OF 1973

Mr. ROBERT C. BYRD. Mr. President, it is my understanding that Mr. TUNNEY, the author of the bill, S. 2365, Mr. COOK, and other Senators who are interested in that bill one way or the other, have reached a resolution of certain problems in connection therewith.

I, therefore, announce that there will be no more rollcall votes today, and I ask unanimous consent that the Senate proceed now to the consideration of S. 2365, Calendar Order No. 359.

The PRESIDING OFFICER. The bill will be stated by title.

The legislative clerk read the bill (S. 2365) by title, as follows:

A bill to regulate interstate and foreign commerce as it relates to the conduct of organized amateur athletic competition within the United States and the participation of American athletes in international amateur athletic competition.

The PRESIDING OFFICER. Is there objection to the present consideration of the bill?

There being no objection, the Senate proceeded to consider the bill.

Mr. TUNNEY. Mr. President, I ask unanimous consent that, during consideration of S. 2365, a bill to regulate interstate and foreign commerce as it relates to the conduct of organized amateur athletic competition within the United States and the participation of American athletes in international amateur athletic competition, amendment No. 459 be agreed to, and that, as agreed to, it be treated as original text for the purpose of amendment.

The PRESIDING OFFICER. Is there objection?

Mr. DOLE. Mr. President, reserving the right to object, how does that differ from the bill?

Mr. TUNNEY. The amendment represents a substitute for the original legislation as introduced.

And there are a number of differences, a considerable number of differences, between the bill as it was originally introduced and amendment No. 459.

Mr. DOLE. Mr. President, further reserving the right to object, it is my understanding that some effort will be made to recommit S. 2365 for further consideration by the committee.

Mr. TUNNEY. That would in no way affect the recommittal.

Mr. President, I would like to ask for a ruling of the Chair on that matter.

Mr. President, a parliamentary inquiry.

The PRESIDING OFFICER. The Senator will state it.

Mr. TUNNEY. Mr. President, if there was a recommittal motion, would the fact that we are considering amendment No. 459 as original text in any way impede the ability of any sponsor of such a motion to recommit the legislation?

The PRESIDING OFFICER. It would simply have the substitute considered as original text for the purpose of further amendment. Of course, the substitute would be agreed to, and, if recommitted, the entire matter would go back to the committee.

Mr. TUNNEY. Mr. President, I had a unanimous-consent request.

The PRESIDING OFFICER. Is there objection to the unanimous-consent request of the Senator from California? The Chair hears none, and it is so ordered.

The amendment in the nature of a substitute is as follows:

Strike all after the enacting clause and insert in lieu thereof the following:

"That this Act may be cited as the 'Amateur Athletic Act of 1973'.

"TITLE I—GENERAL PROVISIONS

"DECLARATIONS OF POLICY

"SEC. 101. (a) FINDINGS.—The Congress hereby finds and declares that—

"(1) Amateur athletic activity, including competition, and physical fitness are valuable in the development of individuals and the strengthening of the Nation.

"(2) International competition between amateur athletes contributes to international peace and understanding.

"(3) The full potential benefits of amateur athletic competition have not been realized because various private organizations in the United States have not been able to coordinate their efforts.

"(4) Organized amateur athletic competition is conducted through the use of facilities of interstate commerce or its activity which affects interstate commerce. International amateur athletic competition involving American citizens is conducted through the use of facilities of foreign commerce.

"(b) PURPOSES.—Therefore, it is hereby declared to be the purpose of the Congress to establish an Amateur Sports Board to coordinate amateur athletic competition and a National Sports Development Foundation to support and encourage athletic activity and physical fitness.

"DEFINITIONS

"SEC. 102. As used in this Act—

"(1) 'Amateur athlete' means an individual who trains for and participates in an amateur athletic competition, in accordance with such guidelines of amateurism as the Board, with due regard for international standards, may promulgate.

"(2) 'Amateur athletic competition' means a contest, event, game, meet, match, tournament, or other program in which only amateur athletes are permitted to compete.

"(3) 'Board' means the Amateur Sports Board established pursuant to section 201 of this Act.

"(4) 'Chairman' means the Chairman of the Board.

"(5) 'Chartered sports association' means a not-for-profit corporation which holds a charter granted by the Board in accordance with this Act.

"(6) 'Commission' means the United States Olympic Commission established pursuant to section 205 of this Act.

"(7) 'Foundation' means the National Sports Development Foundation established pursuant to section 301 of this Act.

"(8) 'International competition' means any organized amateur athletic competition in which individuals or teams, all of whom officially represent the United States as determined by a chartered sports organization, compete against individuals or teams of any other nation, all of whom officially represent such other nation as determined by the appropriate sports governing body of such nation.

"(9) 'President' means the president of the Foundation.

"(10) 'Restricted competition' means amateur athletic competition which is restricted to a specific class of amateur athletes, including, but not limited to, high school or collegiate athletes, members of the Armed Forces, or any other specific category of amateur athletes.

"(11) 'Sanction' means a certification of approval.

"(12) 'Sport', as used in sections 201, 202, 203, and 204 of this Act, means a category of amateur athletic competition which is a part of the program at the Olympic games including archery, athletics (track and field), basketball, boxing, canoe and kayak, cycling, fencing, soccer-football, equestrian sports, gymnastics, team handball, field hockey, judo, rowing, shooting, volleyball, weightlifting, wrestling, yachting, swimming-diving and water polo, modern pentathlon and biathlon, bobsledding, ice hockey, figure skating, speed skating, skiing, and luge, and such other categories as may subsequently be included in such program, or as might be defined by the Board as appropriate for a charter under the provisions of this Act.

"(13) 'Sports organization' means a club, federation, union, institution, association, or other group, except a chartered sports association, which sponsors or organizes any amateur athletic competition in which amateur athletes may compete if they are members of or affiliated with an institution which is a member of such group.

"(14) 'Trustees' means the board of trustees of the Foundation.

"(15) 'Unrestricted competition' means any amateur athletic competition, including international competition, in which all eligible amateur athletes may participate, but does not include restricted competition.

"TITLE II—COORDINATION OF AMATEUR ATHLETIC ACTIVITY

"AMATEUR SPORTS BOARD

"SEC. 201. (a) ESTABLISHMENT.—There is hereby established an independent agency of the United States to be known as the 'Amateur Sports Board'.

"(b) MEMBERS.—(1) The Board shall be composed of five members including a Chairman. The President of the United States shall appoint five qualified individuals to be members of the Board, by and with the advice and consent of the Senate. It is the sense of the Congress that initial appointments under this title should be made within sixty days after the date of enactment of this Act.

"(2) As used in this subsection, 'qualified individual' means an individual who is distinguished for his dedication to the highest ideals of amateur athletic competition, his freedom from bias, and his knowledge and experience in sports development in its broadest sense and who is equipped by experience, known talents, and interests to further the policy of this Act effectively, positively, and independently if appointed to be a member of the Board.

"(3) The President of the United States shall make appointments in such a way that at no time shall there be less than one member who is an amateur athlete who has engaged, within three years prior to such

nomination, in international competition, and so that at no time will there be more than one member who is or has been an officer, director, or employee of the same sports organization. Due regard shall be given, in the appointment of members of the Board, to reflecting the diversity of those who engage in sports and amateur athletics, with appropriate weight given to such factors as race, age, and sex.

"(c) CHAIRMAN.—The members of the Board shall select one member to be the Chairman.

"(d) TERMS OF OFFICE.—The terms of office of the members first taking office shall expire as designated by the President at the time of nomination, one at the end of the first year, one at the end of the second year, one at the end of the third year, and two at the end of the fourth year. The member selected as Chairman shall serve as Chairman until his term of office as a member expires and a successor is duly appointed. A successor to a member of the Board shall be appointed in the same manner as the original member and shall have a term of office which shall expire four years from the date of expiration of the term for which his predecessor was appointed. No member of the Board or former member of the Board, upon the expiration of his term of office, may be reappointed to another term of office as a member of the Board, except the original member who sits for a one-year term.

"(e) STAFF.—The Chairman, with the concurrence of at least three other members of the Board, is authorized to—

"(1) appoint, fix the compensation, and assign the duties of an executive director, attorneys, researchers, and such other employees as the Board deems necessary without regard to the provisions of title 5, United States Code, governing appointments in the competitive service, provided such compensation is not in excess of the maximum rate for GS–18 of the General Schedule under section 5332 of title 5, United States Code; and

"(2) procure temporary and intermittent services to the same extent as is authorized by section 3109 of title 5, United States Code, but at rates not to exceed $100 a day for an individual.

In making appointments under this subsection, the Chairman and Board shall include among the appointments persons determined by the Chairman to be competent in such fields of endeavor as financial management; business, corporate, or athletic management; research and development; communication and public relations; sports medicine; architectural engineering; sports education; physical education; the humanities; or the social sciences.

"(f) COMPENSATION OF MEMBERS.—A member of the Board shall be reimbursed for travel, subsistence, and other necessary expenses incurred in the performance of the duties of the Board and shall receive $150 per diem when engaged in the actual performance of his duties as a member.

"(g) MISCELLANEOUS.—(1) The General Services Administration shall furnish the Board with such offices, equipment, supplies, and services as it is authorized to furnish to any other agency or instrumentality of the United States.

"(2) The Board shall have a seal which shall be judicially recognized.

"(3) The members of the Board shall constitute a quorum for the conduct of business, except as otherwise provided by the Board by regulation.

"(4) Each office of the Board shall be open to convenient access by members of the public.

"(h) GENERAL POWERS.—(1) The Board, or any duly authorized member of the Board, may for the purpose of carrying out any of the provisions of this Act, hold such hearings, sit and act at such times and places, administer such oaths, and require by subpena or otherwise the attendance and testimony of such witnesses and the production of such evidence as the Board or such member deems advisable. Any member of the Board may administer oaths to witnesses appearing before the Board or any member. Subpenas shall be issued under the signature of the Chairman, and may be served by any person designated by the Chairman. Witnesses summoned before the Board shall be paid the same fees and mileage that are paid witnesses in the courts of the United States. Such attendance of witnesses and production of evidence may be required from any place in the United States to any designated place of such hearing.

"(2) The Board, or any duly authorized member of the Board, may—

"(A) conduct an inquiry to secure data and expressions of opinion with respect to any matter pertinent to amateur athletic activity and physical fitness, upon publication of notice of such inquiry in the Federal Register: *Provided*, That a reasonable opportunity is granted to all interested persons to present oral or written testimony and data, subject to reasonable rules and limitations promulgated by the Board; and

"(B) require, by special or general orders, sports organizations, chartered sports associations, and individuals to submit written reports and answers to such requests and questions as are propounded with respect to any matter pertinent to the jurisdiction of the Board. Each chartered sports association which undertakes any international activity shall report in detail to the Board on such activity, and shall make such reports available for inspection by the public at any office of the Board. Reports and answers required under this subparagraph shall be submitted to the Board or such duly authorized member within such reasonable period of time and in such form as the Board may determine.

"(3) In case of contumacy or refusal to obey a subpena or an order of the Board by any person who resides, is found, or transacts business within the jurisdiction of any district court of the United States, such district court shall, upon the request of the Chairman, have jurisdiction to issue to such person an order requiring such person to comply forthwith. Failure to obey such an order is punishable by such court as a contempt of court.

"CHARTERED SPORTS ASSOCIATION

"SEC. 202. (a) GENERAL.—The Board is authorized, pursuant to the provisions of this section, to issue charters with respect to each sport for which application is made for a charter, to a corporation which meets the requirements of this section and any applicable regulations under this section.

"(b) PREREQUISITES.—(1) No person is eligible to receive a charter under this section unless—

"(A) it is a group that has not less than twenty-five individuals as members;

"(B) it incorporates under the laws of any State or the District of Columbia as a not-for-profit corporation having as its purpose the advancement of amateur athletic competition in the United States or in international competition involving citizens of the United States or both, with respect to not more than three named sports;

"(C) in accordance with regulations issued by the Board, it submits an application to the Board requesting a charter under this section and submits therewith a copy of the corporate charter and bylaws; the names, addresses, and occupations of all members and other persons having any financial interest in such corporation; the sport or sports in which it seeks to advance amateur athletic competition; and such additional information as the Board may request;

"(D) in accordance with regulations issued by the Board, it demonstrates to the satisfaction of the Board that—

"(i) its board of directors, executive committee, or other governing body will at all times include among its voting members not less than two individuals who are actively engaged in amateur athletic competition in the United States in the sport or sports designated in the association's charter, and that the voting power held by such individuals will not be less than 20 per centum of the total voting power held in that board, committee, or other body,

"(ii) it will at all times, to the extent consistent with rules and regulations promulgated by the Board, operate under procedures reasonably calculated to inform amateur athletes under its jurisdiction of policy matters under consideration by the corporation, and reasonably calculated to reflect in its policies the views of such athletes, and

"(iii) it will undertake to develop interest and participation in its particular sport or sports throughout the United States;

"(E) the Board makes a finding in writing that less than 40 per centum of the voting power in such corporation is controlled or subject to control, directly or indirectly, by any person which holds or controls, directly or indirectly, by itself or with an affiliate, more than 40 per centum of the voting power in any other corporation which holds, or is applying to hold, a charter under this section as a chartered sports association. An affiliate is a corporation which controls or is controlled by another corporation, or which is controlled by the same person as such other corporation, or which has any officers, directors, or executive committees in common with such corporation; and

"(F) in the case of an applicant for a charter under this section with respect to more than one sport, the Board makes a finding in writing after a hearing that—

"(i) the sports with respect to which it wishes to receive a charter are closely related and would benefit by common administration, and

"(ii) it is capable of functioning as a chartered sports association, with respect to each such sport, in the best interests of that sport and of the amateur athletes participating in such sport.

"(2) The Board may deny the application for a charter under this section of any person which is a sports organization, or which was formed out of a sports organization, if the Board determines that—

"(A) the sports organization has denied amateur athletes who were members of, or affiliated with members of, that sports organization the right to compete in any unrestricted sports competition conducted by that sports organization or any other sports organization or which was sanctioned by a chartered sports association (unless the applicant satisfies the Board that such denial was based on evidence that the person conducting such unrestricted competition did not meet the requirements of section 204 of this Act notwithstanding the sanction by such association, or was based on the application of a reasonable rule or regulation of an educational institution as provided in section 204 of this Act.); or

"(B) the sports organization violated any directive issued by the Board as a result of its mediation of a dispute pursuant to section 203 of this Act.

"(c) PROCEDURE REGARDING ISSUANCE.—(1) Prior to the issuance of any charter under this section, the Board shall hold a public hearing on the application for such charter in accordance with the provisions of section 554 of title 5, United States Code. The burden of persuasion at such hearing shall be on the applicant to establish to the satisfaction of the Board that it is fairly representative of athletes in the sport or sports for which the charter is sought and of sports organiza-

tions conducting national programs involving regularly scheduled practice and competition throughout the usual competitive season in the sport or sports concerned and that is otherwise capable of carrying out the duties of a character sports association. The applicant shall provide evidence that it is qualified to receive recognition by the appropriate international sports association as the United States organization responsible for certifying the amateur status of United States athletes and approving United States teams for international and related competition in its sport or sports.

"(2) The Board may at any time on its own motion or on the application of an interested party review all matters related to the activities of a chartered sports association and may take such action as it deems appropriate including, but not limited to, placing conditions upon the continuation of the association's charter or revoking the charter.

"(d) AUTHORITY OF BOARD.—The Board is authorized—

"(1) to issue regulations in accordance with the provisions of section 553 of title 5, United States Code, with respect to applications for a charter under this section; the terms and conditions upon which the Council will issue, modify, suspend, or revoke such a charter; the operation of a chartered sports association; and such other matters as the Board deems necessary;

"(2) to take such action as the Board deems necessary, with due regard to international standards, to insure that each chartered sports association complies with the terms and limitations of its charter under this section; and

"(3) to take such action as the Board deems appropriate to advance amateur athletic competition in the United States and in international competition involving citizens of the United States.

"(e) FUNCTIONS OF CHARTERED SPORTS ASSOCIATIONS.—A charter issued pursuant to this title shall grant authority to the holders of such charters to—

"(1) act as the representative of the United States to the appropriate international governing body or bodies for the sport or sports over which it has jurisdiction;

"(2) act as the representative of athletes competing in international competition in its sport or sports;

"(3) designate individuals and teams to participate in international competition and certify in accordance with international rules the amateur status of such individuals and teams;

"(4) conduct domestic competition, including but not limited to Olympic trials or national championships;

"(5) conduct domestic exhibitions with representatives of foreign nations, the purpose of which is to promote interest in its sport or sports;

"(6) to take whatever actions, consistent with rules and regulations promulgated by the Board pursuant to this Act, as may be necessary to insure the safety and well-being of athletes representing the United States in international competition in its sport or sports; and

"(7) such other authority as the Board deems appropriate to carry out the purposes of this Act.

"(f) REVOCATION.—(1) The Board is authorized to revoke any charter granted under this section if the chartered sports association is not recognized, within a reasonable period of time after such issuance, by the appropriate international sports governing body or bodies, for the sport or sports for which it has jurisdiction, as the single United States authority responsible for certifying the amateur status of United States athletes and for approving teams representing the United States for international competition in the sport or sports as to which it has been granted such charter. The authority of the Board to revoke a charter under this paragraph is distinct from its authority to revoke a charter for cause pursuant to subsection (d) of this section.

"(2) In addition to any other ground for revocation or suspension of a charter granted under this section, the Board is authorized to revoke or suspend the charter of a chartered sports association if such association denies any amateur athlete the right to compete in any unrestricted competition sanctioned by such association or any other chartered sports association (unless such association satisfies the Board that such denial was based on evidence that the person conducting such unrestricted competition did not meet the requirements of section 204 of this Act notwithstanding the sanction by such association, or was based on the application of a reasonable rule or regulation of an educational institution as provided in section 204 of this Act) or if such association violates any directive issued by the Board as a result of its mediation of a dispute pursuant to section 203 of this Act.

"(g) PROCEDURE.—(1) Any hearing or other proceeding with respect to the issuance, modification, revocation, or suspension of a charter issued under this section or with respect to the mediation of a dispute pursuant to section 203 of this Act shall be conducted in accordance with the provisions of subchapter II of chapter 5 of title 5, United States Code. Such hearing, proceeding, or mediation shall be subject to judicial review in accordance with the provisions of chapter 7 of title 5, United States Code.

"(2) Notwithstanding paragraph (1) of this subsection, the Board is authorized, upon forty-eight hours' notice to the parties, to hear and decide a matter under such procedures as the Board deems appropriate if the Board determines that it is necessary to expedite such hearing, proceeding, or mediation in order to resolve a matter relating to an amateur athletic competition which is so scheduled that compliance with regular procedures would not be likely to produce a sufficiently early decision by the Board to do justice to the affected parties.

"(h) EXPIRATION.—(1) Each charter issued under this section shall expire, with respect to a sport or sports which is part of the program at the Olympic winter games, on June 30 of the year in which such games are held.

"(2) Each charter issued under this section shall expire, with respect to a sport or sports which is part of the program at the Olympic summer games, on December 31 of the year in which such summer games are held.

"MEDIATION

"SEC. 203. (a) GENERAL.—In case of any dispute which involves a chartered sports association and—

"(1) another chartered sports association;

"(2) a sports organization; or

"(3) an amateur athlete,

the Board or any duly authorized member of the Board shall act as mediator to conciliate and resolve such dispute. With the consent of the affected parties, the Board shall determine the issues in such dispute, and in such case the decision of the Board shall be final.

"(b) ENFORCEMENT.—Upon application of (1) the Board through its own attorneys, (2) the Attorney General, or (3) any aggrieved person, the district courts of the United States shall have jurisdiction to enjoin the Commission of any acts committed in violation of any directive issued by the Board as a result of its mediation of a dispute pursuant to subsection (a) of this section.

"SANCTIONING OF UNRESTRICTED COMPETITION

"SEC. 204. (a) GENERAL.—Except as otherwise provided in this section, no unrestricted competition shall be conducted in the United States unless such competition has been sanctioned by a chartered sports association prior to such competition and a copy of such sanction in writing was transmitted to the Board. This provision shall be effective two years after the date of enactment of this Act.

"(b) WAIVER.—By unanimous vote of all of the members of the Board, the Board may waive the requirement of subsection (a) of this section upon a finding that there is no chartered sports association which can sanction such unrestricted competition in view of the time necessarily involved in planning such competition.

"(c) REQUIREMENTS FOR SANCTIONING.—A chartered sports association shall grant a request made by a sports organization or other person for its sanction for an unrestricted competition, unless such chartered sports association determines that—

"(1) appropriate steps have not been taken to protect the amateur status of athletes who will compete in such event and to protect their eligibility to compete in amateur athletic competition in the United States and in international amateur athletic competition;

"(2) appropriate provisions have not been made for validation of records which may be established during such event;

"(3) due regard is not given to any international amateur athletic requirements applicable to such event;

"(4) the event will not be conducted by competent officials and proper medical supervision will not be provided; or

"(5) the sports organization or other person conducting the event refuses to submit an audited or notarized financial report of the immediate past event.

"(d) EDUCATIONAL INSTITUTION.—No eligible amateur athlete may be denied the right to compete in any unrestricted amateur athletic competition which is sanctioned by a chartered sports association pursuant to the provisions of this section nor may any such athlete be subsequently censured or otherwise penalized for participation in any such competition: *Provided*, That a university, high school, or other educational institution may, upon written request to the Board and after a hearing at which evidence is submitted, show, to the satisfaction of the Board, that any such denial was made after notice to the affected athlete and the Board upon application of a published institutional rule which was—

"(1) adopted by such institution prior to such denial;

"(2) reasonable; and

"(3) based upon the academic interests and policy of such institution with respect to the educational development of amateur athletes who are students at such institution.

"(e) ENFORCEMENT.—Upon application of (1) the Board through its own attorneys, (2) the Attorney General, or (3) any aggrieved person, the district courts of the United States shall have jurisdiction to enjoin the Commission of any acts in violation of this section.

"UNITED STATES OLYMPIC COMMISSION

"SEC. 205. (a) ESTABLISHMENT.—Not later than sixty days after all five members of the Board have been appointed, the Board shall establish and designate the members of the United States Olympic Commission. The Commission, in accordance with the provisions of this section, shall review and make recommendations regarding the participation of the United States in the Olympic games.

"(b) MEMBERS.—The Commission shall be composed of nine members, including not less than two amateur athletes who competed in the 1972 Olympic games as representatives of the United States. In designating the members, the Board shall give appropriate consideration to the representation of women and minority groups within the United States. No more than two members of the Commission may be or at any time have been officers or directors of the

United States Olympic Committee, or of any national sports organization.

"(c) CHAIRMAN AND COMPENSATION OF MEMBERS.—(1) The Board shall designate one of the members of the Commission to serve as Chairman at the pleasure of the Board.

"(2) The members of the Commission shall be entitled to compensation and reimbursement on the same terms and at the same rates as members of the Board.

"(d) DUTIES.—The Commission shall review the participation of the United States in the Olympic games, and, if it recommends that such participation should be continued, shall also recommend the form of organization by means of which the United States should participate in the Olympic movement and shall present specific proposals for any legislation required to implement its recommendations. In formulating its legislative recommendations, the Commission shall take into account—

"(1) the objectives of the modern Olympic movement and the extent to which those objectives are being met;

"(2) the manner in which the Olympic games are administered, with particular attention to the views of those who participate in those games as athletes, coaches, officials, or otherwise, or who have attended such games in any other capacity;

"(3) the role which the United States Olympic Committee has played in international sports and the manner in which the United States participation in the Olympic games has been organized and administered by that Committee;

"(4) the policies which would assure the selection on a fair and equitable basis of the best qualified athletes, coaches, managers, trainers, and other officials and which would provide the maximum opportunity for persons to develop their athletic skills and participate in international athletic competition; and

"(5) the arrangements which will best protect the interests of the individual amateur athletes during the period of their training for, travel to, and participation in the Olympic games.

"(e) REPORT.—The Commission shall submit to the President, Congress, and the Board a final report of its findings and recommendations not later than March 15, 1974, or one hundred and eighty days after all of the members of the Commission have been designated by the Board, whichever is earlier.

"(f) AUTHORITY OF BOARD.—The Board may review the activities of the United States Olympic Committee from time to time and may make such recommendations to the Congress, including legislative recommendations, as it deems appropriate with respect to the Olympic program for the United States.

"(g) POWERS OF COMMISSION.—The Chairman of the Commission, subject to such rules and regulations as may be adopted by the Commission and the Board, is authorized to—

"(1) appoint and fix the compensation of an Executive Director, and such additional staff personnel as he deems necessary, without regard to the provisions of title 5, United States Code, governing appointments in the competitive service, and without regard to chapter 51 of subchapter III of chapter 53 of such title relating to classification and General Schedule pay rates, but at rates not in excess of the maximum rate for GS–18 of the General Schedule under section 5332 of such title;

"(2) procure temporary and intermittent services to the same extent as is authorized by section 3109 of title 5, United States Code, but at rates not to exceed $100 a day for individuals; and

"(3) hold such hearings, sit and act at such times and places, and administer such oaths, as the Commission or any subcommittee or a majority of the members thereof may deem advisable.

"(h) TERMINATION.—The Commission shall cease to exist thirty days after submission of its final report.

"(i) CONFORMING AMENDMENT.—Section 12 of the Act entitled 'An Act to incorporate the United States Olympic Association', approved September 21, 1950 (64 Stat. 902; 36 U.S.C. 382), is amended by inserting after 'to Congress' the following: 'and to the Amateur Sports Board'.

"OTHER DUTIES OF BOARD

"SEC. 206. (a) DIVISION OF ATHLETIC FACILITIES.—The Board shall establish within its organization a Division of Athletic Facilities and shall appoint a Director and such other officers and employees as are necessary to carry out the functions of such division. The Division of Athletic Facilities shall, pursuant to the direction of the Board—

"(1) gather, analyze, and make available information relating to existing and potential procedures for the financing, construction, maintenance, and use of athletic facilities;

"(2) consider methods for the economical renovation, expansion, beautification, alteration, and conversion of existing athletic facilities in order to best meet the requirements of the communities in which they are located, and such methods should be directed toward the goal of developing facilities which will meet the optimum degree of flexibility, so as to provide the most economical usage within a community;

"(3) study the relationship between athletic facilities and the neighborhoods and communities in which they are located, and to recommend methods of minimizing any adverse impact of the facility on the neighborhood or community, with particular emphasis placed upon the impact of the facilities on traffic patterns, law enforcement, and adjacent or nearby housing, and commercial activities; and

"(4) provide consultant services to private interests and State or local governments which may require such assistance.

"(b) DIVISION OF SAFETY AND HEALTH.—The Board shall establish within its organization a Division of Safety and Health and shall appoint a Director and such other officers and employees as are necessary to carry out the functions of such division. The Division of Safety and Health shall, pursuant to the direction of the Board—

"(1) gather, analyze, and make available information relating to safety in athletics, and make recommendations for promoting greater safety in athletic activity;

"(2) study the use of drugs and other medications in treating the injuries of athletes, and the effects of such use of drugs and other medications on the athlete during and subsequent to his athletic career;

"(3) study the techniques of physical therapy currently used for the treatment of the injuries of athletes, and encourage and promote the development of better techniques;

"(4) study the effects of athletic competition on the mental health of amateur athletes and the psychological ramifications of athletic competition, during and subsequent to their careers as amateur athletes; and

"(5) study the effectiveness of existing athletic equipment in preventing and reducing injuries resulting from athletic activities, and to make recommendations for improving the effectiveness of such equipment. Such studies shall include the safety and health factors of the facilities in and on which athletic activity is conducted, such as playing surfaces, restraining devices, and so forth. The Director of the Division of Safety and Health of the Board shall maintain continuing liaison with the Consumer Product Safety Commission and, to the extent practicable, shall utilize the resources of such Commission to the extent consistent with the discharge of his responsibilities under this subsection. The Consumer Product Safety Commission is hereby authorized and directed to provide such information and assistance to the Board as is consistent with its own duties and responsibilities.

"(c) FOUNDATION COSTS.—The Board shall pay the costs, including salaries, incurred by the Foundation in carrying out its functions under title III of this Act. No moneys furnished by the Board to the Foundation may be transferred by the Foundation to any other person as financial assistance.

"AUTHORIZATION FOR APPROPRIATIONS

"SEC. 207. There are hereby authorized to be appropriated to the Board for the purpose of this Act, other than section 204 of this Act, such sums as are necessary not to exceed $1,100,000 for this fiscal year ending June 30, 1974; not to exceed $1,100,000 for the fiscal year ending June 30, 1975; and not to exceed $1,100,000 for the fiscal year ending June 30, 1976. The sum of $750,000 for the fiscal year ending June 30, 1974, is authorized to be appropriated to the Board for the use of the Commission in carrying out the provisions of section 204 of this Act.

"TITLE III—SUPPORT AND ENCOURAGEMENT OF SPORTS AND PHYSICAL FITNESS

"NATIONAL SPORTS DEVELOPMENT FOUNDATION

"SEC. 301. (a) ESTABLISHMENT.—There is hereby established, as a nongovernmental corporation of the District of Columbia, the 'National Sports Development Foundation'. The Foundation shall be under the direction of a board of trustees. To the extent not inconsistent with this title, the Foundation shall be subject to the District of Columbia Nonprofit Corporation Act (D.C. Code 29–1001 et seq.).

"(b) GENERAL AUTHORITY.—The Foundation shall have the authority to do all things necessary to carry out the provisions of this title including, but not limited to, the authority to—

"(1) make such bylaws, rules, and regulations as may be necessary for the administration of its functions under this title;

"(2) adopt an official seal which shall be judicially noticed;

"(3) sue and be sued, complain, and defend in any court of competent jurisdiction;

"(4) provide financial assistance to any organization or association, other than a corporation organized for profit, in furtherance of the purposes of this title;

"(5) contract and be contracted with; and

"(6) acquire, control, hold, lease, and dispose of such real, personal, or mixed property as may be necessary to carry out the purpose of the Foundation.

"(c) OFFICES.—The principal office of the Foundation shall be maintained in the District of Columbia or such other place as may later be determined by the Trustees, but the activities of the Foundation shall not be confined to such place but may be conducted throughout the United States. The Foundation may maintain offices at such locations as may be necessary to carry out its purposes. At all times, the Foundation shall maintain in the District of Columbia a designated agent authorized to accept service of process on behalf of the Foundation. Service upon, or notice mailed to the business address of, such agent shall be deemed service upon or notice to the Foundation.

"(d) RESTRICTIONS.—(1) No part of the assets or income of the Foundation may inure to any officer, employee, or member of the Trustees nor may any such asset or income be paid or distributed to any such person during the life of the Foundation or upon its dissolution or final liquidation. This provision shall not be construed to prohibit the payment of reasonable compensation to officers, employees, or members of the Trustees or to prohibit payment of reimbursement

for actual and necessary expenditures, subject to the approval of the Trustees, from funds provided for such purposes by the Board.

"(2) The Foundation shall not make any loans to its officers, employees, or members of the Trustees.

"(3) The Foundation shall have no power to issue any shares of stock or to declare or pay any dividend to any persons.

"(4) Upon the dissolution or final liquidation of the Foundation, upon discharge or satisfaction of obligations and liabilities, the remaining assets may be distributed in accordance with the determination of the Trustees and in compliance with this title, the bylaws of the Foundation, and any applicable Federal and State laws. Any remaining assets resulting from appropriations pursuant to this Act shall revert to the Treasury of the United States.

"(e) DUTIES.—To the extent practicable, the Foundation shall—

"(1) promote equal opportunity for and encourage participation and excellence in athletic activity and physical fitness programs for individuals of all ages;

"(2) foster, support, and advise organizations, groups, and individuals concerned with sports and coordinate their activities voluntarily with educational and recreational programs conducted by Federal, State, and local governments;

"(3) develop and make available technical, financial, and training assistance to not-for-profit organizations and to individuals concerned with sports and physical fitness education;

"(4) promote increased athletic exchanges with foreign nations;

"(5) study and make recommendations with respect to athletic activity, including competition, and physical fitness;

"(6) to extend knowledge and facilities and the practice of sports by establishing and maintaining a data bank for the compilation, analysis, and dissemination of information pertaining to all significant aspects of sports;

"(7) to sponsor or solicit useful research in such areas as sports medicine, equipment design, and performance analysis; and

"(8) sponsoring and stimulating the establishment of advanced or improved coaching, physical training, and physical education programs.

"TRUSTEES

"SEC. 302. (a) GENERAL.—The Trustees shall direct the Foundation in accordance with the provisions of this title and the policy of this Act, shall maintain and administer the Foundation, and shall execute or direct the execution of such other functions as are vested in it or the Foundation by statute or regulation under a statute.

"(b) MEMBERS.—(1) The Trustees shall consist of sixteen qualified individuals who shall be appointed by the Board.

"(2) As used in this subsection, 'qualified individual' means an individual who is distinguished for his dedication to the highest ideals of athletic competition, his freedom from bias, and his knowledge and experience in sports development and physical fitness in its broadest sense and who is equipped by experience, known talents, and interests to further the policy of this Act effectively, positively, and independently if appointed to be a member of the Trustees. Members of the Trustees shall be selected from among individuals who shall have distinguished themselves and achieved recognition by their peers in their respective fields. The Board shall select members of the Trustees in such a way that at no time shall there be less than three members who are presently or who were in the recent past participating athletes, and in such a way that the following fields shall be represented on the Trustees: financial management, business, corporate, or athletic management; research and development; the humanities; fundraising; adolescent development; sports medicine; sports education; physical education; communications and public relations; and the social sciences. In selecting members of the Trustees, due regard shall be given to reflecting the diversity of those engaged in sports with appropriate weight given to such factors as race, age, and sex.

"(c) TERMS OF OFFICE.—The terms of office of the members of the Trustees first taking office shall expire as designated by the Board at the time of appointment, two at the end of the first year, three at the end of the second year, three at the end of the third year, three at the end of the fourth year, three at the end of the fifth year, and three at the end of the sixth year. Successors to members of the Trustees shall be appointed in the same manner as the original members and shall have a term of office expiring six years from the date of expiration of the term for which their predecessors were appointed. Any member appointed to fill a vacancy on the Trustees occurring prior to the expiration of the term for which his predecessor was appointed shall be appointed for the remainder of such term. No member may be reappointed upon the expiration of his term.

"(d) CHAIRMAN.—The members of the Trustees shall select one of their members to serve as chairman of the Trustees for a period of one year.

"(e) ORGANIZATION.—The Trustees appointed initially shall take whatever steps are necessary to establish the Foundation, including the filing of articles of incorporation.

"(f) MEETINGS.—(1) The Trustees shall meet at least once each quarter at such place and at such time as shall be determined by the chairman. The chairman shall also call a meeting at any time upon the request in writing of six or more members. Each member shall receive a notice of the call of each meeting, by certified mail return receipt requested not less than fifteen days prior to the date of such meeting.

"(2) Each meeting of the Trustees shall be open to the public. Minutes shall be kept of each such meeting and made available for public inspection at the office of the Foundation in the District of Columbia and at such other offices as it may maintain. Such copies shall be available for reproduction, upon request and at reasonable charge.

"(g) QUORUM.—Eight members of the Trustees shall constitute a quorum for the transaction of affairs.

"(h) COMPENSATION.—Each member of the Trustees shall be entitled to reimbursement for travel, subsistence, and other necessary expenses incurred in the performance of his duties as a member of the Trustees and $100 per diem when engaged in the actual performance of such duties.

"(i) PRESIDENT.—The Trustees shall appoint a qualified individual to be the President of the Foundation. The President shall serve at the pleasure of the Trustees and shall be the chief administrative officer of the Foundation. Subject to the supervision of the Trustees, the President shall manage and supervise the business of the Foundation, appoint, fix the compensation, and assign the duties of such officers, attorneys, specialists, agents, and other employees, and consultants as he deems necessary, who are qualified to further the policy of this Act.

"(j) GENERAL POWERS.—The Trustees may solicit, accept, hold, and administer gifts, bequests, or devises of money, securities, or other property in any form or of whatever character for the benefit of the Foundation. Unless restricted by the terms of such gift, bequest, or devise, the Trustees may sell or exchange and invest or reinvest in any lawful investment such money, securities, or other property, for the benefit of the Foundation. Such moneys, securities, and other properties shall constitute a fund to be held by the Trustees in trust, and the corpus of such trust shall not be invaded by the Trustees for expenditure or transfer other than for purposes of investment so long as the total amount in such fund together with any amounts appropriated to the Trustees for such fund under section 305 of this Act does not exceed $100,000,000: *Provided*, That the Trustees may expend up to $1,000,000 each year from such fund out of such amounts not appropriated under section 305 of this Act to carry out the purposes of the Foundation until such time as the aggregate sum of all moneys, securities, and other properties received by the Trustees equals or exceeds $15,000,000. Income from such fund may be expended in the discretion of the Trustees.

"AUDIT OF TRANSACTIONS

"SEC. 303. The accounts of the Foundation shall be audited annually in accordance with generally accepted auditing standards by independent certified public accountants or independent licensed public accountants certified or licensed by the government of the District of Columbia. The audit shall be conducted at the place or places where the accounts of the Foundation are normally kept. All books, accounts, financial records, reports, files, and all other papers, things, or property belonging to or in use by the Foundation and necessary to facilitate the audit shall be made available to the person or persons conducting the audit. Full facilities for verifying transactions with the balances or securities held by depositories fiscal agents, and custodians shall be afforded to such person or persons by the Foundation. A report of such audit shall be submitted to the Congress by the Board not later than six months following the close of the fiscal year for which the audit was made. The report shall set forth the scope of the audit and shall include such statements as are necessary to present fairly the assets and liabilities of the Foundation; its surplus or deficit, with an analysis of the changes therein during the year, supplemented in reasonable detail by a statement of the income and expenses of the Foundation during the year; and the independent auditor's opinion of those statements. Such report shall be printed as a public document.

"REPORTS

"SEC. 304. The Foundation shall submit to the Congress, the Board, and the President of the United States, in January of each year, a report on its activities, including a comprehensive description of the activities and accomplishments of the Foundation during the preceding calendar year together with an evaluation of such activities and accomplishments in terms of the attainment of the policy of this Act and the duties of the Foundation. Such report may include recommendations for additional legislative or other action which the trustees may consider necessary or desirable for attaining such objectives. Such report shall not be reviewed by any officer or agency of the United States prior to submission. Such report shall be made available to interested persons and printed as a public document.

"AUTHORIZATION OF APPROPRIATIONS

"SEC. 305. For each fiscal year following the fiscal year ending June 30, 1975, there is authorized to be appropriated to the trustees for use by it in carrying out the provisions of this title an amount equal to the amount of donations, bequests, and devises of money, securities, and other property received by the trustees during the fiscal year preceding the fiscal year for which such appropriation is made, except that the total aggregate amount appropriated pursuant to this subsection shall not exceed $50,000,000."

Amend the title so as to read: "A bill to encourage and coordinate amateur

athletic activity and promote physical fitness in the United States and in international competition in which American citizens participate, and for other purposes."

Mr. TUNNEY. Mr. President, internecine warfare has marred amateur athletics for more than 60 years. All of us are aware of the bickering, power struggles, and mismanagement that too often has characterized the rule or ruin policies of the bureaucratic baronies that control amateur sports.

The Congress over the years has been very patient despite this severe provocation in trying to resolve these conflicts voluntarily. Twice within the last decade we have enlisted the aid of such distinguished Americans as Douglas MacArthur, Archibald Cox, Theodore Kheel and Congressman RALPH METCALFE in efforts to arbitrate these disputes. Yet the sport baronies have resolutely refused to accept the solutions offered by these well-intentioned individuals.

The situation, unfortunately, has continued to rapidly deteriorate. No one for example, can forget the Munich Games, where the Olympic ideal of peace and friendship through sporting competition was permanently bloodstained by the assassination of 11 Israeli athletes. Yet the entire Olympiad was a chaos of bungling and inefficiency which hamstrung our competitors. Clearly the time, energy and efforts of the individual competitors, in many cases amounting to a virtual lifetime of work, should not be wasted, corrupted and overshadowed by events irrelevant to the competition itself. Clearly we cannot afford another Munich or our future participation in the Olympics will be severely jeopardized.

But wishing will not make it so. Already the National Collegiate Athletic Association has pulled out of the U.S. Olympic Committee blasting the AAU's monopolistic control of amateur sports through the aegis of the U.S. Olympic organization and charging the AAU is utilizing "cronyism" to maintain its control.

The Amateur Athletic Act will go far finally to resolve these issues. It will set up a nine-member Commission that will thoroughly investigate our participation in the Olympics and report quickly back to Congress with legislative recommendations for reform. Thus it will help the Congress to develop the information necessary to assure that our participation in future games will more nearly approach the Olympic ideal, and that the U.S. effort will be the best we can attain both as a country and individually.

Last session, when the tragedy and travesty of Munich was still fresh in our minds, the Senate passed an amendment which I introduced to require such a review of the Olympics, but unfortunately the bill was never acted upon by the House. While 1976 may still seem distant, if the Congress fails to act quickly and affirmatively any chance to reform our participation in the next Olympic Games will be lost irrevocably.

But the malaise affecting amateur sports goes far beyond the problems that were manifested at the last Olympics. After 8 months of preparation and 3 days of intensive hearings last May it became clear that Government action is crucial to end the interminable sanctioning wars between the AAU and the NCAA, to reform our participation in the Olympics, and to protect the rights of our athletes and provide a firm foundation for training, coaching, and better facilities for millions of Americans who participate in amateur sports.

It should be remembered that every effort over the years has been made to resolve these issues voluntarily—yet the conflicts have only become more bitter and intractable. Those who control amateur athletics in this country have demonstrated over and over again that they cannot or will not help themselves. Thus the issue facing us is whether to allow the continuation of a status quo which has proven disastrous for the proper development of amateur sports or to act decisively to resolve these problems once and for all.

The Amateur Athletic Act of 1973, I believe will resolve these problems, through its provisions concerning the chartering of sports associations, the sanctioning of athletic events, the reviewing of our Olympic programs and the establishment of a sports development foundation.

The first of these important provisions sets up the U.S. Sports Board comprising of five members appointed by the President with the advice and consent of the Senate. The primary function of this Board is to charter national sports associations. The control over the chartering authority will allow the Board to break through the bureaucratic walls that have surrounded many of these sports associations and insure that any group holding the U.S. charter for a sport is truly representative of those active in that sport.

Charters will lapse every 4 years after the Olympic games and an association will only be rechartered if it can demonstrate its continued effectiveness and concern for the welfare of athletes.

Also, under this act the Board of each chartered association must have at least 20 percent of its votes controlled by athletes. Thus, we will for the first time insure that athletes will have a strong voice in the making of the rules under which they must compete.

The second major provision of this act relates to sanctioning. In the past, sports associations have often used the sanctioning power arbitrarily to further entrench their own position. We have witnessed constant "sanctioning wars" between the various sports associations where the major casualties have been the athletes.

Our bill states that the chartered associations will have sole sanctioning authority for unrestricted meets. But it must be noted that unrestricted meets do not include purely interscholastic, intercollegiate, municipal, or local club meets. Furthermore, sanctioning authority can only be exercised under the strict rules spelled out in the act. Under these provisions the association cannot refuse to sanction a meet if the following basic conditions have been met:

First. Appropriate steps have been taken to protect athletes' eligibility and amateur standing.

Second. Appropriate provisions have been made to validate records.

Third. Due regard has been given to applicable international rules.

Fourth. Competent officials and proper medical supervision has been provided.

Under our bill a sanction may no longer be refused, as has constantly happened in the past, simply because the event is sponsored by an organization that a particular association considers a rival. We can no longer tolerate arbitrary refusals to sanction events and the serious damage this has caused to the careers of our athletes.

The third major provision of this act is the establishment of the U.S. Olympic Commission. This is a temporary commission which will study our country's participation in the Olympics and quickly report back its findings and recommendations to the Board, the President, and the Congress. I believe all those who are aware of the events at Munich will agree that there is a desperate need for this commission.

Lastly, title III of the act establishes the National Sports Development Foundation. This Foundation will seek private donations on a matching grant basis. During our hearings the committee received extensive and persuasive testimony concerning the need for such a Foundation. Many aspects of amateur sports in this country cannot be adequately funded under the present system. It is essential that we develop the athletic potential of this country at all levels. I feel that the Foundation will go a long way toward ensuring that this potential is met.

Mr. President, since introduction of this legislation, a blizzard of misinformation has been unleased by the warring sports groups in order to try to maintain their absolute hegemony over amateur sports by fooling and frightening the Congress and the American people. Phillip Krumm, president of the U.S. Olympic Committee, for example, has charged that this legislation "is a most dictatorial assault on the freedom and civil rights of the American people" and concluded "without any question this is the most dangerous legislation ever put forward for passage in the history of our country."

Such charges are obviously ludicrous. To charge that this legislation will lead to Federal domination of amateur sports is more than a wild exaggeration, it is in a word a lie.

However, whenever legitimate concerns have been raised by the affected parties we have tried diligently to respond to them. Therefore, though we have felt that this legislation dealt fairly with the concerns of the college and high school community we yesterday introduced a series of amendments suggested by their representatives, in order to try to clear up once and for all any lingering apprehensions they may have had about the effects of the bill. Any fair reading of the bill now must clearly show that the legitimate interests of the colleges and high schools are more than adequately covered.

In conclusion, this legislation will assure that athletes who wish to compete in international meets will no longer be helpless pawns in jurisdictional disputes between warring athletic bureaucracies. In will assure that we will no longer have to get 58 Members of the U.S. Senate to sign a letter to qualify college basket-

ball players for an international competition against the Soviet Union. And it will go far in assuring that needed sports facilities will be developed to aid the public at large.

The sponsors of this legislation—Senators PEARSON, COOK, MAGNUSON, GRAVEL, THURMOND, HUMPHREY, CRANSTON and MONDALE—join me in the belief that this bill will usher in a new era of athletic freedom and reason and that it will lessen rather than increase the political aspect of sport by returning the focus of amateur sports to its proper place—the sacrifice and dedication of the individual athlete striving to exceed his personal goal.

Mr. BEALL. Mr. President, how much time do we have?

The PRESIDING OFFICER. The minority side has 60 minutes.

Mr. BEALL. Mr. President, the distinguished Senator from California very accurately stated the problem that exists with this legislation.

Last Spring the Commerce Committee had before it several pieces of legislation dealing with different facets of amateur athletics. We held hearings on the general subject area, concentrating on the problems of our athletes in international competition, the need to provide support for amateur athletics in our Nation and the continuing disputes between organizations that have caused so many problems. From the testimony that we received then, it was obvious that problems existed and that as a result of those problems, some of our best athletes were not able to participate in international competition, or at least could not participate in a way that allowed them to demonstrate their full potential.

I was impressed then with the need to take some kind of action to spur reform in these problem areas.

At the time of the hearings I was undecided as to the form of this action—and was hesitant about committing the Federal Government to a substantial role in bringing about the needed changes.

Mr. President, I think there is no disagreement as to the nature of the problem, but there is disagreement as to the nature of the solution being offered for these problems.

As we are all aware now, the four major proposals before the committee last spring have now been wrapped up into one new package now known as the Amateur Athletic Act of 1973. When that bill was voted out of committee, I noted some misgivings about it and the direction that it would take us. I also noted in committee at the time of consideration that I did not believe we had given enough attention to the details of the subject matter.

Mr. President, I would like to stand here this day and tell you that the Tunney substitute for S. 2365 has done away with my original objections and that I can now support this proposal—but I cannot. I must still object to the proposal as it now stands, although my concern about the problem has not diminished.

Let me detail some of my objections.

First, I am reluctant to believe that the only way to attack this problem is to set up still another broad Federal instrument, a National Amateur Sports Board. I am not convinced that it is necessary to establish a new Board, a new staff, a new special interest if you will—that will inevitably grow even bigger in coming years—and which we will find consuming ever more tax dollars—which concerns me even if the cost is only a proverbial drop in the bucket.

I also object to the feature of this legislation that puts the Federal Government in the position of determining one sole "charter" holder for each sport in this country. In the report that was filed, I indicated my objections to what appears to me to be the establishment of monopolies in each sport—not just condoned by the Federal Government but actually placed into existence by this new Sports Board. I do not believe we should be in the business of creating monopolies—we have enough already.

Additionally, the bill as it presently stands does not, in my opinion, provide enough protection to high schools and colleges—and their organizations—in the area of the rules and regulations that have been established over the years to protect students at these institutions of learning. There are in existence today rules and regulations that are reasonable and are necessary for the orderly conduct of amateur athletics on a domestic level. Such reasonable rules should be maintained, particularly where they pertain to the academic status of an athlete. I do want to say that the changes made in the substitute bill in this area are steps in the right direction but unfortunately they do not go far enough.

Finally, Mr. President, I am afraid that we have, in this bill, engaged in legislative overkill. I will not deny that there is a problem—but I remain unconvinced that we need legislation this sweeping to deal with it.

I believe there may be alternatives to this approach that have not been adequately explored. When this matter was discussed in committee, I suggested that since the most serious problems seemed to arise from disputes between organizations what we needed was some way to settle these disputes. I suggested that some mechanism—patterned after the NLRA—or other dispute resolving agency would be a proper mechanism. Such a mechanism continues to seem like an avenue that should be fully explored before we go off the deep end.

There are other objections that I could make to this legislation. For instance, it appears now that the Justice Department fears it will hamper our international standing—but I do not think a complete rendention is in order at the moment.

Let me make myself clear so no one mistakes my position. I do believe there is a problem—and I have been appalled at some of the false statements and misrepresentation that have been distributed about this legislation in some quarters. I am not impressed with their arguments and hope they find no solace in my position because my attitude toward their shortcomings has not changed. Yet I do not want to approve what is bad legislation and thereby quite possibly create new problems.

I have nothing but respect for those Members of the Senate who have worked so hard for this bill and who I know are quite sincere in their approval of it. It is my understanding that some amendments may be offered to take care of some of my objections as well as the objections of others. I will attempt to maintain an open mind toward these amendments if they are forthcoming—perhaps they can change this legislation enough to merit support on final passage—though at this time I rather doubt it.

I hope so. But again, Mr. President, I do think this is a problem that deserves our attention. I do not think the people who have been misleading the public with regard to the legislation should take comfort from the fact that maybe final action will not be taken today, because action is needed, and I hope whatever the outcome of the legislation may be, there will be action very shortly to bring a solution to bear on this problem, which has denied American athletes the opportunity of participating in both domestic and international competition.

Mr. COOK. Mr. President, will the Senator from California yield me some time?

Mr. TUNNEY. Yes, I yield the Senator from Kentucky such time as he may require.

Mr. COOK. Mr. President, I am most pleased to rise today in support of S. 2365, the Amateur Athletic Act of 1973. I have been actively involved in the development of this legislation and am one of the three primary sponsors. As my colleagues may know, S. 2365 represents the combined efforts of six Senators and includes what we consider to be the best elements of four separate pieces of legislation previously introduced during this session of Congress.

In May of this year, the Senate Commerce Committee conducted 3 days of hearings on the amateur sports situation as it exists today. Testimony was taken from a number of active and retired amateur athletes, as well as from representatives of the major governing bodies of amateur sports in the United States.

The problems became so readily evident, so blatantly obvious that the Senators involved in the hearings resolved to work together to find a solution to the many serious problems facing the development of amateur athletics in this country. As a result of the hearings, Senators PEARSON, TUNNEY, THURMOND, GRAVEL and myself decided that it would be in the best interests of the thousands of young athletes in America to join forces and attempt to develop comprehensive legislative reform in this area.

The result of those efforts is S. 2365, the first serious attempt to revitalize the amateur athletic structure in the United States, and the first step in committing the U.S. Government to a program for the development of athletic opportunities for all of our citizens who desire to pursue athletic excellence. This, in the last analysis, is the end result that all of us are seeking to accomplish.

The legislation before us today is probably one of the most misunderstood and misinterpreted pieces of legislation that has passed through this process in a long

time. If some of the statements made about this bill are to be believed, the sponsors of S. 2365 are setting out to effectuate a coup d'etat of the U.S. Olympic Committee, the National Collegiate Athletic Association and the Amateur Athletic Union. According to many of those assertions, we are trying to extend Federal control over every highschool basketball game, the New Year's day bowl extravaganzas, and even little league baseball. Furthermore, those groups, which are watching their long lived dictatorships over amateur athletics dissolve are claiming that S. 2365 would establish a massive bureacracy that would thrust its tentacles into every aspect of amateur athletics in America. If this bill creates a bureaucracy of massive proportions, then most every one of us is functioning with such an octopus in our offices. The maximum staff permitted by this legislation is 27.

I think the Senator from California has more employees than that on his staff, and I do not think that means he has a massive bureaucracy over there in the New Senate Office Building. And I might say, Mr. President, to digress just temporarily, that if every coach and every responsible athletic director who has come out against this bill and totally misunderstood it, if they are the people who are teaching our athletes today, if they are the people who are supposed to act as instructors, when we in our offices have not even received a request for a copy of the bill and the report, the only thing I can say is that, like the county executive in my own county who, after the University of Louisville and its group of professors decided to vote out football, came to the rescue of that university and came to their aid and assistance, and that football team played in a bowl game last year, this Senator somehow just cannot get that matter into perspective.

Mr. TUNNEY. Mr. President, will the Senator yield for a moment?

Mr. COOK. I yield.

Mr. TUNNEY. One of the things that I have noticed since this legislation came out of the Commitee on Commerce is that we have one man, Mr. Walter Myers, who is executive director of the NCAA, who sends letters, apparently, to every college that is a member of the NCAA and every coach is a member of the NCAA, indicating that this represents a Federal takeover of the collegiate sports program in this country.

We have seen lobbying of Senators by athletic directors, by coaches, and by the presidents of universities across the country, saying that the bill is bad. I have talked personally to at least 50 Senators about the bill and every one has said that they received communications from their coaches and their athletic directors. Some of them said they would have to be against the bill not because they knew something about the bill and opposed it on its merits but because the athletic directors were against it. I would point out to Senators that under the bill, we exempt intercollegiate sports and interscholastic sports, so how could they be opposed to the legislation when they are not even covered by the legislation?

Mr. COOK. I can only say to the Senator that with the intelligence and the knowledge that Walter Byers exhibited to the coaches that elected him to his position, they should realize what an absolute idiot Walter Byers is and they should summarily fire him from his position.

Not only that, I would suggest to the Senator, and perhaps to some of my colleagues, that they remember it was this Senator who circulated a letter one weekend. We started on a Friday and circulated that letter to as many Senators as we could, to get their signatures on it, so that we could present it to Walter Byers who was testifying on Monday in the House, that he allow athletes under the NCAA rules to play against the Russian teams so that we could have a competitive basketball series in the United States.

He has summarily refused because it was under the sanction of the Amateur Athletic Union and he would not let any ballplayers play. It was not until we hand-delivered to him a letter, signed by some 58 Members of the Senate, that he relented so that the people of the United States could see a decent basketball series between the Russian nation and the United States in which we were victorious. If he had not done so, we would have lost every game they competed for in the United States.

Mr. DOLE. Mr. President, will the Senator from Kentucky yield?

Mr. COOK. I yield.

Mr. DOLE. Mr. President, Mr. Byers is a constituent of mine. I hope the distinguished Senator from Kentucky does not refer to everyone with whom he disagrees as being an idiot.

Mr. COOK. Senator DOLE, I would only state to you, whether he is a constituent of yours or not, that if he wrote a letter to all the coaches and said that this is what the bill was going to do, he not only misrepresented it to the people he represents, but he knew he was misrepresenting it because he was aware of the import of this bill, obviously.

Mr. DOLE. Mr. President, the Senator from California has been talking about a letter received from Mr. Byers. I would like to see such a letter since I have never had such a communication.

Mr. TUNNEY. I am talking about the letter from the NCAA, to all member coaches, to presidents of universities, asking them to lobby their Senators in opposition to the bill. I will tell you, Mr. President, it was one of the most mastive propaganda campaigns, because every Senator I talked to said he had heard from his coaches, his local coaches, even high school coaches and from university presidents, that this legislation was going to be a Federal stranglehold on collegiate and high school sports in this country, when the bill specifically exempts interscholastic sports from its purview.

Mr. DOLE. It may come closer to that now, since the Senator has introduced the substitute. I do not believe that S. 2365 exempted them without this change.

Mr. TUNNEY. The bill we passed out of the Commerce Committee exempted colleges and high schools from its purview. What we are attempting to do in the legislation as it was amended and, in some of the amendments we will be offering as committee amendments, is to try to make it absolutely clear—even though it is clear in the legislation—absolutely clear that we have no intention formally to regulate or informally to regulate interscholastic or intercollegiate sports in this country.

I might say that when this legislation was passed out of the Commerce Committee, there was a propaganda campaign against it by the NCAA and the AAU, in which they called this the most dangerous Federal legislation to come out in this century, that it would be a takeover of amateur athletics by a Federal bureaucracy, and that it was going perhaps to involve billions of dollars in which the Federal Government was going to control and manipulate individuals.

It just so happens that this legislation is supported by every amateur athlete I ever talked to. It is probably supported by 99 percent of the amateur athletes in this country. It is supported by 90 percent of the sports writers in this country, those who have familiarity with the Olympic games and international competition in the sports that would be covered by the legislation.

This is a bill designed to ventilate a system which has been closed for too long. It is unfortunate that the coaches and the college presidents would not read the legislation themselves but that they would take a handout from NCAA headquarters which is controlled by Walter Byers and accept that as gospel.

That is what we are faced with. I wonder if the NCAA controls the Senate? From the conversations I have had, it controls the attitudes of a number of Senators.

Mr. COOK. Mr. President, may I say to the distinguished Senator from Kansas (Mr. DOLE) that I used unfortunate language in relation to Mr. Byers. I will not take it out of the RECORD. Since I have been here, I have never taken anything out of the RECORD. But if I owe Mr. Byers an apology, I will give it to him.

But I wish to say to you, in all fairness, having dealt with this subject for quite some time that at the same time we were sending a representative to the NCAA or to the university to participate, we had a situation in Louisville which we commonly referred to as the "dirt bowl" and that was a program in the summertime put on by the city and county recreation department whereby young athletes from the University of Louisville, or if they lived in Louisville, from Moorhead and other places, or the University of Kentucky or the Indiana University, where they could go down and play basketball, and where they were teaching young children in that community and they were working with young children in that community.

Because a court was set aside by the city and county board of recreation, the NCAA considered that—through Mr. Byers—as a sponsored function and would not let those young men participate in that program, and prohibited it, and said that if they did, they would not be qualified to compete with their colle-

giate basketball teams that fall in regular NCAA competition.

This, I would say to you, Mr. President, was just at the same time that Mr. Byers and his great association were going to the State Department to get money to send athletes to other countries so that they could exhibit their athletes to other countries throughout the world. Just like the amendment the other day to get $15 million so that we did not send the Blue Angels all over the world but kept them in the United States for recruiting purposes.

Mr. DOLE. I do not know how many times the Senator has had them in his State, but I have not been able to have them in my State. That is a good analysis.

Mr. COOK. I would like to give it to you because that is the kind of situation we have been contending with.

Mr. DOLE. I do not take any offense to——

Mr. COOK. I would apologize to him. I honestly would.

Mr. DOLE. I only met Mr. Byers one or two times, but he appears to hold the respect of many Kansans.

Mr. COOK. If you had seen example after example after example as I have, the way young athletes in this country have been treated as a result of the hierarchy of that organization, then the Senator could make a better analysis of that operation.

Let us be very fair about it, because it gets rather disturbing when athletes come in and testify before the committee—and I would suggest to members of the committee that they read that report because it gets rather unfortunate when we read about institutions that are more interested in having 85,000 seats at 8 bucks apiece than they are in having decent athletic facilities on their very own campuses. And when we have the situation with the Olympics where they asked every candidate who wanted to participate in the U.S. Olympics to come all the way to the State of Washington, and they did not give them one dime to get there, they did not give them one dime to eat while they were there. But the U.S. Olympic Committee, sure in the world, charged everyone to come into the stadium to see those young American athletics compete in sports with the Olympic teams, while they were eating peanut butter sandwiches or maybe a hot dog, and Lord only knows where they were sleeping. But the U.S. Olympic Committee made money and the University of Washington made a lot of money, but the kids did not get one penny to go all the way to the west coast to compete. A member of the NCAA in good standing, the University of Michigan, got $60,000 for its athletic fund as a result of the Olympics being out there, and not one candidate for the U.S. Olympic track and field events got so much as a hot dog from the university or the U.S. Olympic Committee.

Rather than refute the specific charges and exaggerations which have characterized the lobbying effort against this bill, I will outline briefly the constructive manner in which S. 2365 approaches the problems plaguing amateur athletics, and the reasons why it received such broad based support in the Commerce Committee, where not one vote was cast against it.

One of the factors which has retarded progress in amateur development is a paucity of athletic representation on the governing bodies of sport. S. 2365 remedies this situation by requiring that any sports organization which holds an international franchise must vest at least 20 percent of its voting power in athletes. This will insure that all athletes have a say in the selection of coaches and other policy matters concerning international competition.

The bill also provides for a comprehensive review of the participation of the United States in the Olympic games. We certainly need this, after the last fiasco the United States went through at the world Olympic games. This study will include the structure and operation of the U.S. Olympic Committee, the selection of coaches and athletes to represent the United States, and any other factors which bear on our Olympic effort.

Mr. President, it may come as a surprise to some of my colleagues that members of the U.S. Olympic Committee, under the statute, have tenure in perpetuity. It means they are never called to task; they are never reviewed relative to their activities. They are appointed, and they stay forever.

The record we have seen regarding members of the U.S. Olympic Committee indicates that they do, in fact, stay forever.

In light of the many well-documented mistakes and tragedies of the 20th Olympiad in Munich, such a timely review is essential if our effort in Montreal in 1976 is to do justice to the potential of our athletes.

One of the truly deplorable aspects of amateur athletics in the United States has been the eternal feud between the Amateur Athletic Union and the National Collegiate Athletic Association. These two monoliths have fought for supremacy over amateur sports in America for nearly 50 years. Efforts at arbitration and mediation have all met similar fates. The last attempt at resolving this conflict was made at the insistence of the Commerce Committee in 1965. Vice President Humphrey established the Kheel Commission, headed by Theodore Kheel, one of the Nation's finest labor mediators. After 2 years of hard work, the commission issued recommendations which were ignored by the NCAA. And the feud continues to this day.

It seriously jeopardized the series of basketball games against the Russians national team this summer, and probably was responsible for the U.S. track loss to the Soviets in Richmond, Va., earlier this year. S. 2365 resolves the problem of sanctioning wars by prescribing the conditions under which any sporting event subject to the act must be sanctioned or certified. The terms essentially follow those of the Kheel Commission report of 1968.

S. 2365 also provides for research into certain areas of athletics which is now seriously deficient. These are the areas of safety and health and athletic facilities.

When the young women athletes of the United States had to compete against each other before they went to Europe to compete in the Olympics, they were placed in a facility in one of the boroughs in New York. That track had such a short off-run that when they got through running the hundred yards, or whatever it was, the young ladies had to crash up against a brick wall.

They finally had to get some pads and put them against the wall so that the young women who were trying to break the world records did not have to break an arm, a shoulder, or a leg by banging up against a solid brick wall at the end of the track.

The bill imposes no regulatory authority, but would, is hoped, assist the entire sports spectrum in lessening the physical and mental risks inherent in athletic competition, and also provide new methods for constructing and utilizing athletic facilities.

Finally, the Amateur Athletic Act of 1973 establishes a National Sports Development Foundation. The foundation would use private contributions, matched by Federal funds, to extend the opportunity for athletic participation to those Americans for whom such participation has heretofore been impossible. It would also provide assistance in encouraging the growth and development of the minor sports in America.

These positive aspects of S. 2365 have somehow been overlooked by most of the sports establishment, which always resents any trespass on its private estate. Yet the very athletes who are the focal points of this entire question are in nearly unanimous support of the proposal. No one should be deceived as to the diligence and caution which went into the drafting of this bill. The public outcry now being heard from the sports hierarchies is only the last gasp of an era which can no longer serve our Nation and our athletes. S. 2365 will provide new life for amateur sports in America, and I urge its passage.

Mr. BEALL. Mr. President, I yield such time as he may desire to the distinguished Senator from Kansas.

Mr. DOLE. Mr. President, I appreciate the efforts of the distinguished Senator from Kentucky (Mr. COOK), the distinguished Senator from California (Mr. TUNNEY), and other sponsors of S. 2365, as well as the efforts of the distinguished junior Senator from Maryland (Mr. BEALL) and the distinguished junior Senator from Michigan (Mr. GRIFFIN), who filed additional views in the committee report.

I do not think anybody quarrels with the basic objective which the committee bill was intended to achieve. As I understand, the first objective is a fundamental reform of the U.S. Olympic Committee. Certainly everyone agrees that that should be done.

The second objective is to end disputes among organizations which govern amateur sports in this country. I think it has been demonstrated from the statements already made that that needs to be done.

The third objective to encourage the development of amateur athletic and physical fitness programs is also laudable. There is no question about that.

There are many things that need to be done. Yet there may also be differences, as there are in almost all controversial matters, in how we should go about doing them.

It is my understanding that there will be a motion to recommit this bill. Perhaps some of us, as we take the responsibility of not being so vigilant, so diligent, as we should have been, of not paying enough heed to the pending legislation, will have an opportunity to appear before the committee and make statements and propose other amendments. That is what some of us intend to do.

Mr. President, yesterday I offered an amendment in the nature of a substitute. I ask unanimous consent that the amendment be printed in the RECORD at the conclusion of my remarks.

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

(See exhibit 1.)

Mr. DOLE. Mr. President, the committee report on S. 2365, the Amateur Athletic Act of 1973, lists three basic goals which the committee bill was intended to achieve. The three goals are: First, fundamental reform of the U.S. Olympic Committee; second, an end to disputes among organizations which govern amateur sports in this country, and third, Federal assistance for the development of amateur sports and physical fitness. I also support the accomplishment of these ends but feel they can be reached through less complicated legislation and with much less Federal involvement.

AMATEUR SPORTS ASSOCIATION BOARD

The amendment I now offer would create an Amateur Sports Association Board which through its chartering powers would be able to restructure the membership of the U.S. Olmypic Committee and insure that our national sports federations are responsive to and representative of the U.S. athletes involved in the sport they represent in international competition. The amendment also includes an amateur athletes bill of rights which assures that no U.S. Sports Association, amateur sport group, or operator can unreasonably deny him the opportunity to compete in events sanctioned or organized by another association or group. This provision is intended to help resolve the disputes whch have surfaced among organizations which govern amateur athletics and is intended to insure that the association always act in the best interest of the athletic membership. In this same vein the amendment includes within its chartering provisions language which would require that any applicant requesting a charter as a U.S. sports association must demonstrate that its board of directors or governing body will at all times include among its voting members not less than two individuals who are actively engaged in amateur athletic competition as competitors in the sport of the association, and that the voting power held by such individuals is not less than 20 percent of the total voting power of the board or governing body. In this way the associations are required to have more direct representation of its active amateur athletic participants, a factor which should encourage the associations to be more responsive to the athletes' needs and less concerned with organizational disputes and power struggles.

The third provision of the amendment would establish a National Commission on the Olympic Games to review our participation in the Olympic games and determine how our participation in the program might be enhanced. A similar provision is included in the bill reported by the committee.

The fourth major section of my amendment would establish within the Department of Health, Education, and Welfare a National Amateur Athletic Sports Information Center which in conjunction with the President's Council on Physical Fitness and Sports would locate, collect, review, organize, publish, and disseminate information and data related to amateur athletics. A tremendous amount of research has been done and is being done in both the public and private sector on issues of importance to amateur athletics. In addition, much of the work we are doing within the United States is being duplicated in other countries. The Amateur Athletic Information Center would be charged with locating relevant information, both domestically and on an international basis, regarding issues of importance to amateur athletics.

The Center could then serve as a single source which someone might contact in order to tap the wealth of information that has already been developed on any single topic.

COORDINATE EXISTING INFORMATION

The committee bill reflects specific interest in two special areas of amateur athletics by authorizing the creation of a Division of Facilities and a Division of Sports Health and Safety under the Board. The Information Center also emphasizes these topics but rather than authorizing new studies, would coordinate existing efforts in these areas; and there are many efforts underway in these areas. For example:

First. Executive Order 11562—September 29, 1970—charges the President's Council on Physical Fitness and Sports responsibilities to develop and coordinate "a national program for physical fitness and sports," including responsibilities to coordinate related Federal services and programs, to stimulate and encourage research in the areas of physical fitness and sports performance, to improve school health and physical education programs and to enhance opportunities for participation in physical fitness and sports activities.

Second. The Consumer Product Safety Act—Public Law 92-573—established a Federal regulatory commission with power to investigate and regulate the safety of "consumer products" sold or distributed to a consumer, for use in or around a home or school, in recreation or otherwise. The Commission is presently considering a petition to develop a consumer product safety standard with regard to artificial turf used on athletic fields and it can be anticipated that it will consider the development of standards for other athletic equipment, such as helmets, in the discharge of its responsibilities.

Third. The National Electronic Injury Surveillance System—NEISS—operating under the Consumer Product Safety Commission, reports product-related injury cases treated in a representative, nationwide sample of hospitals. Under product category P1200, injuries related to sports and recreational equipment—for example, product description 1245: Ice skates—are detailed.

Fourth. The National Operating Committee on Safety and Athletic Equipment—NOCSAE—the NCAA Committee on Competitive Safeguards and Medical Aspects of Sports, the National Federation of State High School Associations' Subcommittee on Safety and its Subcommittee on Equipment, and the Joint Committee on Medical Aspects of Sports—which includes representatives of all school-college athletic administrative organizations—are private organizations regularly engaged in developing improved athletic safety standards, practices and equipment. As one aspect of this work, the NFSHSA and the Committee on Medical Aspects of Sports of the American Medical Association publish ten monthly comments annually on the work of the NFSHSA's Safety and Equipment Subcommittees.

Fifth. The Health Services and Mental Health Administration, and in particular the National Institute for Mental Health, is charged with responsibility for the conduct and support of mental health programs, including research programs in the areas of mental health. This same agency has responsibilities regarding programs directed at drug abuse. The Institute's National Clearinghouse for Drug Abuse Information collects and distributes published information regarding drug abuse.

Sixth. The Subcommittee on Juvenile Delinquency of the Senate Judiciary Committee is presently conducting hearings and developing a record regarding the use and abuse of drugs by athletes.

Seventh. Athletic facilities are annually cataloged in several private publications, such as the Bluebook of College Athletics published by the Rohrich Corporation.

Eighth. The National Association of Collegiate Athletic Directors each year conducts workshops in the planning, financing and construction of athletic facilities.

The Information Center incorporates the basic concepts included in the two divisions which the committee bill would establish under the U.S. Amateur Sports Board. However, the center I am proposing would be totally oriented toward locating and making available information in which amateur athletics has a definite interest. It would not have the staff or resources to initiate its own studies or develop reports on specific issues, but instead is intended to locate information which has already been developed so that it might be readily available for those in need of this information.

The Information Center under my amendment would be situated in the Department of HEW rather than under

the Amateur Sports Board. In HEW, it could coordinate its activities with the President's Council on Physical Fitness and Sports, which is already working to promote physical fitness and disseminate information which will encourage better utilization of athletic facilities and improve safety in athletic competition. In fact, a seminar on these very topics is being conducted at Kansas State University in Manhattan, Kans., by the President's Council this weekend.

FUND AND UTILIZE EXISTING PROGRAMS

A major provision included in the committee bill which is lacking in the amendment I propose is the section which would establish a National Sports Development Foundation. As proposed by the committee, the Foundation would gather a $100 million trust corpus—50 percent Federal funds and 50 percent private funds—and the interest from this corpus which would amount to some $8 to $10 million annually would be available to promote the development of amateur athletics across the country. I would definitely agree with the the basic purpose of the Foundation proposal, but it would appear that the administrative costs of establishing and operating an additional program as well as the fact that the proposal ties up $50 million in Federal money over an extended period of time might lead one to conclude that these additional moneys might better be spent on an on-going Federal program which helps serve the needs of amateur athletics. There are many programs currently functioning which provide assistance for both the construction of facilities and the operation of sports programs. The Bureau of Outdoor Recreation budgets over $180 million annually for the construction of outdoor recreational facilities across the country. Community indoor sports facilities would be eligible for funding under the Better Communities Act. For the operation of sports programs, every community in the country receives general revenue sharing funds which are available for this purpose. In addition, private funds are also available to meet the costs of operating sports programs across the country. The Kennedy Foundation assisted and promoted the handicapped Olympics program. It is estimated that NCAA colleges alone annually subsidize their sports programs at a cost of $49.5 million. The National Summer Youth Program which received a $3 million Federal grant as well as private funding and donated facilities provided by some 105 colleges operated a health, recreation, and education program for disadvantaged youth in some 70 cities and 35 States across the country.

I would agree that there may be a need for further development of programs along these lines, but it would seem that we can get the best utilization of the Federal dollar if we expand existing programs or provide information to communities so they can better use existing facilities and resources rather than establish a new Federal program and bureaucratic and administrative structures that go along with it. Thus, while I would support the purposes of the Sports Foundation, I feel the ends can best be accomplished in other ways.

LIMITED FEDERAL INVOLVEMENT

The substitute amendment contains the elements necessary to deal with basic structural problems which have plagued U.S. participation in international amateur sports, without excessively imposing the Federal Government on amateur sports. It would establish a Federal board with specific authority only to preside over a reorganization of unrepresentative holders of franchises from international federations, and which, after this reorganization had been accomplished and in effect for a reasonable period of time, would be dissolved. Thus, there would be effective action but no permanent Federal amateur sports establishment.

LIMIT POWERS OF THE BOARD

In contrast, the present text of S. 2365 would establish a permanent Federal amateur sports bureacracy, including an Amateur Sports Board with authority not only to reorganize the international sports franchise holders, but with many additional authorities, the total effect of which is pervasive Federal Government involvement in and regulation of amateur athletics in this country. The authority of the Board is expanded by two Divisions with responsibilities in the areas of athletic facilities and athletic health and safety. It would be given broad powers to make inquiries regarding athletics and physical fitness generally, to impose any condition on organizations chartered to hold international franchises, to take any action necessary to advance amateur athletic competition and rulemaking powers to issue any regulations it may find appropriate in connection with these responsibilities. Such provisions would charter an agency to occupy the entire field of amateur athletics.

The substitute would not grant the Board these additional broad powers, which have nothing to do with its supposed principal function. It would not expand the Board's staff with two large operating Divisions. Nor would it establish still another Federal body, the National Sports Development Foundation, proposed by S. 2365.

NATIONAL COMMISSION ON OLYMPIC GAMES

The substitute would set up a commission, appointed by the President to study the Olympics and the manner in which U.S. participation is organized, and to make specific recommendations, including recommendations for legislation, if necessary, regarding appropriate reforms. After discharging these responsibilities the Olympic Commission would go out of existence. These provisions are basically the same as the present text of S. 2365, with the exception that S. 2365 would authorize the Amateur Sports Board to appoint the members of the study commission.

ATHLETES' BILL OF RIGHTS

Finally, the substitute contains an "Amateur Athletes' Bill of Rights" provision which would ensure that amateur athletes would not arbitrarily be prevented from competing in international competition. No sports group would be able under this provision to withhold athletes from major international competition for the purposes of organizational aggrandizement. On the other hand, this provision would permit high schools, colleges, and other educational institutions to have and enforce reasonable rules for the protection of student-athletes. Surely such policies which do in fact promote the physical or educational welfare of student-athletes should be permitted to stand.

In contrast, the present language in comparable provisions of S. 2365 would endanger rules, such as playing and practice limitations and provisions for approval of outside competitions in high-pressure sports, which have operated to protect student-athletes and institutions from exploitation by outside promoters. The schools and colleges have expressed great concern that these provisions will erode or destroy systems of regulation which they have developed over the years in response to various abuses, abuses which were bad for amateur athletes and for the high school-college athletic programs which provide athletic instruction and competition for so many of this country's youth. They have also been concerned that the bill's provisions would make substantial inroads into the autonomy of higher education institutions by giving a Federal board authority to review their athletic rules and policies and determine whether they are reasonable and educational. The substitute would leave these issues to the courts rather than a Federal regulatory agency. By providing that actions may be brought not only by the athlete personally, but also on his behalf by any sports club or association to which he, his institution, or his coach belongs and by specifying that attorney's fees may be awarded, it ensures that there will be ready access to the courts.

In sum, the substitute proposes a minimum of intervention by the Federal Government in amateur sports, while at the same time promising effective action directed to the real problem areas which have affected this country's international sports effort.

Mr. President, I wish to conclude by saying that I share the desire of the sponsors of this legislation and I would hope that if some agreement can be reached and the bill goes back to committee, it will come back to the Senate in a form that can be passed and given broad support. I do not mind saying I have been contacted by college coaches, high school coaches, and athletic directors. I do not dismiss their comments out of hand. I do not describe them as a special interest group. I do not believe in the time I have been in Congress I have had much contact with this group of men. For the most part they are outstanding men. They are concerned about the young men they coach. So I am perfectly willing to listen to their views. I do not ascribe to them any evil intent, nor do I believe they have been taken in by some letter sent by someone.

I believe the coaches of America are intelligent men and I do not believe they can be used by any group or groups in an effort to foster some legislation that

would be against the best interest of the American athlete.

I reserve the remainder of the time on this side.

EXHIBIT 1

AMENDMENT (IN THE NATURE OF A SUBSTITUTE)

(Intended to be proposed by Mr. Dole to S. 2365, a bill to regulate interstate and foreign commerce as it relates to the conduct of organized amateur athletic competition within the United States and the participation of American athletes in international amateur athletic competition)

Strike all after the enacting clause and insert in lieu thereof the following:

"That this Act may be cited as the 'Amateur Athletic Act of 1973'.

FINDINGS

SEC. 2. The Congress finds that—

(a) it is necessary and desirable for the United States to maintain a rigorous amateur athletic program that will field the best possible teams, with the assistance of the most competent administration and coaching available, in Olympic games and other international competition in which the United States is represented and which will achieve broad participation by amateur athletes in Olympic games and other international competition;

(b) it is necessary and desirable that the United States be effectively represented in international federations governing amateur athletic competitions by organizations which represent the athletes and organizations in the United States conducting active national programs in the sports concerned;

(c) it is appropriate to ensure that participation on amateur athletic teams representing the United States in international competition is not restricted by sports groups and operators through agreements, practices, and procedures not reasonably necessary to promote the physical, moral, and educational welfare of amateur athletes;

(d) the Act of Congress by which the United States Olympic Committee was created as a federally chartered corporation expressly reserves to the Congress the right to alter or amend the charter; and

(e) an evaluation is required of the form of organization and means by which the United States can participate most effectively in the Olympic games and provide leadership in accomplishing action to assure that future games will be organized and conducted in a manner which will contribute to the achievement of the high ideals of the games and promote international friendship and good will through athletic competition between individuals.

DEFINITIONS

SEC. 3. As used in this Act, the term—

(a) "amateur athlete" means a person who participates in athletics for physical, mental, social, or educational benefits he derives therefrom, to whom athletics is an avocation, and who has not accepted compensation or the promise of compensation for such participation. The term "compensation" shall not include scholarships or grants in aid consistent with the rules of any secondary school, or college or other institution of higher learning, or the payment or reimbursement of actual expenses of an amateur athlete;

(b) "athletics" means physical sports following prescribed rules in which amateur athletes participate;

(c) "Board" means the United States Amateur Sports Association Board;

(d) "coach" means a person who teaches, trains, or supervises amateur athletes or athletics, whether or not he receives remuneration therefor;

(e) "commerce" means commerce, transportation, transmission, or communication between any place in any State and any place outside thereof, or between places in the same State through any place outside thereof, or wholly within the District of Columbia;

(f) "institution" means any secondary school, college, or other institution of higher learning, club, or similar body, which organizes or supervises amateur athletes or employs coaches;

(g) "international competition" means the Olympic games, the pan-American games, and other amateur competition in which individuals or teams, officially representing the United States, compete with or against individuals or teams officially representing any foreign nation or political subdivisions thereof;

(h) "operator" means a person, organization, association, federation, or other private entity, whether or not incorporated, which conducts, sponsors, or promotes any amateur athletic contest, meet, or tournament, whether or not such entity receives remuneration therefor, but such term does not include any State or political subdivision of any State, or any institution specified in subsection (f);

(i) "sport group" means a private organization, association, or federation, whether or not incorporated, whose members or affiliates are amateur athletes, coaches, institutions, or operators, and the primary purpose of which is to approve or sanction, or supervise under established rules, the conduct of amateur athletic contests, meets, or tournaments;

(j) "State" means each of the several States of the United States, the District of Columbia, the Commonwealth of Puerto Rico, Guam, the Virgin Islands, the Canal Zone, and American Samoa; and

(k) "United States Sports Association" means a corporation not for profit which holds a charter granted under section 102 by the Board.

TITLE I—UNITED STATES AMATEUR SPORTS ASSOCIATION BOARD

ESTABLISHMENT OF BOARD

SEC. 101. (a) There is established in the executive branch of the Government an independent agency to be known as the United States Amateur Sports Association Board. The Board shall consist of five members, selected for their demonstrated excellence, ability, knowledge, and experience in the field of amateur sports, who shall be appointed by the President, by and with the advice and consent of the Senate. Not more than three members shall be affiliated with the same political party. One member shall be an amateur athlete who has, within the preceding fifteen years, engaged in international amateur athletic competition sanctioned by the appropriate organization. No member shall have been, nor serve during his term of office as, an officer or employee of the United States Olympic Committee or any national or international athletic sports-governing body. No individual shall be eligible for appointment who has previously served as a member of the Board. A member may be removed from office by the President for neglect of duty or malfeasance in office, but for no other cause.

(b) (1) Each member shall be appointed for a term of three years, except that—

(A) of the members first appointed, two shall be appointed for terms ending one year after the date of enactment of this Act, two shall be appointed for terms ending two years after such date, and one shall be appointed for a term ending three years after such date;

(B) no member appointed to serve for the remainder of the unexpired term of his predecessor shall serve under such appointment beyond the end of such unexpired term (except as provided in subparagraph (C)); and

(C) a member shall continue to serve after the expiration of his term until his successor has been appointed and qualified, but such post term service shall not be for a period greater than ninety days.

(2) The Board shall elect a Chairman and a Vice Chairman from among its members for a concurrent term of one year. No member who serves as Chairman may succeed himself as Chairman. The Vice Chairman shall act as Chairman whenever the Chairman is absent or disabled from performing his duties as a member.

(3) Three members of the Board constitute a quorum for the conduct of business.

(4) The Board shall have a seal which shall be judicially recognized.

(c) The Board shall first meet within thirty days after the date on which the fifth member is appointed and thereafter shall meet on call of the Chairman or upon written demand of not less than three members, but not less frequently than once each year.

(d) With the consent of at least three other members, the Chairman may appoint an Executive Director and such additional employees as the Board determines are necessary to carry out its duties. The Executive Director shall serve at the pleasure of the Board and shall be compensated at a rate to be determined by the Board, but not in excess of the maximum rate for GS–18 of the General Schedule under section 5332 of title 5, United States Code. The Board shall maintain an office in Washington, District of Columbia.

(e) Members of the Board shall be compensated at the maximum daily rate for GS–18 of the General Schedule under section 5332 of title 5, United States Code, for each day (including traveltime) spent in the active performance of their duties under this Act, and shall receive reimbursement for travel, subsistence, and other necessary expenses incurred in the performance of such duties.

(f) The Board shall cease to exist as at the close of December 31, 1978.

FUNCTION OF THE BOARD

SEC. 102. (a) Upon application made by any corporation meeting the requirements of section 103, including any requirements imposed by the Board through regulations, the Board may issue a charter to that corporation designating it a United States Sports Association with authority regarding United States participation in international competition for that sport or sports.

(b) In carrying out its function under subsection (a), the Board is authorized—

(1) to promulgate rules and regulations governing applications for charters, the terms and conditions under which it will issue, amend, suspend, or revoke a charter, operation under a charter, and such other matters as may be necessary, and

(2) to take whatever other action may be necessary in order to insure compliance with the terms of charters granted by it and in order to further amateur athletic competition by United States citizens in international competition having due regard for international amateur sports rules.

Actions of the Board pursuant to this subsection shall be consistent with the requirements of the Administrative Procedure Act (5 U.S.C., ch. 5).

(c) (1) Prior to granting any charter the Board shall hold a hearing thereon pursuant to section 554 of title 5, United States Code. The burden shall be on the applicant sports association to establish to the satisfaction of the Board that it is fairly representative of the athletes and of sports groups and institutions conducting national programs involving regularly scheduled practice and competition throughout the usual competitive season in the sport concerned and that it is otherwise capable of carrying out the duties of a United States Sports Association. The applicant sports association shall be requested to provide evidence that it is qualified to receive recognition by the appropriate international sports association as the United States organization responsible for certifying the amateur status of United States athletes and approving United States teams for in-

ternational competition in its sport. The appropriate international sports association shall be requested by the Board to submit its views regarding the qualifications of the applicant association, but the failure of an international sports association to recognize or state it will recognize the applicant association shall not be cause for withholding a charter.

(2) The Board may at any time on its own motion or on the application of an interested party review all matters related to the activities of an association and shall take such action as it deems appropriate including, but not limited to, placing conditions upon the continuation of the association's charter or withdrawing the charter.

(3) Section 3(3) of the Act of September 21, 1950 (64 Stat. 900, 36 U.S.C. 373(3)), is amended by inserting the following language at the end thereof: "*Provided, however,* That nothing contained in this Act shall limit the jurisdiction of the United States Amateur Sports Association Board or of any United States Sports Association chartered by the said Board;".

UNITED STATES SPORTS ASSOCIATIONS

SEC. 103. (a) In order to be eligible to receive a charter under section 102 as a United States Sports Association, a group of not less than three individuals shall, in accordance with regulations promulgated by the Board—

(1) incorporate under the laws of any State or the District of Columbia as a corporation not for profit for the purpose of furthering amateur athletic competition within the United States and by United States citizens or residents in international competition with respect to a single sport,

(2) submit an application to the board setting forth a request for a charter, a copy of the corporate charter and bylaws, the names, addresses, and occupations of all incorporators, shareholders, or members and other persons having any financial interest in the corporation together with details of such person's affiliation with any sports group, the sport in which it seeks to further competition, and such additional information as the Board may request,

(3) demonstrate to the satisfaction of the Board that—

(A) its board of directors, executive committee, or other governing body will at all times include among its voting members not less than two individuals who are actively engaged in amateur athletic competition in the United States as competitors in the sport of the association, and that the voting power held by such individuals is not less than 20 per centum of the total voting power held in that board, committee, or other body.

(B) it will at all times, to the extent consistent with rules and regulations promulgated by the Board, operate under procedures reasonably calculated to inform amateur athletes under its jurisdiction of policy matters under consideration by the corporation, and reasonably calculated to reflect in its policies the views of such athletes.

(C) it will undertake to develop interest and participation in its particular sport throughout the United States,

(D) it is reasonably representative of the athletes and of the sports groups and institutions in the United States actively engaged in the conduct of a national program involving regularly scheduled practice and competition throughout the usual competition throughout the usual competitive season in the sport concerned, with particular emphasis on those programs which produce world-class competitors in such sport,

(E) the terms of office, and the maximum period which any person may serve in any capacity, of its officers and of the members of its Board of Directors, executive committee, or other governing body are expressly limited to a reasonable period, and

(F) it has established and will follow procedures which assure that the nomination and selection of coaches, administrators, trainers, and athletes will be conducted without regard to organizational affiliations and so that the selection will fall upon the most highly qualified individuals.

(b) No corporation shall be eligible to receive or hold a charter under section 102: (1) if more than 40 per centum of the voting power in such corporation is held or controlled, directly, indirectly, or in common with affiliates, by any person, corporation, partnership, or association which, directly, indirectly, or in common with affiliates, holds or controls more than 40 per centum of the voting power in any United States Sports Association; or (2) if any officer or director of such corporation is also an officer or director of any United States Sports Association. An "affiliate" of an organization shall mean any organization which controls, is controlled by, or is controlled in common with, or which has officers, directors, or executive committee members in common with such organization.

(c) No United States Sports Association shall receive a charter for more than one sport on the Olympic or pan-American games program, unless the Board makes a finding in writing after a hearing that—

(i) the sports with respect to which it wishes to receive a charter are closely related and would benefit by common administration, and

(ii) it is capable of functioning as a chartered sports association, with respect to each such sport, in the best interests of that sport and of the amateur athlete participating in such sport.

UNITED STATES SPORTS ASSOCIATION EXCLUSIVE AUTHORITY

SEC. 104. (a) Except as provided in subsection (b), commencing on the earlier of the date a United States Sports Association for the sport concerned is chartered by the Board or the date which is two years after the date of enactment of this Act, a United States Sports Association for the sport concerned shall in the case of each sport on the Olympic or pan-American games program have exclusive authority: (1) to certify to appropriate foreign or international amateur sports bodies regarding the amateur status of United States athletes for the purposes of international competition; and (2) to approve the participation of individuals or teams officially representing the United States in international competition.

(b) The Board may waive the requirement of subsection (a) only by unanimous vote and only if there is no United States Sports Association which can exercise the required certification or approval authority.

(c) The district courts of the United States shall have jurisdiction to enjoin the commission of acts in violation of subsection (a). The Board or any association chartered by it may bring to the attention of the Attorney General any alleged violation of subsection (a) and the Attorney General shall thereupon cause an investigation to be made and if appropriate shall initiate injunctive proceedings in the United States district court for the district where such violation shall have occurred or at the residence or principal place of business of any defendant.

PROHIBITION

SEC. 105. (a) Except in the case of a violation of reasonable rules and regulations, including those requiring approval of the conditions of competition, duly adopted to promote the physical, moral, or educational welfare of amateur athletes, no United States Sports Association or other amateur sport group or operator engaged in commerce or in any activity affecting commerce which is a member of a United States Sports Association shall, directly or indirectly—

(1) deny or threaten to deny any amateur athlete the opportunity to compete in any amateur athletic event conducted, supervised, sanctioned, promoted, or organized by such United States Sports Association or sport group or operator on the ground that such amateur athlete competed or intends to compete in any international amateur athletic event conducted, supervised, sanctioned, promoted, or organized by any other United States Sports Association, or otherwise to take or threaten to take any disciplinary action against any amateur athlete on such ground; or

(2) otherwise impose or threaten to impose any unreasonable requirement or condition which results in the denial of or interference with the freedom of any amateur athlete to compete in any international amateur athletic event to be conducted, supervised, sanctioned, promoted, or organized by such United States Sports Association, including, but not limited to, unreasonable requirements or conditions for granting its sanction to any such event conducted by or under the supervision of any other United States Sports Association.

(b) Whenever any United States Sports Association or any amateur sport group or operator which is a member of a United States Sports Association has engaged, or there are reasonable grounds to believe that it is about to engage, in any act in violation of subsection (a) hereof, a civil action for preventive relief, including an application for a permanent or temporary injunction, restraining order, or other appropriate order, may be instituted by any amateur athlete claiming to be aggrieved, or on his behalf, by any sport group of which he, his coach, or his institution is a member or is affiliated.

(c) The district courts of the United States shall have jurisdiction of actions brought under subsection (b) hereof. Such actions shall be commenced in the United States district court for any judicial district in which the violation is alleged to have occurred or be threatened, or in which the defendant United States Sports Association or sport group or operator is incorporated or has its principal office, or in which any person resides who, being a member of the board of directors or other governing body of, or a principal officer of, or a person controlling the affairs of, such defendant United States Sports Association or sport group or operator, has taken affirmative action to adopt or carry out any order or decision of such United States Sports Association or sport group or operator alleged to be in violation of subsection (b).

(d) In any action commenced pursuant to subsection (b) the court, in its discretion, may allow the prevailing party a reasonable attorney's fee as part of the costs.

AUTHORIZATION OF APPROPRIATIONS

SEC. 106. There are authorized to be appropriated such amounts as may be necessary to carry out the provisions of this Act.

TITLE II—OVERSIGHT OF OLYMPIC COMPETITION

SEC. 201. There is hereby established a National Commission on the Olympic Games (hereinafter referred to as "the Commission").

SEC. 202. The Commission shall be composed of nine members who shall be appointed by the President of the United States. Such members shall be selected with the purpose of assuring objective consideration of all viewpoints. No more than two members of the Commission at any one time shall be an officer or director, past or present, of the United States Olympic Committee, or of any other national athletic association or federation.

SEC. 203. The President shall designate a Chairman from among the members of the Commission. Any vacancy on the Commission shall not affect its powers and shall be promptly filled.

SEC. 204. The Commission shall review the participation of the United States in the Olympic games, and, if it recommends that such participation should be continued, shall also recommend the form of organization by means of which the United States should participate in the Olympic movement and shall present specific proposals for any legislation required to implement its recommendations. In formulating its legislative recommendations, the Commission shall take into account—

(1) the objectives of the modern Olympic movement and the extent to which those objectives are being met;

(2) the manner in which the Olympic games are administered, with particular attention to the views of those who participate in those games as athletes, coaches, officials, or otherwise, or who have attended such games in any other category;

(3) the role which the United States Olympic Committee has played in international sports and the manner in which the United States participation in the Olympic games has been organized and administered by that committee;

(4) the policies which would assure the selection on a fair and equitable basis of the best qualified athletes, coaches, managers, trainers, and other officials and which would provide the maximum opportunity for persons to develop their athletic skills and participate in international athletic competition; and

(5) the arrangements which will best protect the interests of the individual athletes during the period of their training for, travel to, and participation in the games.

SEC. 205. The Commission shall submit to the President and to the Congress a final report of its findings and recommendations on the earlier of—

(a) the one hundred and eightieth day after the date on which the ninth member of the Commission is appointed, or

(b) March 15, 1974.

SEC. 206. Subject to such rules and regulations as may be adopted by the Commission, the Chairman shall have the power to—

(1) appoint and fix the compensation of an Executive Director, and such additional staff personnel as he deems necessary, without regard to the provisions of title 5, United States Code, governing appointments in the competitive service, and without regard to chapter 51 and subchapter III of chapter 53 of such title relating to classification and General Schedule pay rates, but at rates not in excess of the maximum rate for GS–18 of the General Schedule under section 5332 of such title;

(2) procure temporary and intermittent services to the same extent as is authorized by section 3109 of title 5, United States Code, but at rates not to exceed $100 a day for individuals; and

(3) hold such hearings, sit and act at such times and places, and administer such oaths, as the Commission or any subcommittee or any three of the members thereof may deem advisable.

SEC. 207. Each department, agency, and instrumentality of the executive branch of the Government, including independent agencies, is authorized and directed to * * *

TITLE III—AMATEUR ATHLETIC INFORMATION CENTER

SEC. 301. (a) ESTABLISHMENT—There is hereby established within the Department of Health, Education, and Welfare an Amateur Athletics Information Center.

(b) The Center shall have a director and such other personnel as may be necessary to enable the Center to carry out its duties and functions under this Act and shall coordinate its functions with those of the President's Council on Physical Fitness and Sports.

SEC. 302. (a) FUNCTIONS—It shall be the duty and function of the Center to locate, collect, review, organize, publish, and disseminate information and data related to Amateur Athletics.

(b) The information and data with respect to which the Center shall carry out its duties shall include but not be limited to information and data with respect to the following—

(1) Existing and potential procedures for the financing, construction, maintenance, and better utilization of athletic facilities.

(2) Facts, studies, and experiments relating to improved safety in athletic completion including innovative changes in equipment and facilities.

(3) Facts, studies and experiments relating to the health of athletes including but not limited to the use of drugs and other medications by athletes and innovative techniques in physical therapy used to treat athletic injury.

(4) Information related to potential sources of financial assistance, both public and private, which are available to communities, institutions, and individuals to promote Amateur Athletic competition and improve athletic facilities.

SEC. 303. (a) ADMINISTRATION—The Secretary of Health, Education, and Welfare shall make available to the Center all information and data within the Department of Health, Education, and Welfare which may be beneficial in carrying out the duties and functions of the Center.

(b) Each department or agency of the Federal Government is authorized to make available to the Secretary for use by the Center, any information or data which the Secretary may request for such use.

(c) The Secretary of Health, Education, and Welfare shall, to the maximum extent feasible, enter into arrangements whereby State and other public and private agencies and institutions having information or data which is useful to the Center in carrying out its duties and functions will make such information and data known and where possible available for use by the Center.

SEC. 304. AUTHORIZATION—There is authorized to be appropriated such funds as are necessary to carry out the objective of this Act.

Mr. TUNNEY. Mr. President, I would like to ask my good friend if he has had an opportunity to read the legislation that is before the Senate, and particularly the portion that appears in amendment 459, subsection (10) which states:

(10) "Restricted competition" means amateur athletic competition which is restricted to a specific class of amateur athletes, including, but not limited to, high school or collegiate athletes, members of the Armed Forces, or any other specific category of amateur athletes.

This bill relates to unrestricted competition, not restricted competition.

In other words, what we do by that definition is to take out from under the legislation that classification of athletic events. Therefore, college events, high school events, and events restricted to members of the Armed Forces are exempted from coverage; and all it takes is a simple reading of the legislation to know that.

I am saying that the coaches and the university presidents did not read the legislation; they just followed the dictates of a letter put out by the NCAA.

I talked to a Senator who said he received a letter from one of the colleges in his State saying the bill would strangle intercollegiate athletes. That indicates the person who wrote the letter did not have any understanding of the legislation whatever. That is the kind of misinformation and obfuscation of fact we are faced with in connection with the passage of this bill.

I wish that in the case of amateur athletics a substantial price tag were involved so that Senators would read the legislation and know themselves what it provides.

Special lobbying groups are interested in one thing, and that is protecting their monopoly, the domain that they have had for years and years. Douglas MacArthur tried to do something about it and he gave up; Archibald Cox tried to do something about it and he gave up; the Kheel Commission tried to do something about it and it gave up. At last we have an opportunity to do something to eliminate this warfare which only hurts amateur athletes and unfortunately, because of the propaganda, many Senators do not understand what the bill is about and would vote against it.

Mr. DOLE. The Senator asked a question. If I can recall the question, I wish to answer. I think the question was whether or not I have read the bill. I have, and I have read the committee report.

I read some rather broad language in the bill including a section on page 17, sort of blanket authority which gave the board any authority they deemed necessary to carry out the act, together with other broad powers which are granted to the Board throughout the bill.

As I indicated earlier, I am not opposed to the concept of the legislation and I do not wish to get into a quarrel with the two Senators who are the principal sponsors of the bill. I do not want to oppose the purpose of the legislation. I am only suggesting that a number of Senators have been contacted by their constituents and I think perhaps at times the Senator from California and the Senator from Kentucky respond to calls from their constituents, and normally find there is some merit to their complaints.

We need now to get the matter back to the committee to—I do not wish to say improve it, but at least to perfect it, because there is room for reasonable objection.

Mr. TUNNEY. Mr. President, I think the suggestion made by my good friend yesterday was a good one, that perhaps if the bill received more consideration we would be able to give an opportunity for coaches to come and testify, as well as athletic directors and presidents of universities, and that perhaps some of the fog that surrounds the bill could be eliminated.

I must say, however, that there is one aspect of the propaganda campaign that very deeply disturbs me. I was talking to a basketball coach of a major college recently. I asked him why it was that the NCAA opposed the bill so much and why

the coaches were coming forward and opposing the bill. This particular coach was for the legislation. He said:

Well, the NCAA has a rule book. There are literally thousands of rules. There is no coach in the country who is a member of the NCAA who is not in violation of at least one of the rules. If the NCAA should send a team down to investigate the coach they could always find some violation of the rules which would mean they would be able to suspend the coach of the college from intercollegiate sports.

Thus when the NCAA blows the whistle, all the coaches steps in line.

I do not know whether that is true or not true, but this was a distinguished coach at a distinguished university telling me privately what the situation was, and I have no reason to disbelieve his observations.

I think that explains why it is that we have coaches writing in and university presidents calling in saying we have to defeat this legislation, without having read the bill. I think that is a tragic situation.

I yield to the Senator from Kentucky.

Mr. COOK. Mr. President, under the circumstances, in view of the discussion we have had, I would like to now move that S. 2365 be recommitted to the Commitee on Commerce, to be reported back to the Senate on or before November 8.

The PRESIDING OFFICER. Is there objection?

Mr. DOLE. Mr. President, reserving the right to object, I think it should be reported fairly soon, but I would point out that we are going to have a 2-week recess for the House to catch up, and that would give us only about 2 weeks to consider the bill.

Mr. COOK. I am giving us 2 weeks on this end and 2 weeks at the latter end.

Mr. DOLE. We come back the 29th.

Mr. COOK. It is the rest of that week and the following week.

Mr. DOLE. When does the Senator propose to hold hearings?

Mr. COOK. We can have hearings during the first 2 weeks in November.

Mr. TUNNEY. Mr. President, if I could proceed here, I do not see any reason at all why we could not hold hearings, if Senators would be prepared to sit in on the hearings, and I for one would be prepared, at the end of next week or to hold hearings the first few days of the recess, and then, if there was any need to have any further hearings, hold hearings the first few days in the month of November. I am willing to do this despite the fact that I have already sat through very extensive hearings on this issue, and even though these additional hearings are necessary only because of the confusion caused by the deliberate misstatements of the opponents of this bill. These hearings would give the Commerce Committee plenty of opportunity to listen to witnesses and mark up the bill.

I think the Commerce Committee is completely familiar with the legislation, having considered it originally and having passed the bill out of committee.

I recognize what my very dear friend from Kentucky has said—that the facts are that there is so much misunderstanding regarding the legislation that we really ought to have an opportunity to clarify the issues and to give people who disagree an opportunity to come forward.

So I wholeheartedly concur with my friend's suggestion that this bill be recommitted to the Commerce Committee.

Mr. ALLEN. Mr. President, reserving the right to object——

The PRESIDING OFFICER. The Senator from Alabama.

Mr. ALLEN. Did I understand that the Senator is making this in the form of a unanimous consent request?

Mr. COOK. Would the Senator repeat that?

Mr. ALLEN. Is the Senator making a motion or a unanimous-consent request?

Mr. COOK. Well, it does not have to be in the nature of a unanimous-consent request.

Mr. ALLEN. That being true, it would be subject to amendment, and if the Senator would file his motion, it would be subject to amendment, and I would like to suggest a different time.

On the other hand, if it is a unanimous-consent request, I would interpose no objection if he would amend his unanimous-consent request by stipulating that when the bill comes back to the floor of the Senate, or the time limitation agreement heretofore entered into by unanimous consent would be rescinded. There was 1 hour to the side stipulated. We have already been debating this measure for an hour or more, so the time is just about up.

I would have no objection to the bill's going back to committee if, when it comes back to us, we find ourselves in the position we would find ourselves in with respect to any bill freshly reported from a committee.

So if the Senator would make that agreement or couple that with his request, I would interpose no objection.

Mr. COOK. May I say to the Senator from Alabama that this bill was on the calendar for quite some time. It really was not a newly reported bill out of the Commerce Committee as it came out of the committee in its original form. It has been on the calendar now for 3 weeks or longer, perhaps a month.

I may say that when the unanimous consent agreement was reached, at the request of the distinguished Senator from West Virginia, obviously there was no objection to it at that time.

Mr. ALLEN. Probably with no one on the floor.

Mr. COOK. I do not really know. I would say to the Senator from Alabama, he covers the floor quite extensively. Is the Senator saying he wishes a longer time for debate on the bill?

Mr. ALLEN. An unlimited time, yes, like any other bill coming before us.

Mr. COOK. I must say, as the Senator who handles a number of bills out of the Agriculture and Forestry Committee, he agrees to time limitations on such bills. I cannot see how he would say this should be on another basis.

Mr. ALLEN. When they come out of committee, they come on an unlimited basis.

Mr. COOK. If the Senator is saying when it comes back we will have to work out a new agreement, is it my understanding the Senator from Alabama will not, under any circumstances, agree on a time limitation, whatever bill comes out of the Commerce Committee?

Mr. ALLEN. No; I do not say that, but I want to have the option of agreeing to it, because as it is now each side has an hour.

Mr. President, how much time remains to each side under the agreement?

The PRESIDING OFFICER. There are 20 minutes for the Senator from California and 47 minutes for the minority.

Mr. ALLEN. Approximately 1 hour of the 2 has been used.

So, I would interpose an objection to the unanimous consent request unless the Senator agrees that the previous unanimous consent agreement be rescinded.

Mr. COOK. Mr. President, I suggest the absence of a quorum so that I might prepare a motion in writing.

Mr. ROBERT C. BYRD. Mr. President, will the Senator withhold that suggestion regarding the suggestion of the absence of a quorum and allow me to take up a resolution which has been cleared on both sides in the meantime, while he is preparing it, with the understanding that no time will be charged against either side?

Mr. COOK. Yes.

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

Mr. ROBERT C. BYRD. Mr. President, the message from the House that I had expected has not yet reached the Senate, so I will proceed to something else.

ADDITIONAL CONFEREES TO S. 1983, ENDANGERED SPECIES

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that the names of Senators Moss and Cook be added as additional conferees on S. 1983, endangered species.

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

RECORD HELD OPEN FOR FURTHER EULOGIES TO TOM VAIL

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that the RECORD be held open for 10 additional days to allow Senators who wish to express eulogies for the late Tom Vail, who was the chief counsel of the Committee on Finance, to have an opportunity to express such eulogies for the RECORD.

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

ORDER FOR RECOGNITION OF SENATOR BARTLETT AND PERIOD FOR TRANSACTION OF ROUTINE MORNING BUSINESS TOMORROW

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that after the two leaders or their designees have been recognized on tomorrow, the distinguished Senator from Oklahoma (Mr. BARTLETT) be recognized for not to exceed 10 minutes, after which there be a period for the transaction of routine morning business of not to exceed 20

minutes, with a limitation on statements therein of 3 minutes.

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

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that the order for the recognition of Mr. BARTLETT on tomorrow for a period of not to exceed 10 minutes be changed to 15 minutes.

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

ORDER OF BUSINESS

Mr. ROBERT C. BYRD. Mr. President, under the previous order, is it not correct that at the conclusion of routine morning business tomorrow, the Senate will proceed to the consideration of the HEW appropriation bill?

The PRESIDING OFFICER. The Senator is correct.

AMATEUR ATHLETIC ACT OF 1973

The Senate continued with the consideration of the bill (S. 2365) to regulate interstate and foreign commerce as it relates to the conduct of organized amateur athletic competition within the United States and the participation of American athletes in international amateur athletic competition.

Mr. COOK. Mr. President, my motion for recommittal is at the desk.

The PRESIDING OFFICER. The clerk will report the motion.

The assistant legislative clerk read as follows:

I move that S. 2365 be recommitted to the Committee on Commerce and that same be reported to the Senate on or before November 8, 1972.

The PRESIDING OFFICER. There are 20 minutes on the motion to be equally divided. Who yields time?

Mr. COOK. Mr. President, I reserve the remainder of my time.

Mr. TUNNEY. Mr. President, I would suggest if possible that we get a vote immediately if both sides are willing to yield back the remainder of their time.

The PRESIDING OFFICER. Is all time yielded back?

Mr. TUNNEY. Mr. President, is that agreeable with the Senator from Maryland?

Mr. BEALL. Mr. President, I do not have control of the time. The sponsor of the bill, I suppose, would control the time in opposition.

The PRESIDING OFFICER. The Senator from California controls the opposition time.

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

MESSAGE FROM THE HOUSE

A message from the House of Representatives by Mr. Berry one of its reading clerks, announced that the House had passed the joint resolution (H.J. Res. 753) making further continuing appropriations for the fiscal year 1974, and for other purposes, in which it requests the concurrence of the Senate.

The message also announced that the House had agreed to the amendment of the Senate to the bill (H.R. 6628) to amend section 101(b) of the Micronesian Claims Act of 1971 to enlarge the class of persons eligible to receive benefits under the claims program established by that act.

The message further announced that the House had disagreed to the amendment of the Senate to the bill (H.R. 6768) to provide for participation by the United States in the United Nations environment program; asked a conference with the Senate on the disagreeing votes of the two Houses thereon, and that Mr. FRASER, Mr. MORGAN, Mr. FASCELL, Mr. FRELINGHUYSEN, and Mr. GROSS were appointed managers on the part of the House at the conference.

QUORUM CALL

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

The PRESIDING OFFICER. The clerk will call the roll.

The second assistant legislative clerk proceeded to call the roll.

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

The PRESIDING OFFICER. Without objection, it is so ordered

HOUSE JOINT RESOLUTION 753—CONTINUING APPROPRIATIONS, 1974

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that I may proceed for 3 minutes without the time being charged to either side.

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

Mr. ROBERT C. BYRD. Mr. President, I ask that the Chair lay before the Senate a message from the House of Representatives on House Joint Resolution 753.

The PRESIDING OFFICER (Mr. HASKELL). The Chair lays before the Senate, House Joint Resolution 753 which will be read the first time by title, as follows:

A joint resolution (H.J. Res. 753) making further continuing appropriations for the fiscal year 1974, and for other purposes.

The PRESIDING OFFICER. Without objection, the joint resolution will be considered as having been read the second time.

Mr. ROBERT C. BYRD. Mr. President, I have cleared this request with the distinguished chairman of the Appropriations Committee, the Senator from Arkansas (Mr. MCCLELLAN), and at his request I have talked with the Senator from North Dakota (Mr. YOUNG) and with the Senator from New Hampshire (Mr. COTTON). The request has been cleared with both of those Senators. It has been discussed with the distinguished assistant Republican leader, who is present on the floor.

This is another continuing resolution granting authority for the operation of the Government through the period ending October 11, 1973. The Senate earlier today passed House Joint Resolution 727, a continuing resolution providing authority for the operation of the Government from October 1, 1973, through the sine die adjournment date of the 93d Congress, 2d session. House Joint Resolution 727 as it passed the Senate today has amendments which must be dealt with in conference with the House. Some of the language is highly controversial and it may take a few days to reach full agreement with the House of Representatives.

In addition, the House intends to adjourn until Tuesday, October 9, 1973, over the Columbus Day holiday. Since the original continuing resolution adopted July 1, 1973, expired at midnight September 30, and since only three of the regular appropriation bills have been signed into law, it is necessary that authority be granted for the operation of the Government. This resolution is only for a few days. It passed the House about 6:20 this evening, and I am hopeful that the Senate will agree to it.

Mr. GRIFFIN. Mr. President, I concur in what the distinguished majority whip has said. He stated the facts exactly as they are. This resolution is for a very brief time. It is necessary in order to recognize the practical realities of the situation we face.

There will have to be a conference concerning the different positions of the two Houses on the continuing resolution passed earlier today by the Senate. During this interim this continuing resolution for a brief period of time is necessary. It has been cleared with the ranking minority member, the Senator from North Dakota (Mr. YOUNG).

The PRESIDING OFFICER. The joint resolution is open to amendment. If there be no amendment to be proposed, the question is on the third reading and passage of the joint resolution.

The joint resolution (H.J. Res. 753) was ordered to a third reading, was read the third time, and passed.

Mr. ROBERT C. BYRD. Mr. President, I thank the distinguished assistant Republican leader and I think the Senators who have been discussing the amateur athletic bill for their kindness in yielding.

ORDER FOR ADJOURNMENT FROM TOMORROW TO MONDAY, OCTOBER 8, 1973, AT 10 A.M.

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that, when the Senate completes its business tomorrow, Thursday, it stand in adjournment until the hour of 10 a.m. on Monday next.

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

AMATEUR ATHLETIC ACT OF 1973

The Senate continued with the consideration of the bill (S. 2365) to regulate interstate and foreign commerce as it relates to the conduct of organized amateur athletic competition within the United States and the participation of American athletes in international amateur athletic competition .

Mr. COOK. Mr. President, I hope we have worked out an agreement. I will explain it and hope that it will be satisfactory. It meets with the approval of the Senator from Alabama.

Mr. President, I move that in the proposal I submitted to the desk that where it says "reported to the Senate on

or before November 8," it read "reported to the Senate not before November 8, 1973."

Then, after that, I ask unanimous consent that the original unanimous-consent agreement for a time limitation on the bill, which is 2 hours, be extended to 3 hours on the bill, and ask that the same agreement relative to amendments as was in the original proposal remain intact.

Mr. BEALL. Mr. President, reserving the right to object, does the Senator from Kentucky make any change in the original agreement relative to amendments?

Mr. COOK. I do not.

Mr. BEALL. Mr. President, might I suggest that it would be more suitable if there was 1 hour rather than one-half hour as in the original unanimous-consent agreement.

Mr. COOK. Mr. President, I have no objection if it meets with the approval of the leadership.

Mr. ROBERT C. BYRD. Mr. President, reserving the right to object, and I shall not object, I want to thank the Senators for working out what I think will prove to be a resolution of the problem.

Would the distinguished Senator from Kentucky include in his request debatable motions or appeals and place a time limitation thereon of 30 minutes on such debatable motions or appeals, and also a proviso that the agreement be in the usual form.

Mr. COOK. Mr. President, I say to the Senator from West Virginia that I thank him very much. All I was doing was amending the original unanimous-consent agreement which contained that language, and the only amendment I was making to the unanimous-consent agreement was that rather than 2 hours, it be 3 hours on the bill and rather than 30 minutes on amendments, it be 1 hour on amendments. The original proposal by the majority whip stays in its original form otherwise.

Mr. ROBERT C. BYRD. Mr. President, and the time to begin to run ab initio once it is before the Senate.

Mr. TUNNEY. Mr. President, reserving the right to object, and I shall not object, I thank the distinguished Senator from Alabama for agreeing to the unanimous-consent request, and also thank the Senator from Kentucky for proposing it.

As the floor manager, I feel this is a very good arrangement.

Mr. COOK. Mr. President, I ask unanimous consent that I be permitted to amend my original motion pursuant to the language that I have just extended, and I ask unanimous consent that the original order for the time limitation on the bill and the time limitation on amendments be amended in relation to the remarks I have just made.

The PRESIDING OFFICER. Is there objection to the request of the Senator from Kentucky? Without objection, it is so ordered.

Mr. COOK. I now ask for the vote on the motion.

The PRESIDING OFFICER (Mr. HASKELL). The question is on agreeing to the motion of the Senator from Kentucky as amended.

The motion was agreed to.

DEPARTMENTS OF LABOR AND HEALTH, EDUCATION, AND WELFARE APPROPRIATIONS, 1974—UNANIMOUS-CONSENT AGREEMENT

Mr. ROBERT C. BYRD. Mr. President, merely for the purpose of laying it before the Senate, without any action to be taken thereon today, I ask unanimous consent that the Senate proceed to the consideration of Calendar Order No. 390, H.R. 8877.

The PRESIDING OFFICER. The bill will be stated by title.

The assistant legislative clerk read as follows:

A bill (H.R. 8877) making appropriations for the Departments of Labor, and Health, Education, and Welfare, and related agencies, for the fiscal year ending June 30, 1974, and for other purposes.

The PRESIDING OFFICER. Without objection, the Senate will proceed to its consideration.

There being no objection, the Senate proceeded to consider the bill, which had been reported from the Committee on Appropriations with amendments.

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that no time be charged against this bill today.

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

Mr. ROBERT C. BYRD. I ask unanimous consent that the agreement entered into previously with respect to this bill be modified in the following manner:

That there be a time limitation on the bill of 12 hours instead of 10 hours, as originally agreed, and that there be a time limitation on any amendment to of 30 minutes, rather than 1 hour, as originally agreed to.

These requests have been cleared with the distinguished Senator from New Hampshire (Mr. COTTON), the ranking Republican member of the Subcommittee on Appropriations for Labor and HEW, with the distinguished Senator from North Dakota (Mr. YOUNG), and with the distinguished manager of the bill, the Senator from Washington (Mr. MAGNUSON).

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

AUTHORIZATION FOR CERTAIN ACTION TO BE TAKEN DURING THE ADJOURNMENT

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that during the adjournment of the Senate over until 10 o'clock a.m. tomorrow, the Vice President, the President pro tempore, and the Acting President pro tempore be authorized to sign duly enrolled bills and joint resolutions.

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

AUTHORITY FOR THE SECRETARY OF THE SENATE TO RECEIVE MESSAGES FROM THE HOUSE OF REPRESENTATIVES DURING THE ADJOURNMENT OF THE SENATE

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that during the adjournment of the Senate over until 10 a.m. tomorrow, the Secretary of the Senate be authorized to receive messages from the House of Representatives.

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

UNANIMOUS-CONSENT AGREEMENT ON SURFACE MINING BILL

Mr. ROBERT C. BYRD. Mr. President, I have unanimous consent—I have not cleared this with the other side of the aisle, but it was understood in discussions with the Republican leadership and with other Senators today—that upon the disposition of the Labor-HEW appropriation bill, the Senate proceed to take up S. 425, the bill on surface mining.

Therefore, in order that all Senators may know that will be the next measure once the HEW appropriation bill is disposed of, and surface mining would in any event not come before the Senate until Monday of next week and possibly not before Tuesday, depending on whether or not the HEW appropriation bill is disposed of tommorow or on Monday or Tuesday, or whenever, I ask unanimous consent that upon the disposition of the Labor-HEW appropriation bill, the Senate then take up S. 425, the bill on surface mining.

The PRESIDING OFFICER. Is there objection? The Chair hears none, and it is so ordered.

PROGRAM

Mr. ROBERT C. BYRD. Mr. President, the program for tomorrow is as follows:

The Senate will convene at 10 o'clock a.m.

After the Senator from Oklahoma (Mr. BARTLETT) has been recognized for not to exceed 15 minutes under the order previously entered, there will be a period for the transaction of routine morning business of not to exceed 20 minutes, with statements therein limited to 3 minutes.

On the conclusion of morning business, the Senate will resume the consideration of Calendar Order No. 390, H.R. 8877, the Labor-HEW appropriation bill, under a time limitation.

Yea-and-nay votes will occur tomorrow on amendments to the bill, and possibly—at least that is the hope of the distinguished manager of the bill (Mr. MAGNUSON)—final action could occur tomorrow on that bill. In any event, there will be yea-and-nay votes tomorrow.

At the conclusion of business tomorrow, the Senate will go over until Monday, October 8, on which day the Senate will resume the consideration of the Labor-HEW appropriation bill, if not disposed of tomorrow.

If the aforementioned bills are completed, together with other measures on the calendar cleared for action, and if several conference reports can be agreed upon, all by the close of business next Friday, October 12, or Saturday, October 13—hopefully Friday—the Senate will then recess for 2 weeks, to reconvene at 12 o'clock noon on Monday, October 29.

So there is that condition, Mr. President, that the Senate complete its business on the HEW appropriations, also

on surface mining, and any other measures that have been cleared on the calendar, and on as many conference reports as can possibly be agreed to; and the leadership would urge Senate committee chairmen who have measures pending in conference with the House of Representatives to act as expeditiously as possible to wrap up conferences and present conference reports to the Senate floor for action next week if at all possible, before the aforementioned recess begins.

QUORUM CALL

Mr. ROBERT C. BYRD. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The second assistant legislative clerk proceeded to call the roll.

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

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

ADJOURNMENT TO 10 A.M.

Mr. ROBERT C. BYRD. Mr. President, if there be no further business to come before the Senate, I move, in accordance with the previous order, that the Senate stand in adjournment until 10 a.m. tomorrow.

The motion was agreed to; and at 6:57 p.m., the Senate adjourned until tomorrow, Thursday, October 4, 1973, at 10 a.m.

NOMINATIONS

Executive nominations received by the Senate October 3, 1973:

NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION

Subject to qualifications provided by law, the following for permanent appointment to the grades indicated in the National Oceanic and Atmospheric Administration:

To be lieutenants

Joseph A. Sowers
Larry A. New
Andrew N. Bodnar, Jr.

To be lieutenants (junior grade)

Christopher B. Lawrence
James E. Newcomer
Robert B. Zider
Larry L. Minter
Frank B. Arbusto, Jr.
Stephen D. Whitaker
Stephen A. Young
Bruce L. Crumley
Richard P. Moore
Robert C. Hoge
Richard A. Zachariason
James A. Wexler
Charles L. Kureth
Joseph D. Wilson
Patrick L. Wehling, Jr.
Thomas W. Ruszala
Thomas R. Crane
Bobby J. Taylor
Kenneth H. Underwood
Joseph M. Kunches
Steven J. Hollinshead
Michael J. Eisenstat
Robert E. Karlin
James A. Watkins
Steven R. Birkey
Craig S. Nelson
Stephen H. Manzo
Alan J. Pickrell
Craig B. Christensen
Dan E. Tracy
Neil P. Gloier
Thomas W. Jackson III
Bruce E. Shimano
Hugh H. Sprunt, Jr.
Kent J. Stong

To be ensigns

David Pasciuti
Craig P. Berg
Francesca M. Cava
Donald A. Dossett
Joanne Gulley
Bruce B. Johnson
Charles D. Mason
Bryan K. Mezger
William D. Otto
Kenneth W. Perrin
Thomas G. Russel

HOUSE OF REPRESENTATIVES—*Wednesday, October 3, 1973*

The House met at 12 o'clock noon.

The Chaplain, Rev. Edward G. Latch, D.D., offered the following prayer:

Trust ye in the Lord forever: for in the Lord God is everlasting strength.—Isaiah 26: 4.

O Thou whose love will not let us go and whose light follows us all our way, make us responsive to Thy spirit as we open our hearts unto Thee. Help us to meet the challenge of these times with courage, to carry our responsibilities with confidence, and to solve our ever-present problems with creative wisdom.

We pray for our President, our Vice President, our Speaker, Members of Congress and all who work with them. They have pressures which tax their resources to the limit, duties which demand their attention and abort their time, criticisms which often make their lives miserable. Grant that our people may begin to think of our leaders more and more with sympathetic hearts and understanding minds and less and less with provincial prejudice and fruitless faultfinding.

Bowing before the altar of prayer give to us all a greatness of spirit, a purity of heart, and a willingness to serve Thee and our country with all our being.

In the spirit of Christ we pray. Amen.

THE JOURNAL

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

Without objection, the Journal stands approved.

There was no objection.

PROPOSED AMENDMENT TO URBAN MASS TRANSPORTATION ASSISTANCE ACT

(Mr. WOLFF asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. WOLFF. Mr. Speaker, I would like to alert my colleagues to the fact that this afternoon I will be offering an amendment to the Urban Mass Transportation Assistance Act. The amendment directs the Secretary of Transportation to conduct a full and complete safety investigation of rail facilities in New York that are supervised or leased by the Metropolitan Transportation Authority.

Over the summer, New York City has experienced six major accidents on its rail system. Local officials have called upon Secretary Brinegar to conduct a systemwide safety investigation in an effort to prevent similar catastrophes from occurring in the future. Because the Secretary has declined to do such a study, I will be offering my amendment in the interests of protecting New York's 4 million daily transit riders.

PERMISSION FOR COMMITTEE ON PUBLIC WORKS TO FILE REPORT ON H.R. 10203, WATER RESOURCES DEVELOPMENT ACT OF 1973

Mr. ROBERTS. Mr. Speaker, I ask unanimous consent that the Committee on Public Works may have until midnight tonight to file a committee report on H.R. 10203, the Water Resources Development Act of 1973.

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

There was no objection.

PROSPECTIVE WHEAT SHORTAGES

(Mr. JONES of Oklahoma asked and was given permission to address the House for 1 minute and to revise and extend his remarks and include extraneous matter.)

Mr. JONES of Oklahoma. Mr. Speaker, for the past 2 months I have conducted a mobile congressional office which visited all parts of my congressional district. One of the dominant and recurring themes in my district is the shortage of critical products and, in particular, the shortage of wheat which may occur because of an increase in wheat exports in the coming year.

The Department of Agriculture says that we have a bumper crop of 1.8 billion bushels of wheat, of which 1.1 billion bushels are already committed to export sales.

Because of the great interest in my district, in early September I wrote to Secretary of Agriculture Butz and asked for an explanation of the shortage and asked what the Department was doing to insure a domestic supply in the coming year. About 2½ weeks later, I received a response, not from the Secretary of Agriculture, but from the Assistant Sales Manager of the Commodity Exports Division of the Export Marketing System of the USDA, who answers to the Associate Sales Manager, who answers to the Deputy Associate Secretary, who answers to the Assistant Secretary for International Affairs and Commodities Programs.

None of the questions which I raised was answered. It was a bunch of bureaucratic "bushwa" that simply could not be explained or understood.

Mr. Speaker, this afternoon I am taking a special order to explore the prospective shortage of wheat in the coming year, and I encourage the other Members of this body to join me in calling the attention of the Nation to this critical problem. If there is one thing that consumers in this country cannot understand, it is that there is not enough wheat to insure bread on the table at a reasonable price in the coming year. It is going to be a very serious situation which we are all going to be called upon to explain.